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

Rules and Regulations

Federal Register
Vol. 75, No. 69
Monday, April 12, 2010

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR part 274

RIN 0584–AD48

Supplemental Nutrition Assistance Program, Regulation Restructuring: Issuance Regulation Update and Reorganization To Reflect the End of Coupon Issuance Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule updates and reorganizes the Supplemental Nutrition Assistance Program (SNAP) (formerly the "Food Stamp Program") regulations pertaining to the issuance of SNAP benefits.

These changes to the SNAP regulations are put forth to account for the replacement of the paper coupon issuance system with the Electronic Benefits Transfer (EBT) system as the nationwide method of distributing benefits to program recipients. This action is in accordance with the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (hereinafter referred to as "the 2008 Farm Bill") which prohibits State agencies from issuing paper food stamp coupons and makes EBT cards the sole method of benefit delivery. The 2008 Farm Bill also de-obligated paper coupons as legal tender as of June 18, 2009. Therefore, paper coupons no longer have any value and can no longer be redeemed at any store.

In line with EBT implementation and the elimination of coupons, these changes remove coupon issuance and EBT pilot regulations that are no longer applicable, revise regulatory language to more appropriately reflect the new EBT issuance system and the Program's new name, and reorganize sections to develop a more cohesive set of issuance regulations.

DATES: This rule will become effective on June 11, 2010, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before May 12, 2010. If adverse comments within the scope of the rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

ADDRESSES: The Food and Nutrition Service (FNS), USDA, invites interested persons to submit comments on this direct final rule. Comments may be submitted through the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Address any questions regarding this rulemaking to Andrea Gold, Chief, Retailer Management and Issuance Branch, Benefit Redemption Division at Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or by telephone at (703) 305–2456 during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Food Stamp Program was permanently authorized in 1964, Public Law 88–525. The Program first began using paper coupons instead of "stamps" to issue benefits in 1965. These initial coupons were then phased out in 1975 and became known as the "old series" coupons. The subsequent coupons remained essentially unchanged until they expired on June 18, 2009. Although these coupons resembled banknotes in size, the various colors, designs and booklets they came in were identifiable by others as "food stamps." Furthermore, retailers were required to provide change above 99 cents in the form of coupons as well to ensure that benefits were used solely for eligible food items and not traded for cash. The coupon issuance process was used for almost 40 years, until 2004 when the Electronic Benefits Transfer (EBT) system implementation was completed nationwide. Now, issuing coupons to households and providing change is no longer a factor. The EBT system works similarly to a debit card system and deducts the exact amount of the purchase from the households' EBT account. Furthermore, EBT cards look and operate just like commercial debit cards, allowing recipients more anonymity at the checkout counter.

Because coupons did not have an expiration date, they remained obligations of the Federal government even after EBT implementation was completed and continued to be redeemable at all FNS authorized stores. However, the ability to redeem coupons ended as of June 18, 2009, the expiration date set by the 2008 Farm Bill. In addition, Section 4115 of the 2008 Farm Bill amended Section 7 of the Food and Nutrition Act of 2008 by adding subsection (g)(3)(A), 7 U.S.C. 2016 (g)(3)(A), to prohibit the issuance of coupons and other coupon-related documents, making EBT the sole method of benefit delivery. This law also changed the name of the "Food Stamp Program" to the "Supplemental Nutrition Assistance Program (SNAP)," to bring the title of the Program in line with the modern version of issuance and the focus on nutrition. Similarly, it is also time to bring the Program's regulations in line with current issuance requirements and practices.

Since EBT is now the sole method for issuing and exchanging benefits, the revisions being promulgated by this rulemaking better reflect the new EBT reality. As such, the following changes are being made to 7 CFR part 274, previously entitled "Issuance and Use of Coupons,": Removing coupon issuance and EBT pilot regulations that are no longer applicable, revising regulatory language to more appropriately connote the new EBT issuance system, and reorganizing sections to develop a more cohesive set of issuance regulations.

Reducing Issuance System Options to On-Line or Off-Line EBT Systems

At 7 CFR 274.3, the Department will eliminate regulatory language regarding obsolete issuance system options for the delivery of SNAP benefits to

households. The system options that will be removed are authorization document, direct access, and mail issuance systems for the delivery of coupons. These systems were legislatively eliminated as options for State agencies by the 2008 Farm Bill. State agencies will continue to have the option to implement either an on-line or off-line EBT system for the delivery of benefits.

Removing Outdated Coupon Issuance and EBT Pilot Regulations

Throughout 7 CFR part 274, the Department is deleting language and several sections which directly address State agency responsibilities regarding issuance, replacement, storage, shipping, inventory management, reconciliation, and reporting requirements for paper coupons.

The Department is also removing regulations requiring the issuance of identification (ID) cards to each certified household that are no longer applicable. SNAP benefits are now electronically deposited into a household's EBT account on a monthly basis. Therefore, ID is no longer needed as proof of program eligibility to pick up benefits. Furthermore, to access benefits in their EBT account, households must set up a Personal Identification Number (PIN) known only to household members and those authorized to make SNAP purchases on the household's behalf. A PIN ensures that only authorized persons can conduct SNAP transactions. In addition, to account for the elimination of ID cards, the required use of specially-marked ID cards for certain households eligible for prepared meals and the purchase of hunting and fishing equipment is being replaced with a broader requirement that State agencies implement a method to ensure that only eligible households are able to participate in such programs.

Border store language, requiring State agencies to provide Point-of-Sale (POS) equipment to stores that border an EBT system area, is also being removed. This requirement was intended to ensure adequate benefit access to SNAP clients who lived in areas that bordered a non-EBT State or a State that was not interoperable with the bordering State's EBT system. However, the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Public Law 106–171, required State EBT systems to be interoperable nationwide by October 2002. Because every State agency is now operating a Statewide EBT system that is interoperable with all other State EBT systems, the requirement that a State provide POS equipment to border stores is no longer relevant. However, the requirement that State agencies ensure that procedures are in place to process manual vouchers in border stores deemed necessary for client access still remains in instances when the system is down or for those retailers that do not have POS equipment.

Finally, the Department is revising language pertaining to EBT system pilot projects and expansion. EBT is no longer in the pilot stage, but instead has been in the operation and maintenance stage for all State agencies since nationwide implementation was completed in June 2004. As a result, EBT conversions have replaced pilots for the ongoing operation of State EBT systems. Conversions occur when a State EBT reprocurement results in the selection of a new vendor for EBT services. When this occurs, the State agency must submit a conversion plan instead of a pilot project implementation plan to the Department for approval to address how the State intends to transition from the current system to the new one. Therefore, the Department is making it clearer that pilot and expansion requirements pertain only to new technology or enhancements that significantly change the architecture of issuing benefits electronically.

Nomenclature Changes

The Department is replacing Food Stamp Program and coupon terminology with new SNAP and EBT terminology throughout the issuance regulations at 7 CFR part 274. Again, these changes reflect similar updates in the Food and Nutrition Act of 2008, 7 U.S.C. 2011, *et seq.,* and the replacement of the coupon issuance system with EBT systems.

Reorganization

Henceforth, EBT will be synonymous with SNAP issuance rather than an exception to the usual issuance process. As a result, EBT, as an issuance method, will no longer be separated from overall issuance regulations. This will eliminate overlapping requirements that are currently found in both the coupon and EBT sections. It will also eliminate confusion in areas where coupon issuance requirements do not apply to EBT issuance. The Department is also making technical corrections for clarity, such as adding missing words or correcting inaccurate phrasing. Please note that the Department is changing the citation for most paragraphs throughout Part 274. Furthermore, some regulations are being moved to different sections and some sections are being created or renamed to better reflect the content. The following Distribution Table indicates how individual sections will be reorganized:

DISTRIBUTION TABLE—ISSUANCE AND USE OF BENEFITS

CFR	Direct final rule
274.1—State agency issuance responsibility	274.1—Issuance System Approval Standards.
274.1(b)(1)–(3)	274.1(d)(1)–(3).
274.1(b)(3)(i)–(ii)(B)	Removed.
274.1(b)(4)–274.1(b)(5)	Removed.
274.1(c)–(d)	Removed.
274.1(e)	274.1(f).
274.2—Providing benefits to participants	
274.2(e)–(g)	Removed.
274.3—Issuance systems	Moved to sections 274.1 and 274.2.
274.3(a)(1)–(a)(3)	Removed.
274.3(a)(4)–(a)(5)	274.1(b).
274.3(b)	Removed.
274.3(c)	274.1(c).
274.3(d)(1)–(d)(4)	274.1(h).
274.3(d)(5)	Removed.
274.3(d)(6)	274.2(b).
274.3(e)	Removed.
274.4—Reconciliation and Reporting	
274.4(a)	Removed.

DISTRIBUTION TABLE—ISSUANCE AND USE OF BENEFITS—Continued

CFR	Direct final rule
274.4(b)(1)	Removed.
274.4(b)(2)	274.4(c)(1).
274.4(b)(3)	Removed.
274.4(b)(4)	274.4(c)(2).
274.5—Reserved	274.5—Record retention and forms security.
274.6—Replacement issuances to households	274.6—Replacement issuances and cards to households.
274.6(a)(1)(i)–(a)(1)(ii)	Removed.
274.6(a)(1)(iv)	Removed.
274.6(a)(2)	Removed.
274.6(a)(3)	274.6(a)(2).
274.6(a)(4)	Removed.
274.6(b)	274.6(a)(3).
274.6(b)(2)(i)–(b)(2)(ii)	Removed.
274.6(b)(2)(iii)	274.6(a)(3)(ii).
274.6(b)(2)(iv)	Removed.
274.6(b)(3)	274.6(a)(3)(iii).
274.6(c)	274.6(a)(4).
274.6(c)(3)(i)–(c)(3)(iv)	Removed.
274.6(d)–(d)(1)	274.6(a)(5)–(a)(5)(i).
274.6(d)(2)(i)–(d)(2)(ii)	Removed.
274.6(d)(1)(iii)	274.6(a)(5)(ii).
274.6(d)(2)	274.6(a)(5)(iii).
274.6(e)	Removed.
274.6(f)	274.6(a)(6)(i).
274.6(f)(1)	Removed.
274.6(f)(2)	274.6(a)(6)(ii).
274.6(f)(3)–(4)	Removed.
274.6(g)	Removed.
274.6(h)–(h)(2)	274.6(a)(7)–(a)(7)(ii).
274.6(h)(2)(i)–(ii)	Removed.
274.6(h)(3)	Removed.
274.6(h)(4)	274.6(a)(7)(iii).
274.6(h)(4)(i)–(h)(4)(iii)	Removed.
274.7 Coupon Management	Removed.
274.8—Responsibilities of Coupon Issuers	Removed.
274.9—Closeout of Coupon Issuer	Removed.
274.10—Use of Identification Cards and Redemption of Coupons by Eligible Households.	274.7—Benefit Redemption by Eligible Households.
274.10(a)–(a)(3)	Removed.
274.10(a)(4)(i)–(a)(4)(ii)	274.7(g)(1)–(g)(2).
274.10(a)(4)(iii)	274.7(g)(4)(ii).
274.10(a)(4)(iv)	274.7(h).
274.10(a)(5)	Removed.
274.10(b)–(c)	Removed.
274.10(d)	274.7(a).
274.10(e)	274.7(g)(1).
274.10(f)–(f)(3)	274.7(g)(3)–(g)(3)(iii).
274.10(g)	274.7(g)(4)(i).
274.10(h)	Removed.
274.10(i)	274.7(b).
274.10(j)	Removed.
274.11—Issuance and Inventory Record Retention and Forms Security	274.5—Record Retention and Forms Security.
274.11(a)	274.5(a).
274.11(a)(1)	Removed.
274.11(a)(2)	274.5(a)(ii).
274.11(b)	274.5(b).
274.11(c)(1)(i)	274.5(c).
274.12—EBT System Approval Standards	274.8—Functional and Technical EBT System Requirements.
274.12(a)	Removed.
274.12(b)(1)	274.1(f).
274.12(b)(2)–(b)(4)	274.1(g)(1)–(3).
274.12(c)	274.1(f)(1).
274.12(c)(2)–(3)	274.1(f)(2)–(3).
274.12(c)(4)	274.1(f)(1)(iii).
274.12(d)	274.1(f)(1)(iv).
274.12(e)–(e)(3)	274.8(a)–(a)(3).
274.12(e)(4)(i)	274.3(e)(1)–(e)(2).
274.12(e)(4)(ii)–(vi)	274.3(e)(3)–(7).
274.12(e)(4)(vii)–(e)(4)(vii)	274.1(j).
274.12(f)(1)	274.7(c).
274.12(f)(2)	274.7(d)(1)–(2).
274.12(f)(3)	274.7(d)(3) and 274.8(b)(7).

DISTRIBUTION TABLE—ISSUANCE AND USE OF BENEFITS—Continued

CFR	Direct final rule
274.12(f)(4)	274.2(d).
274.12(f)(4)(i)–(f)(4)(iii)	274.2(g).
274.12(f)(5)(i)	274.2(f).
274.12(f)(5)(ii)–(v)	274.6(b).
274.12(f)(6)	Removed.
274.12(f)(7)	274.2(h).
274.12(f)(8)	274.2(a).
274.12(f)(9)	274.7(e) and 274.7(f)(2).
274.12(f)(10)	274.2(e).
274.12(g)–(g)(2)	274.3(a)–(a)(2).
274.12(g)(3)	274.1(g)(4).
274.12(g)(4)–(4)(i)	274.7(f)–(f)(1).
274.12(g)(4)(ii)	274.3(b).
274.12(g)(5)	274.3(a)(3).
274.12(g)(6)	274.3(c).
274.12(h)–(h)(4)	274.8(b)–(b)(4).
274.12(h)(5)	274.3(d).
274.12(h)(6)–(h)(7)	274.8(b)(5)–(b)(6).
274.12(g)(8)–(10)	274.8(b)(8)–(b)(10).
274.12(h)(11)	Removed.
274.12(i)	274.8(c).
274.12(j)–(j)(1)	274.4(a)–(a)(1)(vi).
274.12(j)(2)–(2)(i)	274.4(b).
274.12(j)(2)(ii)–(iii)	274.4(b)(ii)–(b)(iii).
274.12(j)(3)–(j)(4)	Removed.
274.12(j)(5)	274.1(i)(2).
274.12(k)	274.1(k).
274.12(l)	274.8(d).
274.12(m)	274.8(e).
274.12(n)	274.1(e).

Implementation

In accordance with the parameters set forth in 62 FR 55141 (October 23, 1997), "Use of Direct Final Rulemaking," this rule will become effective on June 11, 2010, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before May 12, 2010.

Adverse comments on regulatory requirements that existed prior to the publication of this rule are not within the scope of this rulemaking. Furthermore, the Department does not have the authority to consider comments on nondiscretionary regulatory changes mandated by the 2008 Farm Bill. Only comments pertaining to discretionary changes in current requirements will be considered. In addition, this rulemaking is intended to address only the provision of the 2008 Farm Bill that requires EBT to be the sole method of benefit delivery. The other EBT and issuance requirements of the 2008 Farm Bill will be addressed in subsequent rulemaking.

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive order, a federalism summary impact statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this direct final rule will not have a significant economic impact on a substantial number of small entities. Departmental Field Offices, retailers participating or applying to participate in the Supplemental Nutrition Assistance Program, State agencies that distribute Supplemental Nutrition Assistance Program benefits and treatment centers, homeless meal providers, group living homes, and other meal services eligible to participate in the Supplemental Nutrition Assistance Program are the entities affected by this change.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain additional reporting or recordkeeping requirements other than those information collections impacted that

will be submitted or has been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA 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, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any 1 year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 7 CFR part 274

Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 274 is revised as follows:

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

Sec.

Authority: 7 U.S.C. 2011–2036.

Editorial Note: OMB control numbers relating to this part 274 are contained in § 271.8.

§ 274.1 Issuance system approval standards.

(a) *Basic issuance requirements.* State agencies shall establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that Program benefits are timely distributed in the correct amounts; and that benefit issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *System classification.* State agencies may issue benefits to households through any of the following systems:

(1) An on-line Electronic Benefit Transfer (EBT) system in which Program benefits are stored in a central computer database and electronically accessed by households at the point of sale via reusable plastic cards.

(2) An off-line EBT system in which benefit allotments can be stored on a card or in a card access device and used to purchase authorized items at a point-of-sale (POS) terminal without real-time authorization from a central processor.

(c) *Alternative benefit issuance system.*

(1) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State agency to issue or deliver benefits using another method. The alternative method may be one of the methods described in paragraph (b) of this section. The determination of which alternative to use will be made by FNS after consultation with the State agency. The cost of conversion will be shared by the Department and the State agency in accordance with the cost accounting provision of part 277 of this chapter.

(2) The cost of documents or systems which may be required as a result of a permanent alternative issuance system pursuant to this section shall not be imposed upon retail food firms participating in the Program.

(d) *Contracting or delegating issuance responsibilities.* State agencies may assign to others such as banks, savings and loan associations, and other commercial businesses, the responsibility for the issuance of benefits. State agencies may permit contractors to subcontract assigned issuance responsibilities.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of benefits, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in part 277 of this chapter.

(3) The State agency shall not assign the issuance of benefits to any retail food firm.

(e) *Ownership rights and procurement requirements.* (1) The State agency shall comply with the software and automated data processing equipment ownership rights prescribed under § 277.13 and § 277.18(1) of this chapter.

(2) The State agency shall comply with the procurement standards prescribed under § 277.18(j) of this chapter. Under service agreements, the procurement of equipment and services which will be utilized in the SNAP EBT system shall be conducted in accordance with the provisions set forth under § 277.18(f) of this chapter.

(f) *Advance planning documentation.* State agencies must comply with the procurement requirements of part 277 of this chapter for the acquisition, design, development, or implementation of initial and subsequent EBT systems. With certain exceptions detailed in part 277, State agencies must receive prior approval for the design and acquisition of EBT systems through submission of advance planning documents (APDs).

(1) *Pilot project approval requirements.* To the extent the State is moving EBT to new technology or incorporating enhancements or upgrades that significantly change the architecture and interface requirements or functionality of issuing benefits electronically:

(i) The State agency shall comply with the two stage approval process for submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(ii) The State agency shall implement EBT systems in a pilot area prior to

expansion statewide or to other project areas. The areas of pilot operation and full scale operation shall be identified in the planning APD when submitted to FNS for approval.

(A) *Pilot project site and expanded site descriptions.* At a minimum, the proposed pilot project site and expanded site descriptions shall include the geographical boundaries, average number and characteristics of Program participants and households, the number and type of authorized food retailers and authorized retailers bordering the pilot and expanded areas, the SNAP redemption patterns of food retailers, the status of commercial POS deployment and the estimated number of checkout lanes that will require POS equipment; and

(B) *A description of major contacts.* A description of initial contacts the State agency has made in the proposed pilot area among food retailers, financial institutions and households or their representatives that may be affected by implementation of the EBT system. Written commitments from the retail grocer community (including supermarket chains, independent retailers, and convenience stores) and participating financial institutions in the pilot area shall be provided along with other documentation that demonstrates the willingness to support the proposed EBT system within the pilot area and expanded system area. The State agency shall submit evidence of contacts with recipient organizations and others.

(iii) *Pilot project reporting.* The State agency is required to report to FNS all issues that arise during the pilot period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than 1 month after completion of the pilot operations.

(iv) *Expansion requirements.* The pilot and expansion schedule must be delineated in the State agency's approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the 3-month analysis and reporting, however, expansion can occur simultaneously with pilot operations. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require the roll-out be suspended until such problems are resolved.

(2) *EBT Implementation APD.* The EBT Implementation APD shall include the completed documents required under § 277.18 of this chapter for implementation APDs, where appropriate. Also, the State agency shall commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the project area:

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in § 274.8 in combination with the system components described by the approved system design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the functional demonstration if one is conducted. FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

(ii) *An acceptance test plan.* The Acceptance Test Plan for the project shall describe the methodology to be utilized to verify that the EBT system complies with Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(C) A "what-if" component shall also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(D) The Department reserves the right to participate and conduct independent testing as necessary during the acceptance testing and appropriate events during system design, development, implementation and operation.

(iii) *An acceptance test report.* The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. The report shall summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report shall contain the State agency's recommendations regarding implementation of the EBT system.

(iv) *A prototype food retailer agreement.* The State agency shall enter an agreement with each FNS authorized retailer that complies with the requirements under § 274.3.

(v) *An implementation plan.* The implementation plan shall include the following:

(A) A description of the tools, procedures, detailed schedules, and resources needed to implement the project;

(B) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(C) A phase-in-strategy which permits a measured and orderly transition from one EBT system to another. In describing this strategy, the plan shall address schedules that avoid disruption of normal shopping patterns and operations of participating households and food retailers. Training of SNAP households, State agency personnel and retailers and/or their trainers shall be coordinated with the installation of equipment in retail stores;

(D) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description shall also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Program requirements; and,

(E) A plan for orderly phase-out of the project and/or for continuing benefit issuance operations if it is demonstrated during the pilot project or conversion operations that the new system is not acceptable.

(vi) *A contingency plan.* The State agency shall submit a written contingency plan for FNS approval. The contingency plan shall contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan shall be incorporated into the State system

security plan after FNS approval as prescribed at § 277.18(p) of this chapter.

(3) *EBT Implementation APD budget.* The Implementation APD budget shall be prepared and submitted for FNS approval in accordance with the requirements of paragraph (k) of this section and § 277.18(d)(2) of this chapter.

(g) *EBT system administration.* (1) The State agency shall be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State agency upon a finding that the State agency or its contracted representative has failed to comply with the requirements of this section and/or § 277.18 of this chapter.

(2) All EBT systems within a State must follow a single EBT APD and system architecture submitted by the State agency. Multiple EBT designs will be acceptable only if such designs can be fully justified by the State agency; the system differences are transparent to participating households that move within the State; operating costs are the same or lower; and the different systems have the ability to readily communicate (transaction interchange) with one another.

(3) The State agency shall indicate how it plans to incorporate additional programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the SNAP EBT system. The State agency shall also consult with the State agency officials responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) prior to submitting the Planning APD for FNS approval.

(4) The State agency shall ensure that a sufficient number of authorized food retailers have agreed to participate throughout the area in which the EBT system will operate to ensure that eligible SNAP households will not suffer a significant reduction in their choice of retail food stores and that a sufficient number of retail food stores serving minority language populations are participating.

(h) *Master issuance file.* (1) The State agency shall establish a master issuance file which is a composite of the issuance records of all certified SNAP households. The State agency shall establish the master issuance file in a manner compatible with its system used for maintaining case record information and shall separate the information on the master issuance file into active and inactive case file categories. The master issuance file shall contain all the information needed to identify certified households, issue household benefits, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements prescribed in § 274.4.

(i) The master issuance file shall be kept current and accurate. It shall be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(ii) Before entering a household's data on the master issuance file, the State agency shall review the master issuance file to ensure that the household is not currently participating in, or disqualified from, the Program. If benefits are issued under the expedited service requirements of §§ 273.2(i) of this chapter and 274.2(b), the State agency shall complete as much of the master issuance file review as possible prior to issuing the benefits. Any uncompleted reviews shall be completed after issuance and appropriate corrective action shall be taken to recover overissuance.

(2) State agencies should divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, the posting of benefits to an EBT account and preparation of EBT cards and PINs for mailing. If issuance functions in an office are handled by one person, a second-party review shall be made to verify card inventory, the reconciliation of the mail log, and the number of mailings prepared.

(3) State agencies shall establish controls to prevent a household from concurrently receiving benefits through expedited and normal issuance services.

(4) State agencies shall clearly identify issuances in their accountability systems as initial, supplemental, replacement, or restored benefits.

(i) *State monitoring, examinations, and audits.* (1) The State agency's accountability system shall include procedures for monitoring benefit issuers to assure that the day-to-day operations of all benefit issuers comply with these regulations, to identify and correct deficiencies, and to report violations of the Act or regulations to FNS.

(2) The State agency must obtain an examination by an independent auditor of the transaction processing of the State EBT service provider regarding the issuance, redemption, and settlement of Program benefits. The examination must be done at least annually and the report must be completed ninety days after the examination period ends. Subsequent examinations must cover the entire period since the previous examination. Examinations must follow the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70, Service Organizations (SAS No. 70), requirements for reports on controls placed in operation and tests of the operating effectiveness of the controls.

(i) The examination report must include a list of all States whose systems operate under the same control environment. Auditors conducting the examination must follow EBT guidance contained in the Office of Management and Budget (OMB) Circular A–133 Compliance Supplement to the extent the guidelines refer to SNAP benefits. (For availability of OMB Circulars referenced in this section, *see* 5 CFR 1310.3.)

(ii) The State agency must retain a copy of the SAS No. 70 examination report.

(iii) The State agency shall respond to written requests from the Food and Nutrition Service (FNS), USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO) for completed SAS No. 70 examination reports by providing the report within thirty days of receipt of the written request.

(iv) The State agency shall respond to written requests from FNS, OIG, or GAO to view auditor's workpapers from SAS No. 70 reports by arranging to have workpapers made available within thirty days of receipt of the written request.

(v) FNS and the USDA OIG shall rely on SAS No. 70 reports on EBT transaction processing services provided by contractors to the State. FNS and USDA OIG reserve the right to conduct other reviews or audits if necessary.

(vi) EBT services provided directly by the State are not subject to SAS No. 70 examination requirements of this section but remain subject to the single audit requirements at 7 CFR 277.7 and OMB Circular A–133.

(j) *Compliance Investigations.* State agencies shall provide on-line read-only access to State EBT systems for compliance investigations.

(1) The State agency is required to provide software and telecommunications capability as necessary to FNS Retailer Investigation Branch Area offices, Regional offices and Field offices so that FNS compliance investigators, other appropriate FNS personnel and USDA OIG investigators have access to the

system in order to conduct investigations of program abuse and alleged violations;

(2) The State agency must ensure that FNS compliance investigators and USDA OIG investigators have access to EBT cards and accounts that are updated as necessary to conduct SNAP investigations.

(k) *Federal financial participation.* (1) The cost of administering statewide benefit issuance after implementation of the EBT system shall be funded at the regular Federal financial participation rate.

(2) The State agency shall comply with the provisions set forth under 7 CFR 277.18 and appendix A of 7 CFR 277.18 of this chapter in determining and claiming allowable costs for the EBT system.

(3) Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements in accordance with § 277.18(k) of this chapter.

(4) State agencies may receive one hundred percent Federal funding for the costs they incur for switching and settling all SNAP interstate transactions. For purposes of this section, the term "switching" means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term "settling" means movement, and reporting such movement, of funds from an EBT card issuer located in one State to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to $500,000 nationwide. Once the $500,000 limitation is exceeded, Federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. To qualify for this funding, the State agency must:

(i) Meet standards of interoperability and portability under § 274.8;

(ii) Sign and submit, in each fiscal year for which the State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which costs are incurred in order to qualify for payment for that fiscal year, and

(iii) Submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

§ 274.2 Providing benefits to participants.

(a) *General.* Each State agency is responsible for the timely and accurate issuance of benefits to certified eligible households, including EBT system compliance with the expedited service benefit delivery standard and the normal application processing standards, as prescribed by these regulations. Those households located in rural areas or comprised of elderly or disabled members who have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or of a fixed mailing address shall be given assistance in obtaining an EBT card. State agencies shall assist these households by arranging for the mailing of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(b) *Availability of benefits.* All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than 30 calendar days following the date the application was filed. An opportunity to participate consists of providing households with an active EBT card and PIN, and benefits that have been posted to the household's EBT account and are available for spending. State agencies, utilizing a centralized mailing system, must mail EBT cards and PINs, if applicable, in time to assure that the benefits can be spent after they are received but before the 30-day standard expires. A household has not been provided an opportunity to participate within the 30-day standard if the EBT card or PIN is mailed on the 29th or 30th day. For households entitled to expedited service, the State agency shall make benefits available to the household not later than the seventh calendar day following the date of application. State agencies which issue EBT cards by mail shall, at a minimum, use first class mail and sturdy nonforwarding envelopes or packages to send EBT cards to households.

(c) *Combined allotments.* For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, made available at the same time, in accordance with the timeframes specified in § 273.2 of this chapter.

(d) *Ongoing households.* State agencies shall establish an availability date for household access to their benefits and inform households of this date. All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date that the household must receive its subsequent allotments.

(1) State agencies may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) Upon the request of the Tribal organization that exercises governmental jurisdiction over a reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days each month.

(3) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. The 40-day requirement does not apply to instances in which actions by recipients, such as failure to submit a monthly report, disrupt benefits. Transfers include, but are not limited to, households being moved into or out of a staggered issuance procedure and households on a fluctuating schedule within a staggered system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide

the household more benefits than the household is entitled to receive.

(4) Notwithstanding the above provisions, in months in which benefits have been suspended under the provisions of § 271.7 of this chapter, State agencies may stagger issuance to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger issuance from the date issuance resumes through the end of the month or over a five-day period following the resumption of issuance, even if this results in benefits being issued after the end of the month in which the suspension occurred.

(e) *Household training.* The State agency shall provide training to each household prior to implementation and as needed during ongoing operation of the EBT system. Training functions for an EBT system may be incorporated into certification procedures. At a minimum, the household training shall include:

(1) Content which will familiarize each household with the provisions of paragraphs (e) through (h) of this section and § 274.6 and § 274.7;

(2) Notification to the household of the procedures for manual transactions and re-presentation as described in § 274.8(d);

(3) The appropriate utilization and security of the PIN;

(4) Each household's responsibilities for reporting loss or damage to the EBT card and who to report them to, both during and outside business hours. Information on a 24 hour hotline telephone number shall be provided to each household during training;

(5) Written materials and/or other information, including the specific rights to benefits in an EBT system, shall be provided as prescribed under 7 CFR 272.4(b) for bilingual households and for households with disabilities. This shall include the statement of non-discrimination found in Departmental Regulation 4300–3 (available from USDA, Office of Civil Rights, Room 326–W, Whitten Building, Washington, DC 20250). Written materials shall be prepared at an educational reading level suitable for SNAP households;

(6) Information on the signs or other appropriate indicators located in checkout lanes that enable the household to identify lanes equipped to accept EBT cards.

(7) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(f) *Personal Identification Number* (PIN). The State agency shall permit SNAP households to select their PIN. PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(g) *Adjustments.* (1) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(2) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, to a store's host computer or POS device. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

(i) *Client-initiated adjustments.* The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(ii) *Retailer-initiated adjustments.* The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owed is subject to collection from the household's next future month's benefits.

(A) The household shall have 90 days from the date of the notice to request a fair hearing.

(B) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(3) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (h)(3) of this section.

(h) *Stale account handling.* Stale benefit accounts are those Program benefit accounts which are not accessed for three months or longer.

(1) If EBT accounts are inactive for 3 months or longer, the State agency may store such benefits offline.

(i) Benefits stored off-line shall be made available upon reapplication or re-contact by the household;

(ii) The State agency shall attempt to notify the household of this action before storage of the benefits off-line and describe the steps necessary to bring the benefits back on-line;

(2) The State agency shall expunge benefits that have not been accessed by the household after a period of one year. Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4.

(3) Procedures shall be established to permit the appropriate managers to adjust benefits that have already been posted to a benefit account prior to the household accessing the account; or, after an account has become dormant. The procedures shall also be applicable to removing stale accounts for off-line storage of benefits or when the benefits are expunged. Whenever benefits are expunged or stored off-line, the State agency shall document the date, amount of the benefits and storage location in the household case file.

§ 274.3 Retailer management.

(a) *Retailer participation.* (1) All authorized retailers must be afforded the

opportunity to participate in the EBT system. An authorized food retailer shall not be required to participate in an EBT system.

(i) Retailers who do not have immediate access to telephones at the time of authorization shall be accommodated by an alternative system (*e.g.,* manual vouchers with preliminary or delayed telephone verification) for redeeming Program benefits from eligible SNAP customers. These retailers include stationary food stores which opt to make home deliveries to SNAP households, house-to-house trade routes which operate on standing orders from customers, *e.g.* milk and bread delivery routes, food buying cooperatives authorized to participate as well as other food retailers authorized under § 278.1 of this chapter. Prior to delivery or upon returning to the store, the retailer shall telephone the EBT central computer or hotline number to log the transaction and obtain an authorization number. If authorization cannot be obtained before or at the time of purchase, the retailer assumes the risk for sufficient benefits being available in the household's account. Any alternate method cannot be burdensome on either the household or the retailer, and it must include acceptable privacy and security features. Such systems shall only be available to retailers that cannot be equipped with a POS terminal at the time of authorization.

(ii) Newly authorized retailers shall have access to the EBT system within 2 weeks after the receipt of the FNS authorization notice. However, whenever a retailer chooses to employ a third party processor to drive its terminals or elects to drive its own terminals, access to the system shall be accomplished within a 30 day period or a mutually agreed upon time to enable the third party interface specifications and any State required functional certification to be performed by the State agency and/or its contractor.

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for SNAP. In addition, if Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. The State agency may choose to charge retailers reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

(3) The State agency shall ensure that the EBT system provides credits to the financial institution holding the accounts for retailers or third party processors within two business days of the daily cut-over period for retailer settlement. The cut-over period is the time of day established by the system to define the end of a transaction day for settlement and reconciliation.

(b) *POS deployment.* POS terminals shall be deployed as follows:

(1) For an FNS authorized retailer with Program benefit redemption amounting to 15 percent or more of total food sales, all checkout lanes shall be equipped;

(2) For an FNS authorized retailer with Program benefit redemptions representing less than 15 percent of total food sales, superstores and supermarkets shall, at a minimum, receive one terminal for every $11,000 in monthly redemption activity up to the number of lanes per store. All other food retailers shall receive one terminal for every $8,000 in monthly redemption activity up to the number of lanes per store. However, a State agency may utilize an alternative deployment formula that permits equipment deployment at higher levels than required by this paragraph up to the number of lanes in each store. The State agency shall review terminal deployment on a yearly basis and shall be authorized to remove excess terminals if actual redemption activity warrants a reduction.

(3) For newly authorized retailers, the State agency and retailer shall negotiate a mutually agreed level of terminal deployment up to the number of lanes per store. The State agency may consult with the appropriate FNS field office in order to determine the previous SNAP redemption activity that could be utilized in determining the initial number of terminals to deploy in newly authorized retailer firms. State agencies will also need to make accommodations for border stores that are deemed necessary for client access. To do so, State agencies must ensure that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment. Redemption information shall remain confidential. Unauthorized release of redemption information is subject to penalties defined in Section 15 of the Food and Nutrition Act of 2008 (7 U.S.C. 2024).

(4) Any FNS authorized retailer shall be able to submit further evidence that it warrants additional terminals after the initial POS terminals are deployed. SNAP households may also submit evidence to the State agency that additional POS terminals are needed. State agencies may provide retailers with additional terminals above the minimum number required by this paragraph at customer service booths or other locations if appropriate.

(c) *Retailer agreements.* The State agency shall enter into an agreement with each authorized retailer. The retailer agreement shall describe the terms and conditions of participation in the SNAP EBT system. At a minimum, the agreement shall:

(1) Describe all terms and conditions with respect to equipment ownership, lease arrangements, handling and maintenance for which the State agency and merchant are liable;

(2) Describe the agreed upon procedures and policies for participation and withdrawal from the EBT system;

(3) Comply with all Program regulations with respect to retailer participation in the Program and treatment of SNAP households. This shall include specific requirements with respect to the deployment of terminals and the identification of checkout lanes for SNAP customers;

(4) Delineate the liabilities during system downtime and the associated responsibilities of each party with respect to the use of off-line and/or manually entered data, paper vouchers, and re-presented vouchers.

(d) Third party processors are financial institutions, cardholder authorization processors other than the party with which the State agency has contracted for EBT services, and food retailers driving their own terminals that are capable of relaying electronic transactions to a central database computer for authorization. The State agency shall afford retailers the opportunity to use third party processors and shall provide interface specifications and certification standards in order for the third party processor to participate in the EBT system.

(1) In order to participate in a SNAP EBT system, a third party processor must be able to meet all third party interface specifications and certification standards associated with § 274.8. The State agency shall make available to

third party processors the third party interface specifications prior to implementation of the EBT system to enable third party processors to access the database. Third party processors shall undergo functional and acceptance tests as specified by the State agency;

(2) Third party processors shall be liable for transactions until the transaction has been electronically accepted by the contracted vendor or an intermediate processing facility;

(3) The State agency shall ensure that third party processors and food retailers driving their own terminals comply with this section and all applicable Program regulations.

(e) *Managing retailer participation.* The State agency shall:

(1) Convey retailer authorization information provided by FNS to the system operator using the Retailer EBT Data Exchange (REDE) system. The State agency must access the REDE files to ensure that the FNS retailer files used to authorize valid EBT SNAP transactions are updated on a daily basis.

(2) Follow-up on actions taken regarding any disqualification or withdrawal of an authorized retailer from the Program must occur within two business days after receipt;

(3) Add newly authorized retailers or third party processors to the EBT system as prescribed under paragraph (a)(1)(ii) of this section.

(4) Ensure that only currently authorized retailers can access the system;

(5) Monitor retailers to ensure that equipment deployment complies with paragraph (b) of this section;

(6) Ensure that equipment and supplies are maintained in working order for retail stores equipped by the State agency or its contractor. Equipment shall be replaced or repaired within 48 hours;

(7) Ensure that retail store employees are trained in system operation prior to redeeming benefits. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(8) Conduct adjustments as prescribed under § 274.2(g) of this chapter;

§ 274.4 Reconciliation and reporting.

(a) *Reconciliation.* State agencies shall account for all issuance through a reconciliation process. The EBT system shall provide reports and documentation pertaining to the following:

(1) *Reconciliation.* Reconciliation shall be conducted and records kept as follows:

(i) Reconciliation of benefits posted to household accounts on the central computer against benefits on the Issuance Authorization File;

(ii) Reconciliation of individual household account balances against account activities on a daily basis;

(iii) Reconciliation of each individual retail store's SNAP transactions per POS terminal and in total to deposits on a daily basis;

(iv) Verification of retailer's credits against deposit information entered into the automated clearinghouse (ACH) network;

(v) Reconciliation of total funds entered into, exiting from, and remaining in the system each day;

(vi) Maintenance of audit trails that document the full cycle of issuance from benefit allotment posting to the State issuance authorization file through posting to POS transactions at retailers through settlement of retailer credits.

(b) *Management reports.* The State agency shall require the EBT system to provide reports that enable the State agency to manage the system. The reports shall be available to the State agency or FNS as requested on a timely basis and consist of:

(1) Information on how the system operates relative to its performance standards, the incidence, type and cause of system problems, and utilization patterns.

(2) Retailer transaction data submitted to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(3) Data detailing by specified category the amount of Program benefits issued or returned through the EBT system shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the SNAP EBT benefit funding authorization for the State's Automated Standard Application for Payment (ASAP) account.

(c) *Required reports.* The State agency shall review and submit the following reports to FNS on a monthly basis:

(1) Form FNS–46, Issuance Reconciliation Report, shall be submitted by each State agency operating an issuance system. The report shall be prepared at the level of the State agency where the actual reconciliation of posted benefits and the master issuance file occurs.

(i) The State agency shall identify and report the number and value of all issuances which do not reconcile with the master issuance file. All unreconciled issuances shall be identified as specified on this reporting document.

(ii) The report shall be received by FNS no later than 90 days following the end of the report month.

(2) *Form FNS–388, State Issuance and Participation Estimates.* (i) State agencies shall telephone or transmit by computer the Form FNS–388 data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the Form FNS–388 data shall be reported by telephone or transmitted by computer and mailed on the first work day after the 19th. The Form FNS–388 report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The Form FNS–388 report shall provide Statewide estimated or actual totals of issuance and participation for the current and previous month, and actual or final participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September Form FNS–388 reports, State agencies shall provide project area breakdowns of benefit issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the Form FNS–388 data to the FNS regional office for review and comment. FNS shall monitor the accuracy of the Statewide estimated dollar value of benefits issued and the number of households and persons participating as reported on the Form FNS–388 report against the Statewide actual total participation as reported on succeeding Form FNS–388 reports and against the semiannual project area participation totals attached to the March and September Form FNS–388 reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) four (4) percent of actual levels, and the estimates for the previous month be within (+) or (−) two (2) percent of actual levels. State agencies shall explain any unusual circumstances that cause benefit issuance and/or participation data to not meet these accuracy standards. If a State

agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

(iv) A participating household is one that is certified and has been, or will be, issued benefits (whether or not the benefits are used), and households that have met the eligibility requirements, but will receive zero benefits.

§ 274.5 Record retention and forms security.

(a) *Availability of records.* (1) The State agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(2) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(c) *Accountable documents.* (1) EBT cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(i) Secure storage;

(ii) Access limited to authorized personnel;

(iii) Bulk inventory control records;

(iv) Subsequent control records maintained through the point of issuance or use; and

(v) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(2) For notices of change which initiate, update or terminate the master issuance file, the State agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

§ 274.6 Replacement issuances and cards to households.

(a) *Providing replacement issuance.* (1) Subject to the restrictions in paragraph (a)(3) of this section, State agencies shall provide replacement issuances to a household when the household reports that food purchased with Program benefits was destroyed in a household misfortune.

(2) Where a Federal disaster declaration has been issued and the household is eligible for disaster SNAP benefits under the provisions of part 280, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

(ii) No limit on the number of replacements shall be placed on the replacement of food purchased with Program benefits which was destroyed in a household misfortune.

(iii) Except for households certified under 7 CFR part 280, replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(4) *Household statement of loss.* (i) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(ii) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(iii) The statement shall be retained in the case record. It shall attest to the destruction of food purchased with the original issuance and the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(5) *Time limits for making issuance replacements.* (i) Replacement issuances shall be provided to households within 10 days after report of loss or within two (2) working days of receiving the signed household statement required in paragraph (a)(4) of this section, whichever date is later.

(ii) The State agency shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

(iii) The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(6) *Verifying issuance and household misfortune.* (i) Upon receiving a request for replacement of an issuance for food destroyed in a household misfortune, the State agency shall determine if the issuance was validly issued. The State agency shall also comply with all applicable provisions in paragraphs (a)(3) through (a)(5)of this section.

(ii) Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

(7) *Documentation and reconciliation of replacement issuances.* (i) The State agency shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household statement required in paragraph (a)(4) of this section.

(ii) The State agency shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, and the month. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose.

(iii) When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original benefit was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original benefit, so that all duplicate transactions may be identified.

(b) *Providing replacement EBT cards or PINs.* In general, the State agency shall replace EBT cards within 2 business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using

centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

(1) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(2) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(3) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. State agencies currently operating EBT systems must inform FNS of their proposed collection operations. State agencies in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency, and circumstances in which the fee shall be applicable. State agencies may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected.

§ 274.7 Benefit redemption by eligible households.

(a) *Eligible food.* Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

(b) *Prior payment prohibition.* Program benefits shall not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Neither shall benefits be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(c) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions shall be established. In addition, no transaction fees shall be imposed on SNAP households utilizing the EBT system to access their benefits.

(d) *Access to balances.* (1) Households shall be permitted to determine their SNAP account balances without making a purchase or standing in a checkout line.

(2) The State agency shall ensure that the EBT system is capable of providing a transaction history for a period of up to 2 calendar months to households upon request.

(3) Households shall be provided printed receipts at the time of transaction in accordance with § 274.8(b)(7).

(e) *Access to retail stores.* (1) The EBT system shall provide for minimal disruption of access to and service in retail stores by eligible households.

(2) The EBT system shall not result in a significant increase in the cost of food or cost of transportation to authorized retailers for SNAP households.

(f) *Equal treatment.* The EBT system shall be implemented and operated in a manner that maintains equal treatment for SNAP households in accordance with § 278.2(b) of this chapter. The following requirements for the equal treatment of SNAP households shall directly apply to EBT systems:

(1) Retailers shall not establish special checkout lanes which are only for SNAP households. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, SNAP customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(2) Checkout lanes equipped with POS devices shall be made available to SNAP households during all retail store hours of operation.

(g) *Households eligible for prepared meals.* (1) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use Program benefits to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(2) *Communal dining facilities.* Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use Program benefits issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose.

(3) *Residents of certain institutions.* (i) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment rehabilitation program may use Program benefits to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or publicly operated community mental health center which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(ii) Eligible residents of a group living arrangement may use Program benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(iii) Residents of shelters for battered women and children as defined in § 278.1(g) of this chapter may use their Program benefits to purchase meals prepared especially for them at a shelter which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(4) *Homeless households.* (i) Homeless SNAP households may use their Program benefits to purchase prepared meals from authorized homeless meal providers.

(ii) Eligible homeless households may use Program benefits to purchase meals from restaurants authorized by FNS for such purpose.

(h) Eligible households residing in areas of Alaska determined by FNS as areas where access to authorized retailers is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of the Program benefits issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use benefits to purchase firearms, ammunition, and other explosives.

(i) State agencies shall implement a method to ensure that access to prepared meals and hunting and fishing equipment is limited to eligible

households as described in paragraphs (g) through (h) of this section.

§ 274.8 Functional and technical EBT system requirements.

(a) *Functional requirements.* The State agency shall ensure that the EBT system is capable of performing the following functional requirements prior to implementation:

(1) *Authorizing household benefits.* (i) Issuing and replacing EBT cards to eligible households;

(ii) Permitting eligible households to select a personal identification number (PINs) at least four digits in length;

(iii) Establishing benefit cards and accounts with the central computer database;

(iv) Maintaining the master household issuance record file data and current authorization information;

(v) Training households and other users in system usage;

(vi) Authorizing benefit delivery;

(vii) Posting benefits to each household's account for regular and supplemental issuances;

(viii) Providing households with access to information on benefit availability;

(ix) Ensuring the privacy of household data and providing benefit and data security;

(x) Inventorying and securing accountable documents; and

(xi) Zeroing out benefit accounts and other account authorization activity.

(2) *Providing food benefits to households.* (i) Verifying the identity of authorized households or authorized household representatives at issuance terminals or POS;

(ii) Verifying the PIN and/or PIN offset, primary account number (PAN), terminal identification number and retailer identification number;

(iii) Determining the sufficiency of the household's account balance in order to debit or credit household benefit accounts at the point of sale;

(iv) Sending messages authorizing or rejecting purchases;

(v) Providing back-up purchase procedures when the system is unavailable;

(vi) Ensuring that benefits are available and carried over from month-to-month.

(vii) Responding to issuance problems in a timely manner.

(3) *Crediting retailers and financial institutions for redeemed benefits.* (i) Verifying electronic transactions flowing to or from participating retailers' bank accounts;

(ii) Creating and maintaining a file containing the individual records of EBT transactions;

(iii) Totaling all credits accumulated by each retailer;

(iv) Providing balance information to retailers or third party processors from individual POS terminals, as needed;

(v) Providing each retailer information on total deposits in the system on a daily basis;

(vi) Preparing a daily tape in a National Automated Clearinghouse format or other process approved by FNS with information on benefits redeemed for each retailer and in summary;

(vii) Transmitting the ACH tape to a financial institution for transmission through the ACH or other method approved by FNS;

(viii) Transferring the information on the ACH tape or other process approved by FNS containing daily redemption activity of each retailer to the FNS Minneapolis Computer Support Center at least once weekly. Transmittal may be by tape, disc, remote job entry or other means acceptable to FNS.

(4) Managing retailer participation in accordance with § 274.3(e).

(b) *Performance and technical standards.* The State agency shall ensure that EBT systems comply with POS technical standards established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO) where applicable. This includes the draft EBT ISO 8583 Processor Interface Technical Specifications contained in the ANSI standards, which delineates a standard message format for retailers and third parties. In addition, the State agency shall ensure that the EBT system meets performance and technical standards in the areas of system processing speeds, system availability and reliability, system security, system ease-of-use, minimum card and terminal requirements, performance bonding, and a minimum transaction set. With prior written approval from FNS, the State agency may utilize the prevailing industry performance standards in its region in lieu of those identified in this section. The standards shall be included in all requests for proposals and contracts.

(1) *System processing speeds.* (i) For leased line systems, 98 percent of EBT transactions shall be processed within 10 seconds or less and all EBT transactions shall be processed within 15 seconds. Leased line systems rent telecommunications carriers specifically to connect to the central authorizing computer. For dial-up systems, 95 percent of the EBT transactions shall be processed within 15 seconds or less and all EBT transactions shall be processed within 20 seconds or less. Dial-up systems utilize existing telecommunications lines to dial up and connect to the central computer at the time of the transaction. Processing response time shall be measured at the POS terminal from the time the 'enter' or 'send' key is pressed to the receipt and display of authorization or disapproval information. Third party processors, as defined in paragraph (h)(5) of this section, shall be required by the State agency to comply with the same processing response times required of the primary processor.

(ii) The EBT system shall provide reports, as determined by the State agency, that document transaction processing response time and the number and type of problematic transactions that could not be processed within the standard response time.

(2) *System availability and reliability.* (i) The EBT system central computer shall be available 99.9 percent of scheduled up-time, 24 hours a day, 7 days per week. Scheduled up-time shall mean the time the database is available for transactions excluding scheduled downtime for routine maintenance. The total system, including the system's central computer, any network or intermediate processing facilities and cardholder authorization processors, shall be available 98 percent of scheduled up-time, 24 hours per day, 7 days per week. Scheduled downtime for routine maintenance shall occur during non-peak transaction periods. State certification procedures shall determine whether intermediate processing facilities and cardholder authorization processors are capable of complying with system availability standards prescribed herein prior to permitting the interface with the central computer system.

(ii) The system central computer shall permit no more than 2 inaccurate EBT transactions for every 10,000 EBT transactions processed. The transactions to be included in measuring system accuracy shall include all types of SNAP transactions permitted at POS terminals and processed through the host computer, manual transactions entered into the system, credits to household accounts, and funds transfers to retailer accounts.

(iii) Reconciliation reports and other information regarding problematic transactions shall be made available to the State agency by the system operator, individual retailers, households or financial institutions as appropriate. Reports on problematic transactions, including inaccurate transactions shall be delineated by the source of the problem such as card failure, POS terminal failure, interruption of

telecommunications, or other component failure. Errors shall be resolved in a timely manner.

(3) *System security.* As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under § 277.18(p) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

(i) Storage and control measures to control blank unissued EBT cards and PINs, and unused or spare POS devices;

(ii) Measures to ensure communication access control. Communication controls shall include the transmission of transaction data and issuance information from POS terminals to work-stations and terminals at the data processing center. The following specific security measures shall be included, as appropriate, in the system design documentation, operating procedures or the State agency Security Program:

(A) Computer hardware controls that ensure acceptance of data from authorized terminals only. These controls shall include the use of mechanisms such as retailer identification codes, terminal identifiers and user identification codes, and/or other mechanisms and procedures recognized by the industry;

(B) Software controls, placed at either the terminal or central computer or both, that establish separate control files containing lists of authorized retailers, terminal identifying codes, and user access and identification codes. EBT system software controls shall include separate checks against the control files in order to validate each transaction prior to authorization and limiting the number of unsuccessful PIN attempts that can be made utilizing standard industry practices before the card is deactivated;

(C) Communications network security that utilizes the Data Encryption Standard algorithm to encrypt the PIN, at a minimum, from the point of entry. Other security may include authentication codes and check-sum digits, in combination with data encoded on the magnetic stripe such as the PIN and/or PIN offset, to ensure data security during electronic transmission. Any of the network security measures may be utilized together or separately and may be applied at the terminal or central computer as indicated in the approved system design to ensure communications control;

(D) Manual procedures that provide for secure access to the system with minimal risk to household or retailer accounts. Manual procedures may include the utilization of manager identification codes in obtaining telephonic authorization from the central computer system; requirements for separate entry with audio response unit verification and authorization number; and/or the utilization of 24 hour hotline telephone numbers to authorize transactions.

(iii) Message validation shall include but shall not be limited to:

(A) Message format checks for completeness of the message, correct order of data, existence of control characters, number and size of data fields and appropriate format standards as specified in the approved system design;

(B) Range checks for acceptable date fields, number and valid account numbers, purchase and refund upper limitations in order to prevent and control damage to the system accounts;

(C) Reversal of messages that are not fully processed and recorded.

(iv) Administrative and operational procedures shall ensure that:

(A) Functions affecting an account balance are separated or dually controlled during processing and when requesting Federal reimbursement through a concentrator bank under the provisions of paragraph (i) of this section. These functions may include but are not limited to the set up of accounts, transmittal of funds to and from accounts, access to files to change account records, and transmittal of retailer deposits to the ACH network or other means approved by FNS for crediting retailer bank accounts;

(B) Passwords, identity codes or other security procedures must be utilized by State agency or local personnel and at data processing centers;

(C) Software programming changes shall be dual controlled to the extent possible;

(D) System operations functions shall be segregated from reconciliation duties;

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate and as prescribed under § 277.18(p) of this chapter. The periodic risk analyses required by the Security Program shall address the following items specific to an EBT system:

(A) EBT system vulnerability to theft and unauthorized use;

(B) Completeness and timeliness of the reconciliation system;

(C) Vulnerability to tampering with or creating household accounts;

(D) Erroneous posting of issuances to household accounts;

(E) Manipulation of retailers' accounts such as creation of false transactions or intrusion by unauthorized computer users;

(F) Capability to monitor systematic abuses at POS terminals such as debits for a complete allotment, excessive manual issuances, and multiple manual transactions at the same time. Such monitoring may be accomplished through the use of exception reporting;

(G) Tampering with information on the ACH tape or similar information utilized in a crediting method approved by FNS; and,

(H) The availability of a complete audit trail. A complete audit trail shall, at a minimum, be able to provide a complete transaction history of each individual system activity that affects an account balance. The audit trail shall include the tracking of issuances from the Master File and Issuance File, network transactions from POS terminals to EBT central computer database and system file updates.

(vi) The State agency shall incorporate the contingency plan approved by FNS into the Security Program.

(4) *System ease-of-use.* (i) For all system users, the State agency shall ensure that the system:

(A) Minimizes the number of separate steps required to complete a transaction;

(B) Minimizes the number of codes or commands needed to make use of the system;

(C) Makes available clear and comprehensive account balance information with a minimum number of actions necessary;

(D) Provides training and instructions for all system users especially those persons with disabilities;

(E) Makes available prompts on POS terminals or balance only terminals, where appropriate;

(F) Identifies procedures for problem resolution;

(G) Provides reasonable accommodation for the needs of households with disabilities in keeping with the Americans with Disabilities Act of 1990.

(ii) In addition to the requirements of paragraph (h)(4)(i) of this section, the State agency shall ensure that retailers utilizing the EBT system:

(A) Have available manual backup procedures;

(B) Can obtain timely information on daily credits to their banks;

(C) Have available deposit information in a format readily comparable to information maintained in the store; and

(D) Have available instructions on resolving problems with equipment and retailer accounts.

(5) *Minimum card requirements.* (i) The address of the office where a card

can be returned if found or no longer in use should be printed on the card.

(ii) FNS reserves the right to require State agencies to place a Department logo on the EBT card and/or sleeves or jackets.

(iii) EBT cards and/or sleeves or jackets shall not contain the name of any State or local official. EBT informational materials shall not indicate association with any political party or other political affiliation.

(iv) State agencies may require the use of a photograph of one or more household members on the card. If the State agency does require the EBT cards to contain a photo, it must establish procedures to ensure that all appropriate household members or authorized representatives are able to access benefits from the account as necessary.

(6) *POS terminals.* POS terminals shall meet the following requirements:

(i) Balance information shall not be displayed on the screen of the POS terminal except for balance-only inquiry terminals;

(ii) PINs shall not be displayed at the terminal; and

(iii) PIN encryption shall occur from the point of entry in a manner which prevents the unsecured transmission between any point in the system.

(7) *Transaction receipts.* Households shall be provided printed receipts at the time of transaction. At a minimum this information shall:

(i) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the SNAP account;

(ii) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(iii) Identify the SNAP households member's account number (the PAN) using a truncated number or coded transaction number. The households' name shall not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(8) *Performance bonding.* The State agency may require a performance bond in accordance with § 277.8 of this chapter or utilize other contractual clauses it deems necessary to enforce the requirements of this section.

(9) *Minimum transaction set.* At a minimum, the State agency shall ensure that the EBT system, including third party processors and retailers driving their own terminals, is capable of providing for authorizing or rejecting purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions. The system must be capable of completing this transaction set across State borders nationwide in accordance with standards specified in paragraph (h)(10) of this section.

(10) *Interoperability.* State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any State. The term "portability" means the EBT system must enable benefits issued in the form of an EBT card to be used in any State by a household to purchase food at a retail food store or a wholesale food concern approved under the Food and Nutrition Act of 2008. The standards must include the following:

(i) *EBT system connectivity.* State agencies are responsible for establishing telecommunications links, transaction switching facilities and any other arrangements with other State agencies necessary for the routing of interoperable transactions to such other State EBT authorization systems. State agencies are also responsible for facilitating the settlement of such interoperable transactions and the handling of adjustments. These connections need not be direct connections between State authorization systems but may be facilitated through agreements and linkages with other designated agents or third party processors. All State agencies must agree to the timing and disposition of disputes, error resolution, and adjustments in accordance with Department regulations at § 273.13(a) and § 273.15(k) of this chapter and paragraph (f) of this section. State agencies or their designated agents must draw funds from State SNAP accounts for SNAP benefits transacted by that State's SNAP recipients, regardless of where benefits were transacted.

(ii) *Message format.* Each authorization system must use the ISO 8583 message format, modified for EBT, in a version mutually agreed to between the authorization agent and the party connected for all transactions. Each authorization system must process each financial transaction as a single message financial transaction, except for pre-authorized transactions and reversals, processed as paired transactions.

(iii) *Card Primary Account Number (PAN) Requirements.* Track 2 on each card shall contain the PAN. Each Government entity must obtain an Issuer Identification Number (IIN) from the American Banker's Association (ABA). The IIN should be included as the first six digits of the PAN. The PAN must comply with ISO 7812, Identification Cards—Numbering System and Registration Procedures for Issuer Identifiers. Each State agency must be responsible for generating, updating, and distributing IIN files of all States to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Each terminal operator that uses a routing table for routing acquired transactions must, within 7 calendar days of receiving an IIN routing table update, modify its routing tables to reflect the updated routing information.

(iv) *Third Party Processor requirements.* Each Third Party Processor or terminal operator must have primary responsibility and liability for operating the telecommunications and processing system (including software and hardware) through which transactions initiated at POS terminals it owns, operates, controls or for which it has signed an agreement to accept EBT transactions, are processed and routed, directly or indirectly, to the appropriate State authorization system. Each terminal operator must maintain the necessary computer hardware and software to interface either directly with a State authorization system or with a third party service provider to obtain access to one or more State authorization systems. Each terminal operator must also establish a direct or indirect telecommunications connection for the routing of transactions to the State authorization system or to a processor directly or indirectly connected to the State authorization system.

(v) *REDE File.* The State agency must ensure that their EBT system verifies FNS retailer numbers for all interstate transactions against the National REDE file of all FNS EBT retailers to validate these transactions.

(c) *Concentrator bank responsibilities.* The concentrator bank shall be a Federally-insured financial institution or other entity acceptable to the Federal Reserve which has the capability to take retailer credits and/or debits, obtained from the EBT system operator, and transmit them to the ACH network operated by the Federal Reserve or through another process for crediting retailers approved by FNS. Transmittal shall be by tape or on-line in a format suitable for the ACH or as approved by FNS.

(1) The minimum functions of the concentrator bank are:

(i) Preparing a daily ACH tape or other crediting process approved by FNS with information on benefits redeemed and creditable to each retailer;

(ii) Transferring the ACH tape or other crediting process approved by FNS to the Federal Reserve or other entity approved by FNS;

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the ASAP system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for SNAP redemptions provided the entity is acceptable to FNS and U.S. Treasury;

(iv) Cooperating in the reconciliation of discrepancies and error resolution when necessary.

(2) With the approval of FNS, another procedure, other than the ACH system, may be utilized to credit retailer accounts and/or debit FNS' account, if it meets the needs of FNS and the EBT system.

(3) The State agency shall be liable for any errors in the creation of the ACH tape or its transmission. The State agency may transfer the liability associated with creation of the ACH tape, its transmission or another crediting process approved by FNS as appropriate to the EBT system operator or the concentrator bank. Appropriate system security administrative and operational procedures shall be instituted in accordance with paragraph (h)(3) of this section.

(d) *Re-presentation.* The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible.

(1) Under certain circumstances, when a manual transaction occurs due to the inaccessibility of the host computer and the transaction is rejected because insufficient funds are available in a household's account, the State agency may permit the re-presentation of the transaction during subsequent months. At the State agency's option, re-presentation may be permitted within the EBT system as follows:

(i) Re-presentation of manual vouchers when there are insufficient funds in the EBT account to cover the manual transaction may be permitted only under the following circumstances:

(A) The manual transaction occurred because the host computer was down and authorization was obtained by the retailer for the transaction; or

(B) The manual transaction occurred because telephone lines were down.

(ii) Re-presentation of manual vouchers shall not be permitted when the EBT card, magnetic stripe, PIN pad, card reader, or POS terminal fails and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household via re-presentation when the household's account balance is insufficient to cover the planned purchase.

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in either of two ways:

(A) Any amount which equals at least $10 or up to 10 percent of the transaction. This amount will be deducted monthly until the total balance owed is paid-in-full. State agencies may opt to re-present at a level that is less than the 10 percent maximum, however, this lesser amount must be applied to all households.

(B) $50 in the first month and the greater of $10 or 10 percent of the allotment in subsequent months until the total balance owed is paid-in-full. If the monthly allotment is less than $50, the State shall debit the account for $10.

(2) The State agency shall establish procedures for determining the validity of each re-presentation and subsequent procedures authorizing a debit from a household's monthly benefit allotment. The State agency may ask households to voluntarily pay the amount of a represented transaction or arrange for a faster schedule of payment than identified in paragraph (d)(1)(iii) of this section.

(3) The State agency shall ensure that retailers provide notice to households at the time of the manual transaction that re-presentation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State agency shall also provide notice to the household prior to the month when a benefit allotment is reduced when a re-presentation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be re-presented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

(4) The Department shall not accept liability under any circumstances for the overissuance of benefits due to the utilization of manual vouchers, including those situations when the host computer is inaccessible or telecommunications lines are not functioning. However, the State agency, in consultation with authorized retailers and with the mutual agreement of the State agency's vendor, if any, may accept liability for manual purchases within a specified dollar limit. Costs associated with liabilities accepted by the State agency shall not be reimbursable.

(5) The State agency shall be strictly liable for manual transactions that result in excess deductions from a household's account.

(e) *Store-and-forward.* As an alternative to manual transactions:

(1) State agencies may opt to allow retailers, at the retailer's own choice and liability, to perform store-and-forward transactions when the EBT system cannot be accessed for any reason. The retailer may forward the transaction to the host one time within 24 hours of when the system again becomes available. Should the 24-hour window cross into the beginning of a new benefit issuance period, retailers may draw against all available benefits in the account.

(2) State agencies may also opt, in instances where there are insufficient funds to authorize an otherwise approvable store-and-forward transaction, to allow the retailer to collect the balance remaining in the client's account, in accordance with the requirements detailed in this section.

(i) State Agencies may elect to allow store-and-forward to provide remaining balances to retailers as follows:

(A) The EBT processor may provide partial approval of the store-and-forward transaction, crediting the retailer with the balance remaining in the account through a one-step process;

(B) The transaction should be in accordance with the standard message format requirements for store and forward; and

(C) Re-presentation, as described in paragraph (d) of this section, to obtain the uncollected balance from current or future months' benefits shall not be allowed for store-and-forward transactions.

(ii) In States that elect not to give retailers the option described in this paragraph, all store-and-forward transactions with insufficient funds will be denied in full.

Dated: April 2, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–8200 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–09–0070; FV09–929–1 FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Revised Nomination and Balloting Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the nomination and balloting procedures for independent growers on the Cranberry Marketing Committee (Committee). The order regulates the handling of cranberries produced in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and is administered locally by the Committee. This rule revises the nomination and balloting procedures for independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current procedures do not provide for an election process for each position separately.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: *Patricia.Petrella@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the nomination and balloting procedures for independent growers on the Committee. This rule revises the procedures for independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current procedures do not provide for an election process for each position separately.

Section 929.22(e) of the order specifies the nomination procedures for nominees representing entities other than the major cooperative marketing organization (independent growers). That section specifies that the names of all eligible nominees from each district received by the Committee, by such date and in such form as recommended by the Committee and approved by the Secretary, will appear on the nomination ballot for that district. It also specifies that the nominee that receives the highest number of votes cast shall be the member and the nominee receiving the second highest number votes cast shall be the alternate. Section 929.22(i) provides that the Committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

The Committee recommended that rules and regulations be established to change the procedures for independent grower nominations. The Committee recommended these changes because candidates are less willing to participate in the nomination process when they are not able to specify whether they are seeking a member or alternate member position on the Committee. Candidates considering to be nominated to the Committee have indicated that they would be more willing to serve if they could initially be nominated as the alternate member. Becoming an alternate member first allows them to gain knowledge of the marketing order and Committee operations without having the responsibility of casting votes. After gaining this knowledge, alternate members can then be nominated to run as the member on the Committee if they so desire.

This action will require a slight change in the nomination and balloting process. It will provide candidates the opportunity to indicate what position (member or alternate) they are seeking. Following the deadline for filing nomination petitions the names of those candidates running for member and the names of those candidates running for alternate member would be placed on the ballot and sent, via U.S. Postal Service, to qualified growers in the marketing order districts.

The candidate receiving the highest number of votes in the member category and the candidate receiving the highest number of votes in the alternate member category in each marketing order district will be declared nominees and their names forwarded to the Secretary for selection.

This change to the nomination procedures will only effect the independent grower nominations for the Committee. The major cooperative marketing organization nominees are selected by that organization and submitted to the Secretary for consideration.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of cranberries who are subject to regulation under the marketing order and approximately 1200 cranberry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Based on information maintained by the Committee, the majority of producers and handlers of cranberries under the order are considered small entities under SBA's standards.

This final rule revises the nomination procedures for independent growers to allow them to participate in the election process for either a member or alternate member on the Committee. The current nomination process does not permit an election process for each position. Authority for this action is provided in § 929.22(i).

At the meeting where this issue was considered, the Committee discussed that the nomination procedures needed to be changed to encourage more participation in the nomination process and to encourage more diverse candidates on the Committee. The independent grower members and alternate members on the Committee indicated that this change will improve the nomination process by generating participation and providing the opportunity for more diverse candidates to run for a position on the Committee.

There are no anticipated economic impacts on either small or large producers or handlers that would result from this rule, as it pertains only to Committee nomination and balloting procedures.

The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this change, including not making the change at all. If this change is not made the Committee believes that the number of new candidates who want to be considered for nomination on the Committee will continue to decline.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on February 5, 2010 (75 FR 5900). Copies of the rule were mailed or sent via facsimile to all Committee members and cranberry handlers. The rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending March 8, 2010, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the nomination process begins in April and the Committee staff needs to have time to inform all cranberry growers of the change in the nomination process. Therefore, this rule should be implemented as soon as possible. Further, growers were made aware of this change which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Marketing agreements, Reporting and recordkeeping requirements, Cranberries.

■ For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 929.161 is added to read as follows:

§ 929.161 Nomination and balloting procedures for candidates other than the major cooperative marketing organization.

(a) During the nomination process, each eligible candidate shall indicate if he/she is seeking a position on the Committee as a member or alternate member.

(b) Ballots provided by the Committee shall include the names of those candidates seeking member positions on the Committee and those seeking alternate member positions.

(c) All ballots shall be received by a date designated by the Committee office staff. Votes for member positions and alternate member positions shall be tabulated separately. In districts entitled to one member, the successful candidate shall be the person receiving the highest number of votes as a member or alternate member. In districts entitled to two members, the successful candidates shall be those receiving the highest and second highest number of votes as members or alternate members. Those names shall then be forwarded to the Secretary for selection.

Dated: April 7, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8277 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Doc. No. AMS–FV–07–0091; FV–07–706–FR]

RIN 0581–AC78

U.S. Honey Producer Research, Promotion, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) is favored by persons to be covered by and assessed under this Order. The Proposed U.S. Producer Order will be implemented if it is approved by a majority of the eligible producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Proposed U.S. Producer Order is being published separately in this issue of the **Federal Register**. This program is being implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

DATES: Effective Date: April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone 202–720–9915 or (888) 720–9917 (toll free) or e-mail *kimberly.coy@usda.gov.*

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible U.S. producers of honey to determine whether they favor issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) [7 CFR part 1245]. The program will be implemented if it is approved by a majority of U.S. honey producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) [7 U.S.C. 7411–7425]. The Order would cover the producers of U.S. honey of 100,000 pounds or more. A proposed rule and referendum order is published separately in this issue of the **Federal Register**.

Prior documents: Proposed rules on both the Proposed Order [74 FR 34182] and the Referendum Procedures [74 FR 34200] were published in the **Federal Register** on July 14, 2009 with a 60-day comment period.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Final Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Department is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The American Honey Producers Association (AHPA), the proponent of the Proposed U.S. Producer Order, has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of U.S. producers of honey voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Department is conducting a referendum prior to the Proposed U.S. Producer Order going into effect.

This rule establishes the procedures under which producers of U.S. honey will vote on whether they want a U.S. honey producer research, promotion, and consumer information program to be implemented. This rule adds a new subpart which establishes procedures to conduct an initial referendum and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 317 producers of honey who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration defines in 13 CFR 121, small agricultural producers as those having annual receipts of no more than $750,000 annually and small agricultural service firms as those having annual receipts of no more than $7.0 million. Using these criteria, most producers would be considered small businesses.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included North Dakota, South Dakota, California,

Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was $161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

There is a current Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Packers and Importers Order) in effect (7 CFR part 1212) that replaced the Original Honey Research, Promotion, and Consumer Information Order (Original Order) on May 15, 2008 [73 FR 29390]. Based on the assessment reports in connection with the Original Honey Research, Promotion, and Consumer Information Order and recorded by U.S. Customs and Border Protection, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (28%), Argentina (21%), Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002. In 2006, 155 million pounds of honey were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported. At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million in a twelve month period.

This rule provides the procedures under which U.S. honey producers will vote on whether they want the Proposed U.S. Producer Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that these procedures will apply. There are approximately 317 producers of honey will be eligible to vote in the first referendum. U.S. honey producers of less than 100,000 pounds of U.S. honey annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these U.S. honey producers informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if U.S. honey producers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the Proposed U.S. Producer program.

The information collection requirements contained in this rule are designed to minimize the burden on U.S. honey producers. This rule provides for a ballot to be used by eligible U.S. honey producers to vote in the referendum. The estimated total cost of providing information by an estimated 317 U.S. producers would be $317 or $1.00 per U.S. producers.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was submitted to OMB for approval and will be approved under OMB number 0581–NEW.

Title: U.S. Honey Producers Research, Promotion, and Consumer Information Order.

OMB Number: 0581–NEW.

Expiration Date of approval: 3 years from approval date.

Title: New information collection for research and promotion programs.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Order. The ballot is needed for the referendum that will be held to determine whether U.S. producers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible U.S. producers voting in a referendum, who also represent a majority of the volume of U.S. honey and honey products, approve this program.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each U.S. honey producer.

Respondents: U.S. honey producers.

Estimated Number of Respondents: 317.

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 11 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

The estimated annual cost of providing the information by an estimated 317 U.S. honey producers would be $317 or $1.00 per producer.

Background

The 1996 Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported honey and honey products. The AHPA submitted the Proposed U.S. Producer Order on May 25, 2007, and modifications were made to the proposal to make it consistent with the 1996 Act. Proposed rules on both the Proposed Order [74 FR 34182] and the Referendum Procedures [74 FR 34200] were published in the **Federal Register** on July 14, 2009 with a 60-day comment period. A second proposal addressing the comments received for the Proposed U.S. Producer Order is published in this issue of the **Federal Register**.

The Proposed U.S. Producer Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for honey and honey products in the United States. The program would be funded by an assessment levied on U.S. honey producers at an initial rate of $0.02 per pound. U.S. honey producers of less than 100,000 pounds of U.S. honey annually will be exempt from assessments. At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million in a twelve month period.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the U.S. Honey Producer Board; and expenses incurred by the Department in implementing and

administering the Order, including referendum costs.

Section 1245.19 of the Proposed U.S. Producer Order provides for a referendum to be conducted among U.S. honey producers to determine whether they favor implementation of the program. That section also requires the Proposed U.S. Producer Order to be approved by a majority of U.S. honey producers who also represent a majority of the volume of U.S. honey produced.

This rule establishes the procedures under which U.S. honey producers of honey may vote on whether they want the U.S. honey producer research, promotion, and consumer information program to be implemented. There are approximately 317 eligible voters.

This action adds a new subpart establishing procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Proposed referendum procedures were published in the **Federal Register** on July 14, 2009. Copies of the proposed rule were made available by USDA and the Office of the Federal Register, and were also available via the Internet at *www.regulations.gov.* The proposed rule provided a 60-day comment period ending on September 14, 2009. No comments were received by the deadline.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) so that a referendum may be scheduled as early in 2010 as possible.

List of Subjects in 7 CFR Part 1245

Administrative practice and procedure, Advertising, Consumer Education, Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended by adding a new part 1245 to read as follows:

PART 1245—U.S. HONEY PRODUCER RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart A—[Reserved]

Subpart B—Referendum Procedures

Sec.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—[Reserved]

Subpart B—Referendum Procedures

§ 1245.100 General.

Referenda to determine whether eligible U.S. producers favor the issuance, continuance, amendment, suspension, or termination of the U.S. Honey Producer Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1245.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter delegated, to act in the Secretary's stead.

(c) [Reserved]

(d) *Eligible producer* means any person who produces 100,000 pounds or more of honey in any State for sale in commerce and is subject to pay assessments to the Board on such U.S. honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the U.S. honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the U.S. honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the U.S. honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey that share the risk of loss and receive a share of the U.S. honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(f) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(g) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(h) *Order* means the U.S. Honey Producer Research, Promotion, and Consumer Information Order.

(i) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A spouse or marital partner who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, or handling for market and the authority to transfer title to the honey so produced, or handled.

(j) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(k) *Representative period* means the period designated by the Department.

(l) *United States or U.S.* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1245.102 Voting.

(a) Each person who is an eligible U.S. producer and each person who is an eligible producer-packer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce U.S. honey or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only that producer's share of the ownership of U.S. honey or honey products.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer may cast one ballot in the referendum on behalf of such

entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1245.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of the eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced, during a representative period determined by the Department, have been engaged in the production of honey and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible U.S. producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1245.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1245.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1245.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1245.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1245.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–0253.

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator.

[FR Doc. 2010–7574 Filed 4–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM426; Special Conditions No. 25–404–SC]

Special Conditions: Modification to Boeing Model 737–600/–700/–700C/–800/–900 and –900ER Series Airplanes: Rechargeable Lithium Batteries and Rechargeable Lithium-Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing 737–600/–700/–700C/–800/–900 and –900ER Series airplanes (hereafter referred to as "Boeing 737NG"). These airplanes, as modified by the Boeing Company, will have a novel or unusual design feature associated with the installation of rechargeable lithium batteries and rechargeable lithium-battery systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 5, 2010. We must receive your comments by May 27, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM426, 1601 Lind Avenue SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM426. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures

would significantly delay issuance of the design approval, and thus delivery, of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reasons for recommended changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

The Boeing Company has applied for a type-design change for the Boeing 737NG airplanes to use rechargeable lithium batteries and rechargeable lithium-battery systems in different applications, including the recorder independent power supply (RIPS). Lithium batteries have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large, transport-category airplanes. Large, high-capacity, rechargeable lithium batteries and rechargeable lithium-battery systems are a novel or unusual design feature in transport-category airplanes. The FAA is proposing this special condition to require that (1) all characteristics of rechargeable lithium battery and rechargeable lithium-battery system installation, that could affect safe operation of the Boeing 737NG, are addressed, and (2) appropriate instructions for continued airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, the Boeing Company must show that the Boeing 737NG airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulation incorporated by reference in A16WE is 14 CFR 25.1353 at Amendment 25–38.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Company rechargeable lithium batteries and rechargeable lithium-battery systems because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing 737NG airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under SECTION 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a type-design change to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Boeing Company modification to Boeing 737NG airplanes will incorporate the following novel or unusual design feature: Rechargeable lithium batteries and rechargeable lithium-battery systems.

Discussion

The current regulations governing installation of batteries in large, transport-category airplanes were derived from Civil Air Regulations (CAR) Part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures, which led to additional rulemaking affecting large, transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel-cadmium battery installations on large, transport-category airplanes.

The proposed use of rechargeable lithium batteries and rechargeable lithium-battery systems for equipment and systems on the Boeing 737NG have prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of rechargeable lithium batteries and rechargeable lithium-battery systems that could affect the safety and reliability of the Boeing 737NG rechargeable lithium batteries and rechargeable lithium-battery system installations.

At present, commercial aviation has limited experience with the use of rechargeable lithium batteries and rechargeable lithium-battery systems in aviation applications. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and cell-component flammability.

1. Overcharging

In general, rechargeable lithium batteries and rechargeable lithium-battery systems are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable

metallic lithium. Metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway, due to overcharging, increases with increasing battery capacity, due to the greater amount of liquid electrolytes in large batteries.

2. Over-discharging

Discharge of some types of rechargeable lithium batteries and rechargeable lithium-battery systems beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of rechargeable lithium batteries and rechargeable lithium-battery systems use liquid electrolytes that are flammable. Electrolytes can serve as a source of fuel for an external fire from a breach of the battery container.

Such problems, experienced by users of rechargeable lithium batteries and rechargeable lithium-battery systems, raise concern about the use of these batteries in commercial aviation. The intent of these proposed special conditions is to establish appropriate airworthiness standards for rechargeable lithium-battery and rechargeable lithium-battery system installations in Boeing 737NG airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these battery installations are not hazardous or unreliable.

Applicability

As discussed above, these special conditions are applicable to the Boeing Company. Should the Boeing Company apply at a later date for a type-design change to modify any other model included on Type Certificate No. A16WE, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features relating to rechargeable lithium batteries and rechargeable lithium-battery systems installed on Boeing 737NG airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing 737NG airplanes modified by Boeing Company to install rechargeable lithium-battery systems on Boeing 737NG airplanes. These systems must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium batteries must meet the requirements of § 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, in accordance with § 25.1309 (b) and applicable regulatory guidance.

(6) Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium-battery installations must have—

(i) A system to automatically control the charging rate of the battery, to prevent battery overheating or overcharging, and,

(ii) A battery-temperature-sensing and over-temperature-warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(iii) A battery-failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium-battery installation the function of which is required for safe operation of the airplane must incorporate a monitoring-and-warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 (and § 26.11) must contain maintenance steps to assure that the lithium batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer. The instructions for continued airworthiness must also contain procedures to ensure the integrity of lithium batteries in spares storage to prevent the replacement of batteries, the function of which is required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state of charge. Precautions should be included in the instructions for continued-airworthiness maintenance instructions to prevent mishandling of lithium batteries, which could result in short-circuit or other unintentional damage that could result in personal injury or property damage.

Note 1: The term, "sufficiently charged" means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) in the certification basis of the Boeing 737NG. These special conditions apply only to rechargeable lithium batteries and rechargeable lithium-battery system installations. The requirements of § 25.1353(b) remains in effect for batteries and battery installations of Boeing 737NG that do not use lithium batteries.

Boeing must show compliance with the requirements of these special conditions by test and/or analysis. The aircraft certification office, or its designees, will find compliance in coordination with the FAA Transport Standards Staff.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–8218 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0831; Airspace Docket No. 09–ANM–13]

Amendment of Class E Airspace; North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class D airspace at Southwest Oregon Regional Airport, North Bend, OR, to allow aircraft at Sunnyhill Airport to arrive and depart outside Class D airspace. This action is necessary for the safety and management of Instrument Flight Rules (IFR) aircraft utilizing both airports.

DATES: *Effective date,* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at North Bend, OR (74 FR 57616). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class D airspace area at North Bend, OR. Controlled airspace is needed extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Southwest Oregon Regional Airport, excluding that airspace within a 1.5-mile radius of Sunnyhill Airport. The exclusion will allow aircraft at Sunnyhill Airport to arrive and depart outside the Class D airspace. This rule will enhance IFR operations at both airports.

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ANM OR D North Bend, OR [Modified]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N., long. 124°14′49″ W.)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N., long. 124°12′10″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport, excluding that airspace within a 1.5-mile radius of Sunnyhill Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on April 5, 2010.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–8193 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1014; Airspace Docket No. 09–ANM–10]

Amendment of Class E Airspace; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Rifle, CO. Additional controlled airspace is necessary to accommodate aircraft executing new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Garfield County Regional Airport. This will improve the safety of Instrument Flight Rules (IFR) operations at the airport. This action also changes the airport name in the existing Class E airspace description.

DATES: Effective date 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On November 27, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Rifle, CO (74 FR 62259). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of the proposed Class E–2 Airspace.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace for the Rifle, CO, area, by establishing surface airspace to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Garfield County Regional Airport, Rifle, CO. This action is necessary for the safety and management of IFR operations at the airport. This will also change the airport name from Garfield County Airport to Garfield County Regional Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002. Class E airspace designated as surface areas.

* * * * *

ANM CO E2 Rifle, CO [New]

Garfield County Regional Airport, Rifle, CO
(Lat. 39°31′35″ N., long. 107°43′ 37″ W.)

Within a 4.1-mile radius of Garfield County Regional Airport, and within 1 mile each side of the 093° bearing extending from the 4.1-mile radius to 5.5 miles east of the Garfield County Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility directory.

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

* * * * *

ANM CO E5 Rifle, CO [Amended]

Garfield County Regional Airport, Rifle, CO
(Lat. 39°31′35″ N., long. 107°43′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Garfield County Regional Airport, and within 4.3 miles each side of the 090° bearing from the airport, extending from the 7-mile radius to 18.3 miles east of the airport, and within 4.5 miles each side of the 321° bearing from the airport, extending from the 7-mile radius to 14.5 miles northwest of the airport.

Issued in Seattle, Washington, on March 31, 2010.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–8192 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200, 2203, and 2204

Rules of Procedure; Regulations Implementing the Government in the Sunshine Act; Implementation of the Equal Access to Justice Act in Proceedings Before the Occupational Safety and Health Review Commission; Correction

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; correction.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) is correcting an erroneous instruction, appearing in the **Federal Register** of December 7, 2009 (74 FR 63985), that could not be carried out. The document made various corrections and technical amendments to its rules and regulations set forth in parts 2200, 2203, and 2204. This correction removes the erroneous instruction and discussion of it in the preamble.

DATES: Effective on April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606–5410, by e-mail at *rbailey@oshrc.gov*, or by mail at: 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION: OSHRC published a document in the **Federal Register** on December 7, 2009 setting forth an amendatory instruction that was impossible to carry out. Specifically, with respect to 29 CFR 2200.209, OSHRC directed that a hyphen be placed between the number "20" and the word "day," so that the relevant portion of the provision would read "20-day period." But in a prior rules revision, dated September 29, 2008 (73 FR 56491), the phrase "20 day period" had been changed to "11-day period." OSHRC intends for § 2200.209 to continue to read "11-day period."

■ In FR Doc. E9–28845 appearing on page 63985 in the **Federal Register** of Monday, December 7, 2009, the following corrections are made:

■ 1. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Second" and add in its place the word "First" in the third sentence.

■ 2. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Third" and add in its place the word "Second" in the fourth sentence.

■ 3. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Fourth" and add in its place the word "Third" in the fifth sentence.

■ 4. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Fifth" and add in its place the word "Fourth" in the sixth sentence.

■ 5. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Sixth" and add in its place the word "Fifth" in the seventh sentence.

■ 6. On page 63985, in the right column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Seventh" and add in its place the word "Sixth" in the ninth sentence.

■ 7. On page 63985, in the right column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Eighth" and add in its place the word "Seventh" in the thirteenth sentence.

■ 8. On page 63985, in the right column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the word "Ninth" and add in its place the word "Eighth" in the fifteenth sentence.

■ 9. On page 63985, in the center column, in the second paragraph of **SUPPLEMENTARY INFORMATION**, remove the second sentence, which reads, "First, in § 2200.209(g), the phrase 'the 21 day period' is amended to include a hyphen between '21' and 'day.'"

§ 2200.209 [Corrected]

■ 10. On page 63988, in the left column, remove instruction 28.b, which reads, "b. Adding a hyphen between the numeral '21' and the word 'day' in the last sentence of paragraph (g)."

Signed at Washington, DC, on the 29th day of March, 2010.

Thomasina V. Rogers,

Chairman.

Horace A. Thompson III,

Commissioner.

Cynthia L. Attwood,

Commissioner.

[FR Doc. 2010–7949 Filed 4–9–10; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2009–0955]

RIN 1625–AA00

Safety Zone; FRONTIER DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Sea, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the DRILLSHIP FRONTIER DISCOVERER, while anchored or deploying and recovering moorings on location in order to drill exploratory wells at various prospects located in the Chukchi and Beaufort Sea Outer Continental Shelf, Alaska, during the 2010 drilling season. The purpose of the temporary safety zone is to protect the DRILLSHIP from vessels operating outside normal shipping channels and fairways. Placing a temporary safety zone around the DRILLSHIP will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective from 12:01 a.m. on July 1, 2010, to 11:59 p.m. on November 30, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0955 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0955 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Ken Phillips, U.S. Coast Guard, District Seventeen, Office of Prevention; telephone 907–463–2821, *Kennneth.G.Phillips@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 6, 2010 we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; FRONTIER DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Sea, Alaska" in the **Federal Register** (75 FR 803). The NPRM included a 30-day comment period. We received 3 (three) submissions with comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a temporary safety zone around the DRILLSHIP FRONTIER DISCOVERER while on location in order to drill exploratory wells approximately 60 to 124 miles off the northwest coast in the Chukchi Sea and 13 to 18 miles off the northern coast in the Beaufort Sea Outer Continental Shelf, Alaska, during the 2010 drilling season. This rule will be in effective from 12:01 a.m. on July 1,

2010, to 11:59 p.m. on November 30, 2010.

Shell Exploration & Production Company requested that the Coast Guard establish a temporary safety zone around the DRILLSHIP FRONTIER DISCOVERER while on location in order to drill exploratory wells in the Chukchi and Beaufort Seas, Alaska. The request for the safety zone was due to safety concerns for both the personnel aboard the DRILLSHIP and the environment. Shell Exploration & Production Company indicated that it is highly likely that any allision or inability to identify, monitor or mitigate ice-related hazards that might be encountered could result in a catastrophic event. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the operation; (2) safety concerns for personnel aboard the vessel; (3) concerns for the environment, given the sensitivity of the environmental and subsistence importance to the indigenous population; (4) the likeliness that an allision could result in a catastrophic event based on a lack of established shipping fairways, fueling and supply storage/operations, and size of the crew; (5) the recent and potential future maritime traffic in the vicinity of the proposed areas; (6) the types of vessels navigating in the vicinity of the proposed area; and, (7) the structural configuration of the vessel. Navigation in the vicinity of the safety zone could consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel.

After conducting a comprehensive examination of the criteria, IMO guidelines, and existing regulations, we conclude that the risk of allision, the potential for loss of life, and damage to the environment warrants the establishment of this temporary safety zone. This rule would significantly reduce the threat of allisions, oil spills, and releases and increase the safety of life, property, and the environment in the Chukchi and Beaufort Seas by prohibiting entry into the zone unless specifically authorized by the Commander, Seventeenth Coast Guard District.

The complete discussion of the background and purpose for this rule can be found in the preamble to the NPRM (75 FR 803).

Discussion of Comments and Changes

One comment was received that opined on the appropriateness of allowing any drilling to take place in the Chukchi or Bering Seas. While it is not within the jurisdiction of the Coast Guard to approve or authorize Outer Continental Shelf activity, we do have the responsibility to ensure, to the maximum extent practicable, that any activity is undertaken with the greatest reduction of risk of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

One comment believed that having safety zones around all mobile drilling vessels is an excellent idea. The Coast Guard issues safety zones for Outer Continental Shelf activity consistent with the guidance in 33 CFR 147.10. In each case a safety zone is established only after evaluating all relevant safety factors and concluding that the regulation would significantly reduce the threat of an incident.

One comment was received suggesting that the safety zone be issued for a multi-year period similar to safety zones in the Gulf of Mexico. The Coast Guard disagrees. While the Coast Guard understands that the underlying justifications for the safety zone are not likely to change from year to year, we find that there are several operational and permitting variables with respect to these activities to support not continuing the safety zones period beyond the current 2010 drilling season as originally requested. Many of these variables would be considered substantive changes. Some of the factors that dictate a season by season publication of the safety zone include change in the vessel being utilized for the exploratory wells; changes in the published prospect/drilling locations and corresponding latitude/longitude coordinates; significant change in the future Outer Continental Shelf Lease Exploration Plans approved by Minerals Management Service; and the limited timeframe each year (approximately 4 to 5 months) associated with actual on-sight activity. The nature of this activity as noted above is not currently comparative with the "manned production facility" operations in the Gulf of Mexico in that those safety zones are established for year-round operations on "permanent" structures that are engaged in the exploration, exploitation, and production of sub-sea resources. The Coast Guard will reconsider the temporary nature of these safety zones should the nature of the operations significantly change from solely exploratory drilling operations.

One comment requested clarification on the involved parties as the NPRM did not elaborate on the specific parties under which the exploratory drilling operations will be undertaken. The Coast Guard notes for clarification that Shell Exploration & Production Company made the request for the safety zone on behalf of Shell Offshore Inc., operator in the Beaufort Sea and Shell Gulf of Mexico Inc., operator in the Chukchi Sea.

One comment asked for a clarification with regard to the probability of a catastrophic event resulting from an incident. The Coast Guard has amended the "Background and Purpose" section of the Final Rule **Federal Register** by changing the word "would" to "could" as it relates to the outcome of an "allision or inability to identify, monitor or mitigate ice-related hazards that might be encountered."

One comment asked for a correction to the **Federal Register** regarding the distances from shore for the exploratory wells in the Chukchi and Beaufort Seas to be consistent with the respective 2010 Outer Continental Shelf Lease Exploration Plans. The Coast Guard has amended the "Background and Purpose" section of the Final Rule Federal Register by inserting the distances from shore to be consistent with the 2010 lease exploration plans.

One comment requested that a clarification be made concerning the drilling of "shallow holes." The Coast Guard understands that all wells will be drilled to the final depth objective or will not be commenced in the 2010 drilling season in accordance with the Minerals Management Service requirements.

One comment requested flexibility with respect to the effective dates of the temporary safety zone to accommodate completion of non-drilling activities to include plugging and abandonment operations, pulling drilling equipment, surveying and restoring the drill sight and moorings recovery. The Coast Guard understands the nature of the post drilling activity and agrees that the safety zone effective period should be extended to provide that needed flexibility until November 30, 2010, but only while the vessel is on location as listed in Table 1 of the rule to cover these activities to ensure the safety of the personnel aboard the DRILLSHIP and the environment. The Coast Guard has amended § 147.T17.001(a) to reflect the new effective end date of November 30, 2010, so long as the vessel is on location.

One comment requested the rule be amended to have the safety zone in effect once the vessels is "on location" while the mooring system is being deployed or recovered not only when the vessel is anchored. The Coast Guard agrees. The safety factors that were evaluated in determining that a safe

zone was warranted while the vessel was anchored on location are substantially similar for when the vessel is on location and the mooring system is in the process of being deployed or recovered. This determination is consistent with extending the effective end date of the safety zone to November 30, 2010, to cover the mooring recovery. The Coast Guard has amended § 147.T17.001(a) to read: "The area within 500 meters (1,640.4 feet) from each point on the outer edge of the vessel while anchored or deploying and recovering moorings on location is a safety zone."

One comment recommended the three "Burger" prospects in Column 1 of Table 1 in the rule be delineated as Burger "C", Burger "F", and Burger "J", respectively, to match the lease exploration plan. The Coast Guard agrees and has amended Table 1 accordingly.

One comment supported the determination to prohibit all vessels, irrespective of size from the safety zone. The Coast Guard determined this to be the best course of action given the complexities of this Arctic operation to include ice management issues, Marine Mammal and Mitigation plan requirements, and a harsh and dynamic offshore environment to significantly reduce the threat of allisions, oil spills, and releases and increase the safety of life, property, and the environment in the Chukchi and Beaufort Seas, Alaska.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule is not a significant regulatory action due to the location of the FRONTIER DISCOVERER in the Chukchi and Beaufort Seas Outer Continental Shelf, Alaska, and its distance from both land and safety fairways. Vessels traversing waters near the temporary safety zone will be able to safely travel around the zone without incurring additional costs.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the locations where the exploratory wells will be drilled.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will enforce a temporary safety zone around the FRONTIER DISCOVERER while on location in order to drill exploratory wells in the Chukchi and Beaufort Seas. The location of the safety zone is not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the temporary safety zone without incurring additional costs.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves establishing regulations for safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.T001 to read as follows:

§ 147.T001 DRILLSHIP FRONTIER DISCOVERER Safety Zone.

(a) *Description.* The FRONTIER DISCOVERER will be engaged in exploratory drilling operations at various locations in the Chukchi and Beaufort Sea from July 1, 2010, through November 30, 2010. The DRILLSHIP will be anchored while conducting exploratory drilling operations with the center point of the vessel located at the coordinates listed in Table 1. These coordinates are based upon [NAD 83] UTM Zone 3.

TABLE 1—PROSPECT LOCATIONS

Prospect	Area	Block	Lease no.	Latitude	Longitude
Burger C	Posey	6764	OCS–Y–2280	N71°18′ 17.2739″	W163°12′ 45.9891″
Burger F	Posey	6714	OCS–Y–2267	N71°20′ 13.9640″	W163°12′ 21.7460″
Burger J	Posey	6912	OCS–Y–2321	N71°10′ 24.0292″	W163°28′ 18.5219″
Crackerjack	Karo	6864	OCS–Y–2111	N71°13′ 58.9211″	W166°14′ 10.7889″
SW Shoebill	Karo	7007	OCS–Y–2142	N71°04′ 24.4163″	W167°13′ 38.0886″
Sivulliq	Flaxman Is	6658	OCS–Y 1805	N70°23′ 29.5814″	W145°58′ 52.5284″
Torpedo	Flaxman Is	6610	OCS–Y–1941	N70°27′ 01.6193″	W145°49′ 32.0650″

The area within 500 meters (1,640.4 feet) from each point on the outer edge of the vessel while anchored or deploying and recovering moorings on location is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel authorized by the Commander, Seventeenth Coast Guard District.

Dated: March 12, 2010.

C.C. Colvin,

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

[FR Doc. 2010–8207 Filed 4–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2009–OII–0012]

RIN 1855–AA06

Investing in Innovation Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants).

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria; correction.

SUMMARY: On March 12, 2010, the Department of Education published in the **Federal Register** (75 FR 12004) a document announcing final priorities, requirements, definitions, and selection criteria (Final Rule) for the Investing in Innovation Fund. This document makes a correction to the March 12 Final Rule.

FOR FURTHER INFORMATION CONTACT: Margo Anderson. Telephone: (202) 453–7122; or by e-mail: *i3@ed.gov;* or by mail: (Attention: Investing in Innovation), U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

On page 12060, we included a footnote providing the Department's interpretation of the core academic subject of science as including STEM education (science, technology, engineering, and mathematics) which encompasses a wide range of disciplines. As an example of those disciplines, we intended to include computer science rather than science. To correct this error, the Department makes the following correction to the March 12 Final Rule:

On page 12060, in the third column, under the heading *Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments,* in footnote number eight, in line six, "including science" is replaced with "including computer science."

Program Authority: Section 14007 of division A of the American Recovery and Reinvestment Act of 2009, Public Law No. 111–5, as amended by section 307 of division D of the Consolidated Appropriations Act, 2010, Public Law 111–117.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Dated: April 7, 2010.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–8301 Filed 4–9–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8125]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

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

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022,

prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
New Hampshire:				
Allenstown, Town of, Merrimack County	330103	September 3, 1975, Emerg; April 2, 1979, Reg; April 19, 2010, Susp.	4/19/2010	4/19/2010
Andover, Town of, Merrimack County	330104	May 12, 1976, Emerg; April 2, 1986, Reg; April 19, 2010, Susp.	do	Do.
Boscawen, Town of, Merrimack County	330105	October 14, 1976, Emerg; July 16, 1979, Reg; April 19, 2010, Susp.	do	Do.
Bow, Town of, Merrimack County	330107	June 18, 1975, Emerg; April 16, 1979, Reg; April 19, 2010, Susp.	do	Do.
Bradford, Town of, Merrimack County	330106	August 12, 1975, Emerg; April 15, 1992, Reg; April 19, 2010, Susp.	do	Do.
Canterbury, Town of, Merrimack County	330108	June 10, 1975, Emerg; May 15 1979, Reg; April 19, 2010, Susp.	do	Do.
Chichester, Town of, Merrimack County	330109	N/A, Emerg; May 14, 2004, Reg; April 19, 2010, Susp.	do	Do.
Concord, City of, Merrimack County	330110	July 17, 1974, Emerg; March 4, 1980, Reg; April 19, 2010, Susp.	do	Do.
Danbury, Town of, Merrimack County	330111	April 23, 2001, Emerg; January 1, 2003, Reg; April 19, 2010, Susp.	do	Do.
Dunbarton, Town of, Merrimack County	330202	May 1, 2000, Emerg; March 28, 2001, Reg; April 19, 2010, Susp.	do	Do.
Epsom, Town of, Merrimack County	330112	November 11, 1976, Emerg; July 3, 1978, Reg; April 19, 2010, Susp.	do	Do.
Franklin, City of, Merrimack County	330113	July 21, 1975, Emerg; September 28, 1979, Reg; April 19, 2010, Susp.	do	Do.
Henniker, Town of, Merrimack County	330114	March 14, 1979, Emerg; March 14, 1979, Reg; April 19, 2010, Susp.	do	Do.
Hill, Town of, Merrimack County	330214	November 29, 1976, Emerg; April 2, 1986, Reg; April 19, 2010, Susp.	do	Do.
Hooksett, Town of, Merrimack County	330115	November 10, 1975, Emerg; April 2, 1979, Reg; April 19, 2010, Susp.	do	Do.
Hopkinton, Town of, Merrimack County	330116	June 27, 1975, Emerg; May 17, 1988, Reg; April 19, 2010, Susp.	do	Do.
Loudon, Town of, Merrimack County	330117	April 2, 2004, Emerg; August 1, 2004, Reg; April 19, 2010, Susp.	do	Do.
New London, Town of, Merrimack County.	330230	November 17, 1975, Emerg; July 16, 1991, Reg; April 19, 2010, Susp.	do	Do.
Newbury, Town of, Merrimack County	330226	August 17, 1976, Emerg; April 2, 1986, Reg; April 19, 2010, Susp.	do	Do.
Northfield, Town of, Merrimack County	330118	October 14, 1975, Emerg; June 15, 1979, Reg; April 19, 2010, Susp.	do	Do.
Pembroke, Town of, Merrimack County	330119	July 24, 1975, Emerg; April 2, 1979, Reg; April 19, 2010, Susp.	do	Do.
Pittsfield, Town of, Merrimack County	330120	January 27, 1976, Emerg; July 3, 1978, Reg; April 19, 2010, Susp.	do	Do.
Salisbury, Town of, Merrimack County	330121	June 8, 1976, Emerg; April 15, 1986, Reg; April 19, 2010, Susp.	do	Do.
Sutton, Town of, Merrimack County	330122	March 1, 1976, Emerg; May 17, 1977, Reg; April 19, 2010, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Warner, Town of, Merrimack County	330123	August 11, 1975, Emerg; June 4, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Webster, Town of, Merrimack County ...	330236	February 25, 1976, Emerg; April 15, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Wilmot, Town of, Merrimack County	330124	May 29, 1984, Emerg; April 1, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Region III				
West Virginia:				
Bethany, Town of, Brooke County	540012	July 16, 1975, Emerg; September 28, 1979, Reg; April 19, 2010, Susp.	.....do	Do.
Braxton County, Unincorporated Areas	540009	December 29, 1975, Emerg; March 18, 1991, Reg; April 19, 2010, Susp.	.....do	Do.
Brooke County, Unincorporated Areas	540011	October 28, 1975, Emerg; December 15, 1983, Reg; April 19, 2010, Susp.	.....do	Do.
Chester, City of, Hancock County	540048	June 23, 1975, Emerg; December 1, 1982, Reg; April 19, 2010, Susp.	.....do	Do.
Flatwoods, Town of, Braxton County	540235	July 3, 1975, Emerg; September 29, 1978, Reg; April 19, 2010, Susp.	.....do	Do.
Follansbee, City of, Brooke County	540013	July 16, 1975, Emerg; September 30, 1982, Reg; April 19, 2010, Susp.	.....do	Do.
Gassaway, Town of, Braxton County	540237	March 21, 1975, Emerg; September 10, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Hancock County, Unincorporated Areas	540047	August 21, 1975, Emerg; June 15, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Jane Lew, Town of, Lewis County	540086	March 7, 1975, Emerg; September 24, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Lewis County, Unincorporated Areas	540085	January 25, 1977, Emerg; July 1, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
New Cumberland, City of, Hancock County.	540049	May 21, 1975, Emerg; May 15, 1980, Reg; April 19, 2010, Susp.	.....do	Do.
Sutton, Town of, Braxton County	540236	June 5, 1975, Emerg; September 10, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Weirton, City of, Brooke and Hancock Counties.	540014	March 20, 1975, Emerg; September 28, 1979, Reg; April 19, 2010, Susp.	.....do	Do.
Wellsburg, City of, Brooke County	540015	December 18, 1974, Emerg; November 17, 1982, Reg; April 19, 2010, Susp.	.....do	Do.
Weston, City of, Lewis County	540087	November 1, 1974, Emerg; April 15, 1982, Reg; April 19, 2010, Susp.	.....do	Do.
Region IV				
Alabama:				
Pine Hill, Town of, Wilcox County	010397	June 6, 2005, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Wilcox County, Unincorporated Areas ..	010327	February 21, 1979, Emerg; May 1, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Mississippi:				
Claiborne County, Unincorporated Areas.	280201	February 14, 1974, Emerg; May 1, 1978, Reg; April 19, 2010, Susp.	.....do	Do.
Crosby, Town of, Wilkinson County	280003	December 17, 1974, Emerg; February 1, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Port Gibson, Town of, Claiborne County	280033	April 16, 1975, Emerg; June 15, 1978, Reg; April 19, 2010, Susp.	.....do	Do.
Wilkinson County, Unincorporated Areas.	280202	February 15, 1974, Emerg; July 16, 1990, Reg; April 19, 2010, Susp.	.....do	Do.
North Carolina:				
Bryson City, Town of, Swain County	370228	March 25, 1975, Emerg; December 4, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Dillsboro, Town of, Jackson County	370136	July 23, 1975, Emerg; May 15, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Eastern Band of Cherokee Indians, Cherokee, Graham, Haywood, Jackson, and Swain Counties.	370401	May 4, 1977, Emerg; May 17, 1989, Reg; April 19, 2010, Susp.	.....do	Do.
Jackson County, Unincorporated Areas	370282	August 5, 1975, Emerg; May 17, 1989, Reg; April 19, 2010, Susp.	.....do	Do.
Sylva, Town of, Jackson County	370137	July 28, 1975, Emerg; July 3, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Swain County, Unincorporated Areas ...	370227	February 3, 1980, Emerg; July 17, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Webster, Town of, Jackson County	370281	December 29, 2005, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.

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Tennessee:				
Alexandria, City of, Dekalb County	470042	May 23, 1975, Emerg; June 17, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Decatur County, Unincorporated Areas	470041	December 2, 1985, Emerg; September 1, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Dowelltown, City of, Dekalb County	470043	May 22, 1975, Emerg; August 19, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Jackson County, Unincorporated Areas	470370	November 26, 1982, Emerg; September 4, 1985, Reg; April 19, 2010, Susp.	.....do	Do.
Liberty, City of, Dekalb County	470044	May 23, 1975, Emerg; September 4, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Parsons, Town of, Decatur County	470316	April 28, 1992, Emerg; November 1, 2006, Reg; April 19, 2010, Susp.	.....do	Do.
Van Buren County, Unincorporated Areas.	470342	July 14, 2005, Emerg; June 1, 2008, Reg; April 19, 2010, Susp.	.....do	Do.
Region V				
Illinois:				
Alexis, Village of, Mercer and Warren Counties.	170674	May 9, 1975, Emerg; July 2, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Keithsburg, City of, Mercer County	170508	May 23, 1975, Emerg; September 15, 1983, Reg; April 19, 2010, Susp.	.....do	Do.
Mercer County, Unincorporated Areas ..	170806	April 8, 1974, Emerg; January 3, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Reynolds, Village of, Mercer and Rock Island Counties.	170883	March 24, 1998, Emerg; October 18, 2002, Reg; April 19, 2010, Susp.	.....do	Do.
Seaton, Village of, Mercer County	170881	August 13, 1975, Emerg; August 19, 1985, Reg; April 19, 2010, Susp.	.....do	Do.
Michigan:				
Algansee, Township of, Branch County	260994	June 19, 1997, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Coldwater, City of, Branch County	260813	February 10, 1989, Emerg; August 16, 1996, Reg; April 19, 2010, Susp.	.....do	Do.
Coldwater, Township of, Branch County	260826	September 26, 1989, Emerg; August 16, 1996, Reg; April 19, 2010, Susp.	.....do	Do.
Girard, Township of, Branch County	261044	January 16, 2001, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Kinderhook, Township of, Branch County.	260361	June 19, 1997, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Matteson, Township of, Branch County	260911	December 21, 1993, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Ovid, Township of, Branch County	260362	June 30, 1997, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Quincy, Township of, Branch County	260997	July 25, 1997, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Sherwood, Township of, Branch County	261020	April 2, 1998, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Union, Township of, Branch County	261016	January 15, 1998, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Wisconsin:				
Beaver Dam, City of, Dodge County	550095	May 16, 1975, Emerg; April 3, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Brownsville, Village of, Dodge County ..	550096	April 2, 1975, Emerg; January 3, 1985, Reg; April 19, 2010, Susp.	.....do	Do.
Columbus, City of, Columbus and Dodge Counties.	550058	October 7, 1974, Emerg; December 1, 1981, Reg; April 19, 2010, Susp.	.....do	Do.
Fox Lake, City of, Dodge County	550097	August 1, 1975, Emerg; March 16, 1981, Reg; April 19, 2010, Susp.	.....do	Do.
Hartford, City of, Dodge and Washington Counties.	550473	April 17, 1975, Emerg; December 4, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Horicon, City of, Dodge County	550098	July 7, 1975, Emerg; August 15, 1980, Reg; April 19, 2010, Susp.	.....do	Do.
Hustisford, Village of, Dodge County	550557	July 25, 1975, Emerg; August 15, 1980, Reg; April 19, 2010, Susp.	.....do	Do.
Mayville, City of, Dodge County	550103	July 21, 1975, Emerg; June 1, 1981, Reg; April 19, 2010, Susp.	.....do	Do.
Neosho, Village of, Dodge County	550104	June 9, 1975, Emerg; June 15, 1988, Reg; April 19, 2010, Susp.	.....do	Do.
Theresa, Village of, Dodge County	550106	August 21, 1975, Emerg; July 16, 1980, Reg; April 19, 2010, Susp.	.....do	Do.

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Watertown, City of, Dodge and Jefferson Counties.	550107	May 23, 1975, Emerg; April 1, 1981, Reg; April 19, 2010, Susp.	.....do	Do.
Waupun, City of, Dodge and Fond du Lac Counties.	550108	January 21, 1975, Emerg; August 15, 1984, Reg; April 19, 2010, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Ardmore, City of, Carter County	400031	March 5, 1975, Emerg; January 6, 1982, Reg; April 19, 2010, Susp.	.....do	Do.
Gene Autry, Town of, Carter County	400032	September 30, 1999, Emerg; November 1, 2007, Reg; April 19, 2010, Susp.	.....do	Do.
Healdton, City of, Carter County	400033	September 2, 1975, Emerg; January 3, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Lone Grove, Town of, Carter County	400395	January 26, 1978, Emerg; March 16, 1989, Reg; April 19, 2010, Susp.	.....do	Do.
Wilson, City of, Carter County	400035	June 20, 1975, Emerg; July 3, 1985, Reg; April 19, 2010, Susp.	.....do	Do.
Texas:				
La Grulla, City of, Starr County	480576	December 26, 1975, Emerg; January 3, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Rio Grande City, City of, Starr County ..	481678	N/A, Emerg; October 22, 1997, Reg; April 19, 2010, Susp.	.....do	Do.
Roma, City of, Starr County	480577	November 20, 1995, Emerg; November 1, 2007, Reg; April 19, 2010, Susp.	.....do	Do.
Starr County, Unincorporated Areas	480575	November 6, 1970, Emerg; July 1, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Region VII				
Missouri:				
Annada, Village of, Pike County	290287	August 17, 1979, Emerg; November 19, 1986, Reg; April 19, 2010, Susp.	.....do	Do.
Bowling Green, City of, Pike County	290288	February 12, 1974, Emerg; May 2, 1977, Reg; April 19, 2010, Susp.	.....do	Do.
Clarksville, City of, Pike County	290289	December 26, 1973, Emerg; April 1, 1977, Reg; April 19, 2010, Susp.	.....do	Do.
Louisiana, City of, Pike County	290290	February 1, 1974, Emerg; April 3, 1978, Reg; April 19, 2010, Susp.	.....do	Do.
Pike County, Unincorporated Areas	290286	April 29, 1981, Emerg; May 1, 1989, Reg; April 19, 2010, Susp.	.....do	Do.
Buffalo, City of, Dallas County	290739	N/A, Emerg; November 14, 2007, Reg; April 19, 2010, Susp.	.....do	Do.
Urbana, City of, Dallas County	290514	January 15, 2008, Emerg; April 19, 2010, Reg; April 19, 2010, Susp.	.....do	Do.
Nebraska:				
Columbus, City of, Platte County	315272	May 21, 1971, Emerg; June 29, 1973, Reg; April 19, 2010, Susp.	.....do	Do.
Duncan, Village of, Platte County	310272	June 22, 1995, Emerg; October 1, 2001, Reg; April 19, 2010, Susp.	.....do	Do.
Lindsay, Village of, Platte County	310177	December 15, 1976, Emerg; September 4, 1987, Reg; April 19, 2010, Susp.	.....do	Do.
Platte Center, Village of, Platte County	310178	March 29, 1975, Emerg; January 30, 1990, Reg; April 19, 2010, Susp.	.....do	Do.

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

Dated: March 31, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–8276 Filed 4–9–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS-R9-NSR-2009-0023] [93270-1265-0000-4A]

RIN 1018-AW49

2009–2010 Refuge-Specific Hunting and Sport Fishing Regulations–Additions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service adds two refuges to the list of areas open for hunting and/or sport fishing programs and increases the activities available at eight other refuges for the 2009–2010 season. One refuge will see a decrease in activities and another refuge will see no net change in activities for the 2009–2010 season.

DATES: This rule is effective April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358-2397; Fax (703) 358-2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority" section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also standardizing and clarifying the language of existing regulations.

Plain Language Mandate

In this rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Refuge System, using the word "allow" instead of "permit" when we do not require the use of a permit for an activity, and using active voice (i.e., "We restrict entry into the refuge" vs. "Entry into the refuge is restricted").

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k-4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, which built upon the Administration Act in a manner that provides an "organic act" for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and

not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Response to Comments Received

In the December 29, 2009, **Federal Register** [74 FR 68968], we published a proposed rulemaking identifying changes pertaining to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing to existing refuge-specific language on certain refuges for the 2009-2010 season. We received five comments (three from the same commenter) on the proposed rule during a 30–day comment period. One commenter supported the decision to open Turnbull National Wildlife Refuge (NWR) in Washington for hunting, and another commenter was generally supportive of all proposed openings with a concern raised about the proposed cut in weekend waterfowl hunting opportunities at Mathews Brake NWR in Mississippi. That concern is addressed below in Comment/Response 4.

Comment 1: The commenter believes hunting is incompatible with the public interest, that it is discriminatory in nature and disenfranchises millions of residents in the United States.

Response 1: We disagree. The 1997 National Wildlife Refuge System Administration Act stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge that should be facilitated. The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible. In the case of each refuge opening/expansion in this rule, the refuge managers went through the compatibility process (which allows for public comment), in addition to complying with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) [NEPA] (which also allows for public comment) to make the determination before opening or expanding their refuge to allow for hunting. We made no change to this rulemaking as a result of this comment.

Comment 2: The same commenter asked for an extension of time to further comment on the proposed rule and felt that we discriminate by not allowing email or facsimile comments on the proposed rule.

Response 2: We disagree that the comment period is insufficient. The process of opening refuges is done in stages, with the fundamental work being done on the ground at the refuge and in the community where the program is administered. In these stages, the public is provided other opportunities to comment, for example, on the comprehensive conservation plans, the compatibility determinations, and the hunt plans and accompanying NEPA documents. The final stage is when we publish the proposed rule in the **Federal Register** for additional comment, commonly providing a 30–day comment period.

We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30–day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in wildlife-dependent recreational activities on a number of refuges. Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

As to no longer accepting facsimile or email comments, this change occurred on December 10, 2007, when the Service became a participating agency in the Federal Government's eRulemaking program, including the Federal Docket Management System (FDMS). FDMS is the agency side of Regulations.gov. Rulemaking documents are directly loaded from the **Federal Register** into Regulations.gov for public review. FDMS enables agencies, including the Service, to manage their administrative records (dockets) electronically and to post public comments on Regulations.gov. At the time that the Service began participating in FDMS, the Service determined that, for rulemaking documents, we use only the following methods for the public to comment: (1) Online through Regulations.gov; (2) by U.S. mail; or (3) by hand delivery. This helps ensure efficiency in allowing public review of our dockets.

Comment 3: The same commenter wondered if we are "conserving" fish, why are most species extinct at present. He or she continued, "If you are conserving birds, why are 40 [bald] eagles in an entire state considered adequate for ecological purposes?" The commenter lives on the east coast, so our assumption is that he or she is referring to bald eagles.

Response 3: This rule opened no new refuges to fishing; four of the refuges remain closed to fishing and the remaining eight refuges were already open to fishing. We allow no fishing for species that are listed as either threatened or endangered. We comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) when developing comprehensive conservation plans and step-down management plans and have consulted with Ecological Services offices for each of the affected refuge openings. In no case was there a finding that hunting activities would affect threatened or endangered species.

The Service removed bald eagles from the Federal List of Endangered and Threatened Wildlife in the lower 48 States on August 8, 2007. We based our determination on a thorough review of all available information, which indicated that the threats to this species had been eliminated or reduced to the point that the species has recovered and no longer meets the definition of threatened or endangered under the Endangered Species Act. According to the July 9, 2007, final rule published in the **Federal Register** (72 FR 37346), we went from 487 breeding pairs in 1963 to 9,789 breeding pairs in 2007. The recovery of the bald eagle is due in part to the reduction in levels of persistent organochlorine pesticides (such as DDT) occurring in the environment and habitat protection and management actions. The protections provided to the bald eagle under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act

(16 U.S.C. 703-712) continue to remain in place after delisting of the species.

Comment 4: A commenter expressed concern over the proposed reduction of total migratory bird hunting days (by 200 in weekend waterfowl hunting opportunities) at Mathews Brake NWR in Mississippi. The commenter encourages us and the refuge administrators to work with the local hunting community to find ways to reopen those days and to provide enhanced weekend hunting opportunities.

Response 4: Mathews Brake has long had the reputation of being a consistently good waterfowl hunting area, and it annually attracts hunters from many different States. Good hunting sites are very limited, producing a fierce competition among hunters, especially on opening day and weekends. As an example, 2008 opening day of waterfowl season had a total of 84 boats trying to vie for the places to hunt within the limited area. As described in Objective 6B of the 2006 Comprehensive Conservation Plan for the Theodore Roosevelt National Wildlife Refuges Complex, of which Mathews Brake is part, one of our objectives for this hunt program is to "provide hunters with a high-quality, safe hunting experience on refuge lands..." Limiting the number of hunting parties to 20, with one boat per party, alleviates many of the safety issues that were occurring (such as night time boat races to the best spots), yet still allows a quality hunting experience for those chosen through our draw system, and helps limit disturbance to the wildlife resource values of Mathews Brake.

We do allow up to four hunters per party, thus providing weekend and opening day hunting opportunities on Mathews Brake for up to 80 hunters per day. We are also aware that there will be hunters applying for the Mathews Brake NWR weekend/opening day waterfowl hunts that will not be selected. We provide unlimited weekend waterfowl hunting on three other national wildlife refuges within the Theodore Roosevelt NWR Complex, all with what we consider good hunting. For example, Morgan Brake NWR, located approximately 10 miles south from Mathews Brake, has 2,966 acres open; Hillside NWR, 15 miles south from Mathews Brake, has 9,723 acres available for hunting; and Panther Swamp, located 40 miles south, has 10,731 acres open for weekend waterfowl hunting. North of Mathews Brake we allow unlimited weekend waterfowl hunting at Dahomey, Tallahatchie, and Coldwater National Wildlife Refuges. There should be no problem for individuals not selected to hunt at Mathews Brake to find suitable waterfowl hunting on nearby refuges. We made no change to this regulation as a result of this comment.

Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30–day public comment period for the December 29, 2009, proposed rule. An additional delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allows activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon date of publication.

Amendments to Existing Regulations

This document codifies in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1 – CHANGES FOR 2009-2010 HUNTING/FISHING SEASON

National Wildlife Refuge	State	Migratory Bird Hunting	Upland Game Hunting	Big Game Hunting	Fishing
Hillside	MS	Previously published	Previously published	B (turkey)	Previously published
Holt Collier	MS	Closed	Previously published	C	Closed
Mathews Brake	MS	F	Previously published	Previously published	Previously published
Morgan Brake	MS	Previously published	Previously published	A/B (hog)	Previously published
Panther Swamp	MS	D	Previously published	E	Previously published
Yazoo	MS	C	Previously published	Previously published	Closed
Nisqually	WA	G	Closed	Closed	Previously published
Turnbull	WA	H	Closed	H (elk)	Closed
Waccamaw	SC	A	A	A	Previously published
Lake Andes	SD	H	H	H	Closed
Red River	LA	A	A	A/B (hog, turkey)	Previously published

TABLE 1 – CHANGES FOR 2009-2010 HUNTING/FISHING SEASON—Continued

National Wildlife Refuge	State	Migratory Bird Hunting	Upland Game Hunting	Big Game Hunting	Fishing
San Luis	CA	A	Previously published	Closed	Previously published

A= Refuge already open to activity but added new land which increased activity
B= Refuge already open to activity but added new species to hunt
C= Refuge already opened to activity but expanded the activity through increased type of hunt (e.g., youth waterfowl)/different weaponry now allowed
D= Refuge already opened to activity, added new land but adjusted hunt days, so *no net increase*
E= No increase in hunt days; rather a redistribution of hunt area/days to make for safer, quality hunt
F= *Decrease* in hunter days due to limiting of weekend waterfowl hunters
G= New activity on a refuge previously opened to other activities
H= New refuge opened, new activity

In the State of Mississippi, we revised the public hunting plan and make the following changes for the Theodore Roosevelt National Wildlife Refuge Complex (comprised of six refuges: Hillside, Holt Collier, Mathews Brake, Morgan Brake, Panther Swamp, and Yazoo NWRs):

- Revision of the hunt plan for Holt Collier NWR (which is currently covered by the Yazoo NWR hunt plan) reflecting different weaponry and changing 14 days of the hunt from archery to archery/muzzleloader for big game hunting;
- For Panther Swamp NWR: addition of deer hunting using muzzleloaders and modern weapons and waterfowl hunting on 2,900 acres of the Carter Unit; on the recently acquired 761-acre tract, expansion of deer and feral hog hunting (with no corresponding increase in hunters); and a redistribution/reduction of waterfowl hunting areas/hunt days throughout the refuge, including the Carter Unit and recently acquired 761-acre tract;
- Addition of turkey hunting on Hillside NWR;
- Addition of youth waterfowl hunting allowed on Yazoo NWR;
- Limited weekend waterfowl hunt participation at Mathews Brake NWR, decreasing the number of hunters; and
- Increase in deer/feral hog hunting on 366 acres at Morgan Brake NWR.

On Waccamaw NWR in South Carolina we added six new refuge parcels and with this rule increase all allowable hunting activities on 1,905 acres and feral hog hunting on 1,200 acres. On Nisqually NWR in Washington we have added 191 acres of tidal flats that we open to migratory bird hunting. On Red River NWR in Louisiana we have added approximately 6,000 acres of land that we open to all three hunting activities, and we add feral hog and turkey hunting. On San Luis NWR in California we have added approximately 2,000 acres of land (East Bear Creek Unit) that we open for migratory game bird hunting.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: *http://www.epa.gov/ost/fish/*.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule adds two national wildlife refuges to the list of refuges open to hunting, increases hunting activities on eight national wildlife refuges, decreases activities at one national wildlife refuge and has a net change of zero at one national wildlife refuge. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new hunting programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 3,675 user days of hunting (Table 2). Because the participation trend is flat in hunting activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2. ESTIMATED CHANGE IN HUNTING OPPORTUNITIES IN 2009/2010

Refuge	Additional Hunting Days	Additional Hunting Expenditures
Hillside	90	$9,635
Holt Collier	150	$16,059
Mathews Brake	-200	($21,412)
Morgan Brake	25	$2,677
Panther Swamp	0	0
Yazoo	100	$10,706
Nisqually	700	$74,942
Turnbull	95	$10,171
Waccamaw	75	$8,030
Lake Andes	180	$19,271
Red River	1,600	$171,297
San Luis	860	$92,072
Total	**3,675**	**$393,448**

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $393,000 in hunting-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. Using a national impact multiplier for hunting activities (2.67) derived from the report "Economic Importance of Hunting in America" yields a total economic impact of approximately $1.1 million (2008 dollars) (Southwick Associates, Inc., 2007). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new" money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $1.1 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $210,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $210,000 to be spent in total in the refuges' local economies. The maximum increase ($1.1 million if all spending were new money) at most would be less than 1 percent for local retail trade spending.

TABLE 3. COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2009/2010 (THOUSANDS, 2008 DOLLARS)

Refuge/County(ies)	Retail Trade in 2002 (2008 $)	Estimated Maximum Addition from New Activities	Addition as % of Total	Establishments in 2007	Establ. With < 10 emp in 2007
Hillside					
Holmes, MS	$112,887.5	$4.5	0.004%	79	56

TABLE 3. COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2009/2010 (THOUSANDS, 2008 DOLLARS)—Continued

Refuge/County(ies)	Retail Trade in 2002 (2008 $)	Estimated Maximum Addition from New Activities	Addition as % of Total	Establishments in 2007	Establ. With < 10 emp in 2007
Holt Collier					
Washington MS	$723,963.8	$7.5	0.001%	281	201
Mathews Brake					
Leflore, MS	$364,678.3	-$10.0	-0.003%	183	136
Morgan Brake					
Holmes, MS	$112,887.5	$1.3	0.001%	79	56
Panther Swamp					
Yazoo, MS	$229,806.9	$0.0	0%	91	66
Yazoo					
Washington, MS	$723,963.8	$5.0	0.001%	281	201
Nisqually					
Thurston, WA	$2,676,041.6	$35.2	0.001%	794	535
Turnbull					
Spokane, WA	$5,825,795.2	$4.8	0%	1,698	1,105
Waccamaw					
Horry, SC	$3,858,832.9	$1.3	0%	1,681	1,239
Georgetown, SC	$669,980.1	$1.3	0%	371	275
Marion, SC	$286,986.1	$1.3	0%	151	112
Lake Andes					
Charles Mix, SD	$76,157.9	$9.0	0.012%	61	45
Red River					
Natchitoches Parish, LA	$375,577.5	$80.4	0.021%	149	101
San Luis					
Merced, CA	$1,917,683.1	$43.2	0.002%	582	395

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects.

This rule:

a. Will not have an annual effect on the economy of $100 million or more. The minimal impact will be scattered across the country and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs will occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost will be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for

hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign–based enterprises. This rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this rule will apply to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the *Regulatory Planning and Review* and Unfunded Mandates Reform Act sections above, this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation clarifies established regulations and results in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule increases activities at eight refuges and opens two new refuges, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018-0102 and 1018-0140). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. Section 7 consultation has been completed on each of the affected refuges.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 Departmental Manual (DM) 6, Appendix 1.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10). Concerning the actions that are the subject of this rulemaking, we complied with NEPA at the project level where we developed each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A). We completed an Environmental Assessment, along with a Finding of No Significant Impact, for each refuge in this rulemaking except for Nisqually NWR. For Nisqually, we completed a Categorical Exclusion, along with an Environmental Action Statement. The action in Nisqually is to open 191 acres already open to hunting to allow boat access for hunting; the impact from this action was previously analyzed in Nisqually NWR's Final CCP and EIS from 2004.

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Turnbull National Wildlife Refuge, 26010 South Smith Road, Cheney, Washington 99004; Telephone (509) 235-4723.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S.

Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248-7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679-7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; Telephone (413) 253-8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236-8145.

Lake Andes National Wildlife Refuge, 38672 291 Street, Lake Andes, South Dakota 57356; Telephone (605) 487-7603.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, California 95825; Telephone (916) 414-6464.

Primary Author

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List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

■ 2. Amend §32.7 "What refuge units are open to hunting and/or sport fishing?" by:

■ a. Adding Lake Andes National Wildlife Refuge, in alphabetical order, in the State of South Dakota; and

■ b. Adding Turnbull National Wildlife Refuge, in alphabetical order, in the State of Washington.

■ 3. Amend §32.24 California by revising paragraphs A.9. through A.12. and adding paragraph A.13. of San Luis National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

San Luis National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

9. We restrict hunters in the spaced zone area of the East Bear Creek Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve crippled birds.

10. Access to the Freitas Unit free-roam hunting area is by boat only with a maximum of 5 mph. Prohibited boats include air-thrust and/or inboard water-thrust types.

11. We prohibit the use of motorized boats in the free-roam units with the exception of the Freitas Unit.

12. We do not allow vehicle trailers of any type or size to be in the refuge hunt areas at any time or to be left unattended at any location on the refuge.

13. Dogs must remain under the immediate control of their owners at all times (see §26.21(b) of this chapter).

* * * * *

■ 4. Amend §32.37 Louisiana by revising paragraphs A., B., and C. of Red River National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Red River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, and snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

3. We allow dove hunting on the days noted in the refuge brochure.

4. Hunters may enter the refuge no earlier than 4 a.m.

5. We prohibit hunting within 100 feet (30 m) of the maintained rights of way of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

6. We prohibit leaving boats, blinds, and decoys unattended.

7. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

8. Youth hunters under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

9. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that pays other individual(s), pays or promises to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Small Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, and A8 (to hunt small game) apply.

2. We allow hunting of raccoon and opossum during the daylight hours of rabbit and squirrel season. We allow night hunting during December and January. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

3. We allow the use of dogs to hunt squirrel and rabbit during January and February.

4. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a Special Use Permit at the refuge office.

5. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

6. We allow coyote hunting during all open refuge hunts with weapons legal for the ongoing hunt.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hogs, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, and A8 (to hunt big game; each adult may supervise no more than one youth hunter) and B6 apply.

2. We allow general gun deer hunting on the days noted. We allow archery

deer hunting during the entire State season.

3. The daily bag limit is one either-sex deer. State season limit applies.

4. Deer hunters must wear hunter orange as required by State deer hunting regulations on Wildlife Management Areas.

5. We prohibit possession or distribution of bait while in the field and hunting with the aid of bait, including any grain, salt, mineral, or any nonnatural occurring food attractant on the refuge.

6. We allow hog hunting during all open refuge hunts with weapons legal for the ongoing hunt.

7. We allow turkey hunting on the days noted in the brochure.

* * * * *

■ 5. Amend §32.43 Mississippi by:
■ a. Revising Hillside National Wildlife Refuge;
■ b. Revising Holt Collier National Wildlife Refuge;
■ c. Revising Mathews Brake National Wildlife Refuge;
■ d. Revising Morgan Brake National Wildlife Refuge;
■ e. Revising Panther Swamp National Wildlife Refuge; and
■ f. Revising Yazoo National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Hillside National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, coot, and dove in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.

11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

12. You may take migratory birds with shotguns shooting only approved nontoxic shot.

13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

14. We allow goose, duck, merganser and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

15. There is no early teal season.

16. We open for dove hunting on specified dates and areas within the first and second State seasons. The first two Saturdays of the first season require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact the refuge headquarters for specific dates and open areas.

*B. Upland Game Hunting.*We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow dogs for hunting squirrel and quail and for the February rabbit hunt.

4. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the deer muzzleloader hunt, we restrict entry into the Turkey Point area until March 1.

6. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10, and B5 through B7 apply.

2. During all gun and muzzleloader deer hunts: all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

3. We prohibit organized drives for deer.

4. Hunting or shooting within or adjacent to open fields and tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). You are considered hunting if you occupy a stand or blind or have an arrow nocked in a bow.

6. We designate deer check station dates, locations, and requirements in the refuge brochure.

7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree in which metal objects have been screwed or driven (see §32.2(i)). Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Turkey hunting opportunities will consist of three limited draw hunts within the State season time frame. These hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

10. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

11. We prohibit all other public use on the refuge during all gun and muzzleloader deer hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the gun and muzzleloader deer hunt.

2. We allow fishing in the borrow ponds along the north levee (see refuge brochure map) throughout the year except during the gun and muzzleloader deer hunt.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We prohibit fishing from bridges.

6. We allow frogging during the State bullfrog season.

7. We allow ATVs on designated trails (see § 27.31 of this chapter) (see refuge brochure map) September 15 through February 28.

8. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period of 4 a.m. to 1½ hours after legal sunset.

Holt Collier National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of rabbit and furbearers on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with weapons legal for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

11. We allow rabbit and quail hunting with dogs in February.

12. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

13. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

14. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B7, B9, B13, and B14 apply.

2. During the muzzleloader deer hunt all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

3. We prohibit organized drives for deer.

4. Hunting or shooting within or adjacent to open fields and or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

6. We designate deer check station dates, locations, and requirements in the refuge brochure.

7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects (see §32.2(i)). Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt.

8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

10. We prohibit all other public use on the refuge during muzzleloader deer hunts.

D. Sport Fishing. [Reserved]

Mathews Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season. The first 2 days of the season and all weekends, with the exception of youth weekends, are limited draw hunts. These hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

2. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

3. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

4. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

5. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

6. We prohibit possession of alcoholic beverages (see §32.2(j)).

7. We prohibit use of plastic flagging tape.

8. You must park vehicles in such a manner as not to obstruct roads, gates,

turn rows, or firelanes (see §27.31(h) of this chapter).

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

11. You may take migratory birds with shotguns shooting only approved nontoxic shot.

12. Hunters must remove all decoys, blind material (see §27.93 of this chapter), boats, and harvested waterfowl from the area no later than 1 p.m. each day.

13. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

14. There is no early teal season.

15. Beginning the day before duck season opens and ending the last day of duck season, we close refuge waters to all public use from 1 p.m. until 4 a.m.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2 through A9 and A15 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)) and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow dogs for hunting squirrel and for the February rabbit hunt.

4. During the rabbit hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. We prohibit horses and mules.

6. Beginning the day before waterfowl season, we restrict hunting to the waterfowl hunting area (see refuge brochure map).

C. Big Game Hunting. We allow archery hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2 through A9, A15, and B5 apply.

2. We allow archery hunting October 1 through January 31.

3. State bag limits apply.

4. We prohibit organized drives for deer.

5. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

6. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

7. We designate deer check station dates, locations, and requirements in the refuge brochure.

8. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects (see §32.2(i)). A hunter may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing in all refuge waters throughout the year, except in the waterfowl sanctuary, which we close from the first day of duck season through March 1 (see refuge brochure map).

2. Beginning the day before duck season opens and ending March 1, we close refuge waters to all public use from 1 p.m. until 4 a.m.

3. We prohibit trot lines, limb lines, jugs, seines, and traps.

4. We allow frogging during the State bullfrog season.

5. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period from 4 a.m. to 1½ hours after legal sunset.

Morgan Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot on the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.

11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

12. You may take migratory birds with shotguns shooting only approved nontoxic shot.

13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

14. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

15. There is no early teal season.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A11 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow dogs for hunting squirrel and quail and for the February rabbit hunt.

4. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the deer muzzleloader hunt, we restrict hunting through the remainder of the season(s) to the designated waterfowl hunting area (see refuge brochure map).

6. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7, A9, A10, B5, and B6 apply.

2. During muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

3. We prohibit organized drives for deer.

4. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

5. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

6. We designate deer check station dates, locations, and requirements in the refuge brochure.

7. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt.

8. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

9. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

10. We prohibit all other public use on the refuge during all muzzleloader deer hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the muzzleloader deer hunt.

2. From November 16 to February 28, we allow fishing in refuge waters north of Providence Road.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We allow frogging during the State bullfrog season.

6. With the exception for frogging during the State season, we limit refuge ingress and egress for fishing to the period of 4 a.m. to 1½ hours after legal sunset.

7. Conditions A2 through A10 apply.

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Panther Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following regulations:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the limited draw hunts.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. We allow ATVs on designated trails (see §27.31 of this chapter) (see refuge brochure map) from September 15 through February 28.

11. You may possess or use only approved nontoxic shot (see §32.2(k)) while in the field.

12. You may take migratory birds with shotguns shooting only approved nontoxic shot.

13. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

14. We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

15. There is no early teal season.

16. We allow hunting of snow geese during the Light Goose Conservation order seasons by Special Use Permit.

17. Waterfowl hunting in Unit 1 will be on Monday, Tuesday, and Wednesday. Waterfowl hunting in Unit 2 will be Friday, Saturday, and Sunday (see refuge brochure for details).

18. We reserve the last weekend of December for youth waterfowl hunting. One adult hunter age 21 or older, who we also allow to hunt, must accompany each youth hunter age 15 and under.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10 apply.

2. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

3. We allow dogs for hunting squirrel and quail and for the February rabbit hunt.

4. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the last limited draw deer hunt until March 1, we restrict all entry into the lower twist area.

6. With exception for raccoon hunting, we limit refuge ingress and egress to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7, A9, A10, B5, and B7 apply.

2. We allow shotguns shooting only approved nontoxic shot (see §32.2(k)) and archery equipment for turkey hunting.

3. You must immediately tag all deer harvested prior to moving it during limited hunts; we provide the tags.

4. During all gun and muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of

unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

5. We prohibit organized drives for deer.

6. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

7. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

8. We designate deer check station dates, locations, and requirements in the refuge brochure.

9. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

10. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

11. The limited draw hunts require a Limited Hunt Permit assigned by random computer drawing. At the end of the hunt you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year. Contact refuge headquarters for specific requirements, hunts, and application dates.

12. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

13. We prohibit all other public use on the refuge during all limited draw hunts.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during all limited draw hunts.

2. We open waters between the East and West levee, the Landside Ditch, and the portion of Panther Creek adjacent to the West Levee year-round except during limited draw hunts.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We allow frogging during the State bullfrog season.

6. With the exception for frogging during the State season, refuge ingress and egress for fishing is limited to the period of 4 a.m. to 1½ hours after legal sunset.

7. Conditions A1 through A7 and A10 apply.

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Yazoo National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, coot, and dove on the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information Card in plain view on the dashboard of their vehicle so that the Permit Number is readable.

3. Failure to display the User Information Card will result in the loss of the participant's annual refuge Public Use Permit.

4. We prohibit hunting or entry into areas designated as "CLOSED" (see refuge brochure map).

5. We prohibit possession of alcoholic beverages (see §32.2(j)).

6. We prohibit use of plastic flagging tape.

7. You must park vehicles in such a manner as not to obstruct roads, gates, turn rows, or firelanes (see §27.31(h) of this chapter).

8. We are open for hunting during the State season except during the muzzleloader deer hunt.

9. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal weapons used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

10. You may possess only approved nontoxic shot (see §32.2(k)) while in the field.

11. You may take migratory birds with shotguns shooting only approved nontoxic shot.

12. Hunters must remove all decoys, blind material (see §27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

13 We allow goose, duck, merganser, and coot hunting from ½ hour before legal sunrise until 12 p.m. (noon). We allow entry into the refuge at 4 a.m.

14. There is no early teal season.

15. We allow hunting of snow geese during the Light Goose Conservation Order seasons by Special Use Permit.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season except during limited draw hunts.

2. Conditions A1 through A9 apply.

3. We allow shotguns with only approved nontoxic shot (see §32.2(k)), and .22 and .17 caliber rimfire rifles for taking small game.

4. We allow dogs for hunting squirrel and quail and for the February rabbit hunt.

5. During the rabbit and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

6. With exception for raccoon hunting, refuge ingress and egress is limited to the period of 4 a.m. to 1½ hours after legal sunset.

7. We prohibit horses and mules.

8. We allow rabbit hunting on the Herron and Brown Tracts. Contact refuge headquarters for hunt dates, maps, and additional information.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7, A9, B6, and B7 apply.

2. We allow shotguns shooting only approved nontoxic shot (see §32.2(k)) and archery equipment for turkey hunting.

3. You must immediately tag all deer harvested prior to moving it during limited hunts; we provide the tags.

4. During all gun and muzzleloader deer hunts all participants must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material visible above the waistline as an outer garment while hunting and en route to and from hunting areas.

5. We prohibit organized drives for deer.

6. Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

7. We prohibit hunting or shooting into a 100-foot (30-m) zone along either side of pipelines, power line rights-of-way, designated roads, trails, or around parking lots (see refuge brochure map). We consider it hunting if you occupy a stand or blind or have an arrow nocked in a bow.

8. We designate deer check station dates, locations, and requirements in the refuge brochure.

9. We allow hunters to possess and hunt from only one stand or blind. Complex Headquarters will use a specific method to identify stands and blinds. We prohibit the use of climbing spikes or hunting from a tree into which hunters have screwed or driven metal objects. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt. Hunters may place turkey blinds the day of the hunt and remove them after each day's hunt.

10. During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball.

11. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

12. We prohibit all other public use on the refuge during all limited draw hunts.

13. We allow archery deer hunting on the Herron and Brown Tracts. Contact refuge headquarters for hunt dates, maps, and additional information.

D. Sport Fishing. [Reserved]

■ 6. Amend §32.60 South Carolina by revising paragraphs A.2., A.4., A.6., A.10., B., C.15., C.16., C.19., and D. of Waccamaw National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. An adult at least age 21 must supervise all youth hunters age 15 and under. Youth hunters must have successfully completed a State-approved hunter education course.

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4. We allow scouting Monday through Friday during the waterfowl season. Anyone scouting may not use a firearm and must be off the refuge by 2 p.m.

* * * * *

6. We prohibit permanent blinds (see §27.93 of this chapter). Hunters must remove portable blinds and decoys at the end of each day's hunt.

* * * * *

10. We prohibit hunting on any unit for wildlife species not officially opened to hunting or entering any areas posted as "Closed" or "No Hunting Zones."

B. Upland Game Hunting. We allow hunting of gray squirrel, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A9, and A10 apply.

2. We allow hunting only on days designated annually by the refuge within the State season. We allow upland game hunting only on designated refuge areas within Refuge Unit 1.

3. We require nontoxic shot in shotguns when hunting. We allow .22-caliber rimfire rifles.

C. Big Game Hunting. * * *

* * * * *

15. We allow hunters to use flagging to mark the site of hunter entry from roads or trails and again at the stand site. We allow hunters to use clothes pins with reflective tape between entry and stand sites to mark the route to the stand. Hunters must label all such markers with their full name and remove them at the end of the hunt.

16. We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,250 cm^2) of solid, fluorescent-orange material at all times during big game hunts except for wild turkey.

* * * * *

19. We limit turkey hunts to annual quota hunts. We will select hunters by a random drawing. The selected hunters must possess signed Refuge Turkey Hunt Permits at all times during the hunt.

* * * * *

D. Sport Fishing. We allow fishing in accordance with State regulations.

■ 7. Amend §32.61 South Dakota by adding Lake Andes National Wildlife Refuge in alphabetical order to read as follows:

§ 32.61 South Dakota.

* * * * *

Lake Andes National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on designated areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge in accordance with State regulations.

D. Sport Fishing. [Reserved]

* * * * *

■ 8. Amend §32.67 Washington by:

■ a. Adding paragraph A. of Nisqually National Wildlife Refuge; and

■ b. Adding Turnbull National Wildlife Refuge in alphabetical order to read as follows:

§ 32.67 Washington.

* * * * *

Nisqually National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to possess and carry no more than 25 approved nontoxic shells while hunting in the field (see §32.2(k)).

2. Hunters may access the hunt areas by boat only. The maximum speed limit is 5 miles per hour for boats in all refuge waters.

* * * * *

Turnbull National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, and coot within 50 yards (45 m) of hunting sites designated by the refuge manager on the north side of Upper Turnbull Slough in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl (duck, goose, coot) hunting during the State's Youth Migratory Bird Hunt.

2. We prohibit the use of motorized boats.

3. We prohibit the construction or use of permanent blinds, pit blinds, stands, or scaffolds (see §27.93 of this chapter).

4. We only allow authorized vehicles on designated routes of travel and require hunters to park in designated parking area (see §27.31(h) of this chapter). We prohibit ATVs and ORVs.

5. Hunters may possess and carry no more than 25 nontoxic shotshells per hunter per day while in the field (see §32.2(k)).

6. We prohibit shooting or discharging any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

7. We allow hunter access from 2 hours before legal sunrise until 1 hour after legal sunset.

8. Hunters must possess a nontransferable refuge special access permit that names hunters, their hunt partners, and accompanying adult.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of elk on designated areas of the

refuge in accordance with State regulations subject to the following conditions:

1. We conduct the refuge hunt by State permit only. We require hunters to possess and carry current Washington State elk licenses, valid for the refuge hunt unit, and a refuge special access permit.

2. We allow only authorized vehicles on designated routes of travel and require hunters to park in designated parking areas (see §27.31(h) of this chapter). We prohibit ATVs and ORVs.

3. We allow hunter access from 2 hours before legal sunrise until 5 hours after legal sunset. Hunters needing additional time for retrieval must notify refuge staff or a State fish and wildlife officer.

4. We prohibit possession of a bow with the arrow nocked within any safety zone or Closed Area.

5. Safety zones of 500 feet (150 m) are in effect around existing structures. We prohibit shooting from or into any safety zone or Closed Area.

6. One person may assist hunters only during elk retrieval. We require this person to remain with the hunter at all times during retrieval. We require all hunters/helpers to possess a nontransferable refuge special access permit.

7. Refuge staff or a State Fish and Wildlife Officer must accompany hunters during retrieval of a wounded elk that moves outside the hunt unit in Closed Areas.

8. Hunters must use nontoxic ammunition or remove or bury the visceral remains of harvested animals.

D. Sport Fishing. [Reserved]

* * * * *

Dated: April 1, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–8307 Filed 4–9–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XU96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, April 12, 2010, through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for golden tilefish in the South Atlantic is 295,000 lb (133,810 kg) for the current fishing year, January 1 through December 31, 2010, as specified in 50 CFR 622.42(e)(2).

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for golden tilefish when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS has determined that the commercial quota for South Atlantic golden tilefish will be reached by April 12, 2010. Accordingly, the commercial fishery for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, April 12, 2010, through December 31, 2010.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having golden tilefish onboard must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, April 12, 2010. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(ii) and (d)(2), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ, and the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, April 12, 2010, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for golden tilefish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: April 7, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–8296 Filed 4–7–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 69
Monday, April 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–FV–10–0020; FV10–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Changes to Reporting and Assessment Due Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed changes to the reporting and assessment date requirements prescribed under the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. The marketing order is administered locally by the Walla Walla Sweet Onion Marketing Committee (hereinafter referred to as the "Committee"). This rule would revise the submission due date for certain handler reports and assessment payments from September 1 to September 30. The proposed changes would allow handlers additional time to compile requisite information and submit it to the Committee. It is expected that this action would improve handler compliance with the administrative requirements of the marketing order.

DATES: Comments must be received by May 12, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.* Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the due dates currently prescribed in the order's administrative rules for certain reports and assessment payments. This rule would change the submission due date for handler shipment statements and assessment payments for Walla Walla sweet onions shipped prior to September 1 (hereinafter referred to as "regular season") from September 1 to September 30. The proposed due date change would allow handlers needed time to compile information, file reports, and pay assessments. It is expected that this action would improve handler compliance with the order's reporting and assessment requirements. The proposed rule was unanimously recommended by the Committee at its February 2, 2010, meeting.

Currently, § 956.80 of the order provides that, upon request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties. In addition, § 956.42(a) provides that each person who first handles Walla Walla sweet onions shall pay assessments to the Committee upon demand.

Section 956.180(b) of the order's administrative rules currently prescribes that each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments.* For Walla Walla sweet onions handled prior to September 1, such report shall be furnished to the Committee by September 1. In addition, § 956.142 currently provides that, for Walla Walla Sweet Onions handled prior to September 1, annual assessments are due September 1.

At its meeting on February 2, 2010, the Committee recommended that the

order's reporting and assessment due dates for regular season shipments be changed to allow handlers additional time to fulfill these requirements. At the time the order was promulgated in 1995, the Walla Walla sweet onion shipping season typically concluded at the end of July or early in August. As such, the Committee established a September 1 deadline for submitting reports and paying assessments, which gave handlers most of the month of August to accumulate information and prepare their reports and assessment payments.

Recently, however, handlers have indicated to the Committee that advancements in Walla Walla sweet onion production and storage techniques have extended the regular season for the shipment of such onions until the end of August. As a result, it has become more difficult for handlers to gather the information required in time to meet the September 1 deadline for reporting shipments and paying assessments. Changing the due date for submission of the handler's shipment statement and assessment payment for regular season shipments from September 1 to September 30 would allow handlers the needed time to complete the requirements and submit them to the Committee.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 28 handlers of Walla Walla sweet onions who are subject to regulation under the marketing order and approximately 37 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on information from the Committee for the 2009 shipping season, handlers shipped 621,218 50-pound equivalents of Walla Walla sweet onions. At an average price of $11.50 per 50-pound equivalent, total handler revenue was approximately $7,144,000 and average revenue per handler was approximately $255,100. Also based on information from the Committee, producers harvested an average of 24 acres of Walla Walla sweet onions, with an average production of 699 50-pound equivalents per acre. With an average farm gate value of $8.75 per 50-pound equivalent, Walla Walla sweet onion producers averaged approximately $146,800 in gross receipts for the year. Based on this information, the majority of handlers and producers of Walla Walla sweet onions may be classified as small entities under SBA's standards.

This proposal would revise the due dates currently contained in §§ 956.180 and 956.142 of the order for the submission of regular season handler reports and assessment payments for Walla Walla sweet onions handled from June 1 through August 31. The deadline for submitting reports and assessment payments for such onion shipments would be revised from September 1 to September 30. The proposed change would not affect reporting and assessment payment due dates for late season Walla Walla sweet onions shipped during the September 1 through May 31 period, which would remain 30 days after the end of the month in which the onions were handled. The proposed due date change would allow handlers needed time to compile information, file reports and pay assessments. Authority for this action is provided in §§ 956.42(f) and 956.80.

The order provides that each handler who ships Walla Walla sweet onions shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* and shall pay a pro rata assessment. Currently, handlers who handle Walla Walla sweet onions prior to September 1 are required to submit the shipment statement by September 1. Late season shipments of Walla Walla sweet onions handled after September 1 are required to be reported within 30 days after the last day of the month in which the sweet onions were shipped. Handler assessments are due the same date that the shipment statements are due. Interest charges of 1½ percent of the unpaid balance are imposed on any assessments which are not paid within 30 days of their due date.

At its February 2, 2010, meeting, the Committee discussed whether the current due dates for certain reports and assessment payments needed to be changed to allow more time for handlers to comply with the marketing order's requirements. Handlers stated at the meeting that advancements in both the production and storage of Walla Walla sweet onions had extended the marketability of their product well into August, whereas, traditionally, their primary marketing season ended around the end of July. As such, the handlers explained that there is now less time between the end of their shipping period and the reporting deadline to compile information, complete reports and pay their assessments. The Committee staff indicated that compliance with the order's reporting and assessment requirements would likely improve if handlers were given additional time to fulfill them.

The Committee discussed alternatives to this change, including extending the due dates even further; requiring submission of reports and assessments monthly instead of at the end of the regular season; changing the due dates, but adding a late penalty; and not making any changes. However, the Committee believes that the proposed changes adequately address the concerns of the handlers while maintaining sufficient consequences for noncompliance and reasonable timelines for the administration of the order.

This rule is not expected to have any economic impact on handlers or producers of any size. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

Information collected under this order is currently approved under OMB No. 0581–0178. This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As stated above, information collected would not change with this rule; only the date on which the collection is required to be submitted would be revised. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the

Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 2, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule, if adopted, should be in place as soon as possible to inform handlers of the new reporting and assessment payment deadlines for the upcoming shipping season, which begins in June 2010. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 956.142 to read as follows:

§ 956.142 Interest charges.

For Walla Walla Sweet Onions handled prior to September 1, the Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 30. For Walla Walla Sweet Onions handled during the period September 1 through May 31, the Committee shall impose an interest charge on any handler who fails to pay his or her assessments within thirty (30) days of the last day of the month in which such shipments are made. The interest charge shall be 1½ percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within 60 days following the due date, the 1½ percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

3. Revise the introductory text of § 956.180(b) to read as follows:

§ 956.180 Reports.

* * * * *

(b) Each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* containing the information in paragraphs (a)(1), (a)(2), and (a)(3) of this section, except that gift box and roadside stand sales shall be exempt from paragraph (a)(2) of this section: *Provided,* That for Walla Walla Sweet Onions handled prior to September 1, such report shall be furnished to the Committee by September 30, and that for Walla Walla Sweet Onions handled during the period September 1 through May 31, such report shall be furnished to the Committee no later than thirty (30) days after the end of the month in which such onions were handled:

* * * * *

Dated: April 7, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8267 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Doc. No. AMS–FV–07–0091; FV–07–706–PR–2A]

RIN 0581–AC78

Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and Referendum Order.

SUMMARY: This proposed rule would establish a new U.S. honey producer funded research and promotion program under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed U.S. Honey Producer Research, Promotion and Consumer Information Order (Proposed U.S. Producer Order) was submitted to the Department of Agriculture (Department) by the American Honey Producers Association (AHPA). The Department is conducting an initial referendum to ascertain whether the persons to be covered by and assessed under the Proposed U.S. Producer Order favor the Order prior to it going into effect. The Proposed U.S. Producer Order would provide that producers pay an assessment to the U.S. Honey Producer Board (Proposed Board) at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. A producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption. The Proposed U.S. Producer Order would be implemented if it is approved by a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register.**

DATES: The voting period is May 17, 2010 through June 4, 2010. To be eligible to vote, producers must have produced 100,000 or more pounds of honey from January 1, 2008 through December 31, 2008. Ballots will be mailed to all known honey producers on or before May 17, 2010. Ballots must be received by the referendum agent no later than the close of business by 4:30 p.m. (Eastern Time) on June 4, 2010.

ADDRESSES: Copies of the Proposed U.S. Producer Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; *telephone:* (202) 720–9915 or (888) 720–9917 (toll free); or *facsimile:* (202) 205–2800; or can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave., SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free), *Fax:* (202) 205–2800 or e-mail *kimberly.coy@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Commodity Promotion, Research, and

Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

As part of this rulemaking, a proposed rule was published in the **Federal Register** on July 14, 2009 [74 FR 34182], with a 60-day comment period which closed on September 4, 2009. Fourteen comments were received.

In a separate rulemaking, a proposed rule with the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Packers and Importers Order) was published in the **Federal Register** on June 4, 2007 [72 FR 30924], with a 60-day comment period which ended on August 3, 2007. That rule also proposed termination of the Original Honey Research, Promotion, and Consumer Information Order (Original Order) and regulations in 7 CFR Part 1240. A second proposed rule and referendum order was published in the **Federal Register** on March 3, 2008 [73 FR 11474]. A final rule including the referendum procedures was published in the **Federal Register** the same day [73 FR 11470]. The final rule establishing the Packers and Importers Order was published in the **Federal Register** on May 21, 2008 [73 FR 29390]. A final rule terminating the Original Order was published in the **Federal Register** on April 17, 2009 [74 FR 17767].

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a petition with the Department stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any such petition must be filed within two years after the effective date of an order, provision or obligation subject to challenge. The petitioner would have the opportunity for a hearing on the petition. Thereafter, the Department would issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

In deciding whether a proposal for an order is consistent with and will effectuate the purpose of the 1996 Act, the Secretary may consider the existence of other federal research and promotion programs issued under other laws. For example, in proposing the Packers and Importers Order, under the authority of the 1996 Act, the Department also proposed that the Original Order issued under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4613) be terminated, after taking into account the duplicative nature of the two programs. As previously noted, the Original Order was terminated on April 17, 2009 [74 FR 17767]. However, the Proposed U.S. Producer Order and the previously promulgated Packers and Importers Order are authorized under the same statute, the 1996 Act.

Nonetheless, a more detailed comparison of the provisions of both programs appears later in this document. The following is an overview of the two programs.

The Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S. Producer Order represents the interests of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs are on different parts of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of $0.02 cents per pound of U.S. honey produced. The number of entities to be assessed under the Proposed U.S. Producer Order would be around 317. The first handler would be responsible for collecting and remitting assessments. The reporting burden for the Proposed U.S. Producer Order is on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million. The aggregate collection of assessments for the honey industry would be approximately $4.9 million.

The goals of the Proposed U.S. Producer Order are to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) support and strengthen the position of the U.S. honey industry to ultimately increase consumption of U.S. honey; and (3) develop, maintain, and expand existing markets and enhance the image of U.S. honey.

Background

This rule proposes the implementation of a U.S. Producer Order. The American Honey Producers Association (AHPA), which represents more than 550 U.S. honey producers, submitted a proposal to the Department for a national research, promotion, and consumer information order for U.S. honey on May 24, 2007.

The Proposed U.S. Producer Order is authorized under the 1996 Act. The 1996 Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. The Proposed U.S. Producer Order would provide for the continued development and financing of a coordinated program of research, promotion, and information. The Proposed U.S. Producer Order will authorize these activities for U.S. honey only.

According to the AHPA, the U.S. honey industry is facing serious threats due to Colony Collapse Disorder (CCD) and other factors. The survival of U.S. commercial beekeepers is dependent upon creating a strong market demand for domestic, U.S.-produced honey. The AHPA believes that the establishment and implementation of an all U.S. Honey Producer Board will permit U.S. beekeepers to specifically address the various factors that affect the U.S. honey industry. Funding of an all U.S. Honey Producer Board, will permit the development of programs related to

issues such as the drastic decline in numbers of the honeybee due to (1) natural pests and diseases that kill or weaken the honeybee; (2) record droughts in the mid-west that have destroyed the plants and flowers honeybees use to gather pollen, and (3) the overall dramatic decrease in demand for U.S. honey.

U.S. honey producers have attempted to halt the long term decline in the numbers of honeybees (over 30 percent in the past twenty-years), due to the above mentioned issues, costing them millions of dollars for treatment, colony development, maintenance, replacement, and in lost honey production and pollination services. The funds generated by a U.S. Honey Producer Program would be spent on conducting research activities designed to address these critical issues, as well as promotional activities to expand the demand for U.S. Honey.

The honeybee is a fundamental component of U.S. agriculture supplying pollination to 90 different food, fiber, and seed crops at an estimated value of approximately $15 to $20 billion a year. The value of pollination service is vastly greater than the total value of honey and wax produced by honey bees. Honey bees pollinate approximately one-third of the human diet each year in the United States, and more than 140 billion honey bees (representing 2 million colonies) are transported by beekeepers across the U.S. to pollinate crops. California grows 100% of the U.S. almond crop and supplies 80% of the world almonds. Each year, nearly one million honey bee hives are needed to pollinate the California Central Valley's 600,000 acres of almond groves. By the year 2012, it is estimated that this number may increase to two million hives if the expected increase in almond production grows to 800,000 acres. Blueberries and avocados also receive more than 90 percent of their pollination from honey bees.

Without an active, vibrant domestic honey industry, many other agricultural commodities may suffer due to the loss of essential pollination services that the U.S. honey industry provides. Due to many recent problems facing the U.S. honey industry, U.S. farmers were forced to import honey bees from other countries (New Zealand and Australia) for pollination services in 2006. This marked the first time since 1922 that honey bees were imported into the U.S. for pollination services, underscoring the fragile state of the U.S. honey industry and highlighting the need for a research and promotion program focused solely on the domestic honey industry. Although the United States can import honey, it may be difficult to import bees on the massive scale required by U.S. farm producers for the critical pollination of U.S. crops.

U.S. commercial beekeepers depend on the production of honey as well as pollination services in order to maintain a viable business. In order to remain in operation, U.S. beekeepers require a vibrant U.S. marketplace. The AHPA stated in its proposal that the creation of a U.S. honey producer program would help ensure the survival of the U.S. honey industry and strengthen other agricultural industries.

The AHPA believes that both the Proposed Board and the Packers and Importers Board, will more effectively operate programs specifically focused on each assessment payers' interests. The two boards would pursue their own distinct focus and agendas. Within this proposal is a discussion of some of the differences between the Proposed U.S. Producer Order and the Packers and Importers Order.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders to the needs of different commodity groups. Section 516 of the 1996 Act contains permissive terms that may be included in the orders. For example, § 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity covered by the order in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin to be collected under an order. An order also may provide for its approval in a referendum based upon different voting patterns. In accordance with § 518(e) of the 1996 Act, the results of the referendum must be determined in one of three ways: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

For the Proposed U.S. Producer Order, the Department is conducting a referendum, preceding the Proposed U.S. Producer Order's effective date, to ascertain whether the persons to be covered and assessed favor the Proposed U.S. Producer Order going into effect. Implementation of the Proposed U.S. Producer Order would require the approval of a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. Specific procedures to be followed in such referendum will be published in a separate **Federal Register** publication.

In addition, section 518 of the 1996 Act requires the Department to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Proposed U.S. Producer Order; or (2) at the request of the Proposed Board established under the Proposed U.S. Producer Order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition to these criteria, the 1996 Act provides that the Department may conduct a referendum at any time to determine whether persons eligible to vote favor the continuation, suspension, or termination of an order or a provision of an order. Expenses incurred by the Department in implementing and administering the Proposed U.S. Producer Order, including referenda costs, would be paid from assessments.

Order Assessments

The funds generated through the mandatory assessments on domestically produced U.S. honey would be used to pay for promotion, research, and consumer and industry information as well as the administration, maintenance, and functioning of the Proposed Board and shall be solely used to support U.S. honey.

Under the Proposed U.S. Producer Order, "first handler" would be defined to mean the person who first handles U.S. honey, including a producer who handles U.S. honey of the producer's own production. The term is further defined as follows:

(a) When a producer delivers U.S. honey from the producer's own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer's or processor's own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility

for the purpose of holding such honey under the producer's own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such honey for the processor's own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) U.S. honey used from the producer's own production for the purpose of feeding the producer's own bees is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer's own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer's own production in the manufacture of formulated products for the producer's own account and for the account of others, the producer is both a producer and a first handler.

In addition, "handle" means to process, package, sell, transport, purchase, or in any other way place U.S. honey, or cause it to be placed, in commerce. This term shall include selling unprocessed U.S. honey that will be consumed with or without further processing or packaging. This term shall not include the transportation of unprocessed U.S. honey by a producer to a first handler or the transportation of processed or unprocessed U.S. honey by a commercial carrier for the account of the first handler or producer. This term shall not include the purchase of U.S. honey by a consumer or other end-user of the U.S. honey.

The Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The Proposed U.S. Producer Order establishes that each first handler, responsible for collecting and remitting assessments, shall pay the Proposed Board the amount due on a date as established by the Proposed Board. The Proposed Board may provide for different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

Except as otherwise provided for, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose U.S. honey the assessment is made, and remit the assessments to the Proposed Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made no later than the time when the assessment becomes payable to the Proposed Board. The first handler shall maintain separate records for each U.S. producer's honey handled, including U.S. honey produced by said first handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Proposed Board. Under the Proposed U.S. Producer Order, first handlers shall remit to the Proposed Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce. The first handler shall collect and pay assessments to the Proposed Board unless such first handler has received documentation acceptable to the Proposed Board that the assessment has been previously paid. Assessments shall be paid to the Proposed Board at such time and in such manner as the Proposed Board, with the Secretary's approval, directs pursuant to this part. The Proposed Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

The assessment levied on U.S. honey producers would be used to pay for promotion, research, and consumer education and industry information developed and designed to benefit honey produced in the U.S., as well as the administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Proposed U.S. Producer Order, including referenda costs, also would be paid from assessments.

Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by the Department [60 FR 12533, March 7, 1995]. Persons also would have to pay interest and late payment charges on late assessments as prescribed in the Proposed U.S. Producer Order.

Under the Proposed U.S. Producer Order, a producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption.

In addition, a producer who operates under an approved National Organic Program (NOP) system plan, produces only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from paying assessments under the Proposed U.S. Producer Order.

The Proposed U.S. Producer Order allows the Proposed Board to recommend to the Secretary an increase to the assessment, as it deems appropriate, by an affirmative vote of five Board members. The Proposed Board may not recommend an increase in the assessment of more than $0.05 per pound of U.S. honey and an assessment may not increase by more than $0.005 in any single fiscal year. Any change in the assessment rate shall be subject to rulemaking and announced by the Proposed Board at least 30 days prior to becoming effective.

Although the 1996 Act allows for credits of assessments for generic and branded activities, the AHPA, who proposed the U.S. Producer Order, did not elect to include this provision.

The Proposed U.S. Producer Order establishes that producers will be responsible for paying assessments. The Order further states that the first handler will be the responsible entity for collecting the assessments and filing specific reports and maintaining records regarding the amount of U.S. honey placed in commerce.

Each first handler would be required to maintain any books and records necessary to carry out the provisions of the Proposed U.S. Producer Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Board's or Department's employees or agents during normal business hours for inspection if necessary.

The Proposed U.S. Producer Order provides that all officers, employees, and agents of the Department and of the respective Board members are required to keep confidential all information obtained from persons subject to the Order. This information would be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing

brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party.

However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Proposed U.S. Producer Order would be permitted, if the statements do not identify the information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Proposed U.S. Producer Order and a statement of the particular provisions of the Proposed U.S. Producer Order violated by the person would be allowed.

It is anticipated that, based on current estimates of the number of commercial beekeepers in the U.S that would be covered under this proposal, the Proposed Board would collect approximately $1.9 million dollars per year and that program administrative expenses could be kept at a minimum so that approximately $1.6 million would be available to develop and implement research and promotion programs designed specifically to benefit honey produced in the United States.

It is also anticipated that since only 317 producers would be covered under the Proposed U.S. Producer Order, program administrative expenditures would be kept to a minimum.

Establishment of the U.S. Honey Producer Board

Section 515 of the 1996 Act provides for the establishment of a board consisting of producers, first handlers, and others in the marketing chain, as appropriate. The Department would appoint members to the Proposed Board from nominees submitted in accordance with a Proposed U.S. Producer Order. The Proposed U.S. Producer Order would provide for the establishment of a U.S. Honey Producer Board to administer the Proposed U.S. Producer Order under AMS oversight. The AHPA has proposed that the Proposed Board be composed of no more than seven honey producers and seven alternates.

Each term of office on the Proposed Board would begin on April 1 and end on March 31, with the exception of the initial Board's term of office. The Proposed Board would nominate the seven producer members and their alternate representatives appointed by the Secretary from seven regions of the United States, to carry out a program of promotion, research, and information regarding U.S. honey. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States. Honey is produced in almost all of the 50 States. The top six producing States in 2007 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota.

One producer member and one alternate would be appointed to serve on the Proposed Board from each of the following regions:

(1) *Region 1:* Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) *Region 2:* Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) *Region 3:* North Dakota and South Dakota.

(4) *Region 4:* Minnesota, Iowa, Wisconsin, and Michigan.

(5) *Region 5:* Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) *Region 6:* Florida, Georgia, and all other U.S. territories and possessions.

(7) *Region 7:* Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Proposed U.S. Producer Order indicates that the Proposed Board may recommend to the Department that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Department may remove the member if the Department finds that the Proposed Board's recommendation demonstrates cause.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board shall reflect the geographic distribution of the production of the agriculture commodity in the United States.

Under the Proposed U.S. Producer Order at least once every five years, but not more frequently than once in each three year period, the Proposed Board would review the geographical distribution in the United States of the quantities of production of U.S. honey covered by the Proposed U.S. Producer Order.

The review, based on a five year average annual review of assessments and/or Department statistics, would enable the Proposed Board to evaluate whether the Proposed Board membership is reflective of the regional representation of U.S. honey produced.

Under the Proposed U.S. Producer Order, Board members could serve terms of three years and are eligible to serve a maximum of two consecutive terms. When the Proposed Board is first established, three producers would be assigned initial terms of four years; two producers would be assigned initial terms of three years; and two producers would be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years would be eligible to serve a second term of three years. Each Board member and alternate member would continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

In the event that any member or alternate of the Proposed Board ceases to be a member of the category of members from which the member was appointed to the Proposed Board, such position shall become vacant. Provided, that if, as a result of the Proposed Board reallocation a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

Under the Proposed U.S. Producer Order, a quorum is met if there are a majority of members present including alternates acting in place of members.

Comparison of the Proposed U.S. Producer Order and the Packers and Importers Order

A major difference between the Packers and Importers Order and the Proposed U.S. Producer Order is that the Proposed U.S. Producer Order provides for assessments to be paid by the producers of U.S. honey rather than first handlers and importers of honey and honey products.

Other differences between the Proposed U.S. Producer Order and the Packers and Importers Order are the entities assessed, the de minimis amount, and the assessment rate.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year. The number of entities assessed under the Proposed U.S.

Producer Order would be around 317. In addition, the Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The first handler will be responsible for collecting and remitting assessments. The reporting burden under the Proposed U.S. Producer Order would be on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million.

In addition to differences in the entities assessed, the de minimis amount, and the assessment rate, there are other comparative differences between the Proposed U.S. Producer Order and the Packers and Importers Order including reporting costs, the makeup of the Boards, and the nomination process.

The Proposed Board would consist of seven producers and each member would have an alternate. The Secretary would appoint members to the Proposed Board from nominees submitted in accordance with the Proposed U.S. Producer Order. Each term of office will begin on April 1 and end on March 31.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Packers and Importers Board consists of 10 members; three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. A term of office begins on January 1.

Under the Packers and Importers Order, first handlers, producers, and a national honey marketing cooperative representative represent those entities in the United States. Board members from each of these groups are nominated by national organizations representing each of them respectively. Importers and the importer-handler on the Packers and Importers Board are nominated by national organizations representing importers.

The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. In contrast, under the Packers and Importers Order an estimated 350 total hours are required for reporting and recordkeeping at a total cost of $11,550.

Other Order Provisions

The 1996 Act requires that for fiscal years beginning 3 years after the date of the Board's establishment, the Board shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. There is no specific requirement for research funds under the Proposed U.S. Producer Order.

The Proposed U.S. Producer Order provides for a continuance referendum every seven years.

This Proposed U.S. Producer Order includes definitions, provisions concerning establishment of the Board, expenses and assessments, plans and projects, reports, books and records, and other miscellaneous provisions.

The Department modified the AHPA's proposal to make it consistent with the 1996 Act and to provide clarity, consistency, and correctness with respect to word usage and terminology. The Department also changed the proposal to make it consistent with other similar national research and promotion programs. Some of the changes made by the Department to the AHPA's proposal were: (1) To remove the terms "handler" and "producer-packer" and adopt "first handler" as the term to be used throughout the Proposed U.S. Producer Order; (2) to describe in more detail the section describing reports, books, and records that need to be provided by the Board on its financial position;(3) to delete any references to quality standards and prices as these provisions are not authorized under the 1996 Act; (4) to remove the refund of assessment language; (5) to add language which states that any change in the assessment rate shall be subject to rulemaking; (6) to delete from section 1245.37(q) what was duplicated in section 1245.51; and (7) to modify section numbers as appropriate to match the above necessary changes made to the proposal.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses would not be disproportionately burdened.

The 1996 Act authorizes generic promotion, research, and information programs for agricultural commodities. Development of such programs under this authority is in the national public interest and vital to the welfare of the agricultural economy of the United States and to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S. Producer Order represents the interest of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs would be required of different segments of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of $0.02 cents per pound of U.S. honey produced. The number of entities assessed under the Proposed U.S. Producer Order would be around 317. An estimated 1,683 producers would be exempt under the 100,000 pound exemption, while an estimated 5 producers would be exempt as organic producers. The first handler will be responsible for collecting and remitting assessments.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per

pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million. The aggregate collection of assessments for the honey industry will be approximately $4.9 million.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An initial referendum would be conducted prior to putting this Proposed U.S. Producer Order in effect. The Proposed U.S. Producer Order also provides for approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; and (2) persons voting for approval that represent a majority of the volume of U.S. honey of those voting in the referendum. Every seven years, the Department shall conduct a referendum to determine whether producers of U.S. honey favor the continuation, suspension, or termination of the Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent and more of the producers required to pay assessments; or at the request of the Board.

The Proposed U.S. Producer Order provides for first handlers to file reports to the Proposed Board. While the Proposed U.S. Producer Order would impose certain reporting and recordkeeping requirements on first handlers, the information required under the Proposed U.S. Producer Order could be compiled from records currently maintained and would involve existing clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the Proposed U.S. Producer Program, and their use is necessary to fulfill the intent of the 1996 Act. An estimated 63 first handler respondents and 317 producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $7.0 million or less. Using these criteria, under the Proposed U.S. Producer Order, most producers and handlers would be considered small businesses.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled less than 155 million pounds in 2006, a decrease of almost 16 percent from 2004. The top six producing States in 2006 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota. NASS reported the value of honey sold from these six states in 2006 was $84,583,000 and the volume produced was 90,433,000 pounds. By comparison, as recently as 2000, U.S. commercial beekeepers produced over 220 million pounds of honey. In 2006, honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005, due to congressional action.

Based on the assessment reports in connection with the Original Order and recorded by Customs, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (27%), Argentina (21%), Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002.

The Proposed Board may develop guidelines for compliance with the Proposed U.S. Producer Order. The Proposed Board may recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. Any changes in the assessment rate shall be subject to rulemaking. The administrative expenses of the Proposed Board are limited by the 1996 Act to no more than 15 percent of assessment income. This does not include USDA costs for program oversight.

With regard to alternatives, the 1996 Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in § 516 of the 1996 Act, and other sections provide for alternatives.

The Proposed U.S. Producer Order is designed to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) strengthen the position of the U.S. honey industry and ultimately increase consumption of U.S. honey; and (3) maintain, develop, and expand existing markets for U.S. honey.

Additionally, the Proposed U.S. Producer Order would impose some additional reporting and recordkeeping costs on first handlers; however, the reporting requirements are minimal. If the Proposed U.S. Producer Order is implemented, the reporting and recordkeeping burden cost would be $47,916 under the Proposed U.S. Producer Order. These costs should be offset by the benefits derived by the operation of the Proposed U.S. Producer Order.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities (the AHPA has proposed less than 100,000 pounds as a *de minimis* quantity) of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities.

Also, under authority provided by 7 U.S.C. 7401, the Proposed U.S. Producer Order exempts producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produce only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, from paying assessments.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

While the Department has performed an initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, the Department invited comments concerning potential effects. We did not receive any comments as a result of the publication of the Initial Regulatory Flexibility Analysis.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS submitted to OMB a new information collection for the

Proposed U.S. Honey Producer Program under OMB control number 0581–NEW.

Title: Advisory Committee and Research and Promotion Board Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of approval: July 31, 2012.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

Under the Proposed U.S. Producer Order, producers would be required to pay assessments and first handlers would be required to collect these assessments and file reports with the Proposed Board. While the Proposed U.S. Producer Order would impose certain recordkeeping requirements on first handlers, information required under the Proposed U.S. Producer Order could be compiled from records currently maintained by such first handlers. Such records would be retained for at least two years beyond the marketing year of their applicability.

Under the Proposed U.S. Producer Order, producers are responsible to pay an assessment of $0.02 per pound.

An estimated 63 first handler respondents and 317 U.S. producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Proposed U.S. Producer Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other honey programs administered by the Department.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the Proposed U.S. Producer Order, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Proposed Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. There is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form AD–755 (Approved under OMB Form No. 0505–0001).

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: Producers.

Estimated number of Respondents: 28 for initial nominations, 9 in subsequent years.

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 4.2 hours for the initial nominations and 1.35 hours annually thereafter.

(2) Monthly Report by Each First Handler of U.S. Honey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on U.S. honey handled.

Respondents: First handlers.

Estimated number of Respondents: 63.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 378 hours.

(3) A Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the Order.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and producers.

Estimated Number of Respondents: 380.

Estimated Total Annual Burden of Respondents: 190 hours.

(4) An Exemption Application for Producers Who Would Be Exempt From Assessments. (Certification Of Exemption).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each exempt producer.

Respondents: Exempt Producers.

Estimated Number of Respondents: 1683.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 841.50 hours.

(5) Nomination Appointment Form.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7.5 hours.

(6) Nomination Appointment Ballot.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers.

Estimated Number of Respondents: 105.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 26.25 hours.

(7) Organic Exemption Form. (Approved under OMB Form No. 0581–0217).

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Producers.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

In the July 14, 2009 proposed rule, comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed U.S. Producer Order and the Department's oversight of the Proposed U.S. Producer Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. We did not receive any comments on the collection of information part of this rule.

Comments

A 60-day comment period was provided to allow interested persons an opportunity to respond to this proposal, published in the **Federal Register** on July 14, 2009. Fourteen comments were received on the Proposed U.S. Producer Order by the June 08, 2009 deadline. Ten commenters supported the Proposed U.S. Producer Order, three were opposed, and one comment was an attachment of the original proposal submitted by the AHPA without any additional comments attached.

One commenter that opposed the Proposed U.S. Producer Order was concerned about the effect of the cost of the program on the national taxpayer. If the Proposed U.S. Producer Order is approved in referendum, the assessment rate will be $0.02 per pound of U.S. honey produced and will only be imposed on producers of 100,000 pounds or more per fiscal year. Research and promotion programs under the Department are self-help programs, funded by assessments on their applicable industries, and do not receive taxpayer funds. Therefore, those which characterize or refer to assessments as taxes are not correct, and are referred to in the discussion of comments as assessments.

One commenter that opposed the Proposed U.S. Producer Order stated that the price of honey is unaffordable and the addition of a research program for honey would subsequently increase the price further. The purpose of the Proposed U.S. Producer Order is to maintain and expand markets for U.S. honey as well as to develop and carry out generic promotion, research, and information activities relating to U.S. honey. The Proposed U.S. Producer Order does not regulate the price of honey.

Two commenters that opposed the Proposed U.S. Producer Order believe that there is not a need to strengthen the position of U.S. honey because there is already a demand for U.S. honey. AHPA believes that funding of an all U.S. Honey Producer Board, will allow for opportunities beyond those already available, including increasing the demand of U.S. honey. Funding will allow for the establishment, issuance, effectuation, or administration of appropriate activities for research, promotion, advertising, or information, including industry and consumer information, with respect to U.S. honey.

One commenter that opposed the Proposed U.S. Producer Order would like to opt-out of all honey programs. U.S. honey producers are given the opportunity to vote to determine whether the implementation of the Proposed U.S. Producer Order is favored by a majority of eligible persons voting who also represent a majority of the volume of U.S. honey produced. In addition, the Honey Packers and Importers program requires a continuance referendum every 7 years. The referendum allows the industry to determine the future of these programs.

One commenter that opposed the Proposed U.S. Producer Order believes that the threshold for exemption will lead to loopholes and possible fraud to avoid assessment. First handlers and producers, including those exempt under the Proposed U.S. Producer Order, are required to maintain and make available for inspection and audit by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of the Proposed U.S. Producer Order. This requirement ensures that the Order is enforced.

Two commenters that opposed the Proposed U.S. Producer Order believe that assessments solely on U.S. honey producers would be an unwarranted expense that will punish U.S. honey producers. In addition two commenters that supported the Proposed U.S. Producer Order stated that the proposed assessment should be on foreign honey only. Research and promotion programs are self-help programs, funded by their applicable industries. The Proposed U.S. Producer Order represents the interest of U.S. honey producers alone and therefore should be funded by U.S. honey producers. The assessment would be a self imposed-assessment only if the Department determines that the implementation of the Proposed U.S. Producer Order is favored by a majority of eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced.

One commenter that opposed the Proposed U.S. Producer Order and one commenter that supported the Proposed U.S. Producer Order, who both pay an assessment under the Packers and Importers Order, are concerned that they will have to pay an assessment under the Proposed U.S. Producer Order as well. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound that they handle. The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of $0.02 cents per pound. If a producer also handles his or her own honey production, that producer will be covered under both programs.

Five commenters that supported the Proposed U.S. Producer Order stated that although there is currently a Packers and Importers Order, the U.S. honey producers would best be served by the Proposed U.S. Producer Order. The commenters believe that the interests of producers vary from those of the importers.

Five commenters that supported the Proposed U.S. Producer Order were concerned about what they believe is a decline in market share of U.S. honey. One commenter that supported the Proposed U.S. Producer Order believes that the continual low prices of what the commenter believes is adulterated and contaminated honey, has forced commercial beekeepers out of the marketplace. Two commenters believe that an all U.S. honey program will address the perceived quality issue of honey by allowing the Proposed Board to promote U.S. honey.

Six commenters that supported the Proposed U.S. Producer Order spoke to the growing concern in the industry of the effect of Colony Collapse Disorder (CCD) and believe that although there is currently a Packers and Importers Order the Proposed U.S. Producer Order as U.S. honey producers are uniquely impacted by CCD. In addition, one commenter that supported the Proposed U.S. Producer Order stated that any assessment that benefits the U.S. bee population is paramount. Two commenters that supported the Proposed U.S. Producer Order stated that having industry funds available will allow for more immediate research response to beekeeping needs as well as to the overall benefits of U.S. honey.

Referendum Order

Pursuant to the 1996 Act, a referendum will be conducted to determine whether eligible producers of honey favor issuance of the Proposed U.S. Producer Order. The Proposed U.S. Producer Order is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2008, through December 31, 2008. Producers must have produced 100,000 pounds of honey during the

representative period from January 1, 2008 through December 31, 2008, to be eligible to vote. The referendum shall be conducted by mail ballot from May 17, 2010 through June 4, 2010. Ballots must be received by the referendum agent no later than the close of business 4:30 pm (Eastern Time) on June 4, 2010, to be counted.

Section 518 of the 1996 Act authorizes the Department to conduct a referendum prior to the Order's effective date. The Order shall become effective only if it is determined that the Order has been approved by a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period.

Kimberly Coy, of the USDA, AMS, Research and Promotion Branch, is designated as the referendum agent to conduct this referendum. The referendum procedures [7 CFR 1245.100 through 1245.108], which were issued pursuant to the 1996 Act, shall be used to conduct the referendum.

The referendum agent will mail registration instructions to all known eligible producers in advance of the referendum. Any producer who does not receive registration instructions should contact the referendum agent cited under the "For Further Information" section no later than one week before the end of the registration period. Prior to the first day of the voting period, the referendum agent will mail the ballots to be cast in the referendum and voting instructions to all eligible voters. Persons who are producers during the representative period are eligible to vote. Any producer who does not receive a ballot should contact the referendum agent cited under the "For Further Information" section no later than one week before the end of the registration period. Ballots must be received by the referendum agents no later than the close of business (Eastern time) on or before June 4, 2010, to be counted.

List of Subjects in 7 CFR Parts 1245

Administrative practice and procedure, Advertising, Consumer Education, U.S. Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding Part 1245 to read as follows:

PART 1245—U.S. HONEY PRODUCER RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Definitions

Sec.

U.S. Honey Producer Board

Expenses and Assessments

Promotion, Research, and Information

Reports, Books, and Records

Miscellaneous

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—U.S. Honey Producer Research, Promotion, and Consumer Information Order Definitions

§ 1245.1 Act.

"*Act*" means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments to that Act.

§ 1245.2 Board.

"*Board*" or "U.S. Honey Producer Board" means the administrative body established pursuant to § 1245.30, or such other name as recommended by the Board and approved by the Department.

§ 1245.3 Conflict of interest.

"*Conflict of interest*" means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1245.4 Department.

"*Department*" means the United States Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1245.5 Exporter.

"*Exporter*" means any person who exports U.S. honey from the United States.

§ 1245.6 First handler.

"*First handler*" means the person who first handles U.S. honey, including a producer who handles U.S. honey of the producer's own production. Persons who are first handlers include but are not limited to the following:

(a) When a producer delivers U.S. honey from the producer's own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer's or processor's own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility for the purpose of holding such honey under the producer's own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such lot of honey for the processor's own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) When a producer uses U.S. honey from the producer's own production for the purpose of feeding the producer's own bees, that honey is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer's own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer's own production in the manufacture of formulated products for the producer's own account and for the account of others, the producer is both a producer and a first handler.

§ 1245.7 Fiscal period and marketing year.

"*Fiscal period*" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1245.8 Handle.

"*Handle*" means to process, package, sell, transport, purchase or in any other way place honey, or causes it to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a first handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer. This term shall not include the purchase of honey by a consumer or other end user of the honey.

§ 1245.9 Honey.

"*Honey*" means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

§ 1245.10 Honey production.

"*Honey production*" means all beekeeping operations related to managing honey bee colonies to produce U.S. honey, harvesting U.S. honey from the colonies, extracting honey from the honeycombs, and preparing U.S. honey for sale and further processing.

§ 1245.11 Information.

"Information" means information, programs, or activities that are designed to develop new domestic or foreign markets, maintain or expand such markets, develop new marketing strategies, increase market efficiency, or enhance the image of U.S. honey. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes and care of U.S. honey; and

(b) *Industry information* means any action that will lead to the development of new markets, new marketing strategies, or increased efficiency for the U.S. honey industry, and activities to enhance the image or strengthen the position of the U.S. honey industry.

§ 1245.12 Marketing.

"*Marketing*" means the sale or other disposition of U.S. honey in the domestic market or the foreign market.

§ 1245.13 Order.

"*Order*" means the U.S. Honey Producer Research, Promotion, and Consumer Information Order.

§ 1245.14 Part and subpart.

"*Part*" means the Honey Producer Research, Promotion, Consumer Education, and Industry Information Order (Order) part 1245 and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a "subpart" of such part.

§ 1245.15 Person.

"*Person*" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(a) A spouse or marital partner who has title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(b) Joint ventures wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, or handling for market and the authority to transfer title to the U.S. honey so produced, or handled.

§ 1245.16 Plans and projects.

"*Plans and projects*" mean those research, promotion and information programs, plans, or projects established pursuant to this subpart.

§ 1245.17 Producer.

"*Producer*" means any person who produces honey in any State for sale in commerce.

§ 1245.18 Promotion.

"*Promotion*" means any action, including paid advertising and public relations, to advance the desirability or marketability of U.S. honey to the general public and the food industry with the express intent of improving the competitive position, expanding existing markets, increasing consumption, and enhancing the image of U.S. honey.

§ 1245.19 Referendum.

"*Referendum*" means a referendum to be conducted by the Secretary pursuant to the Act whereby U.S. honey producers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced.

§ 1245.20 Research.

"*Research*" means any type of systematic study, analysis, test, or investigation, including studies testing the effectiveness of market development and promotion efforts, or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, or production of U.S. honey. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, U.S. honey production, and honey bees.

§ 1245.21 Secretary.

"*Secretary*" means the Secretary of Agriculture of the United States, or any

other officer or employee of the Department to whom the Secretary delegated the authority to act on his or her behalf.

§ 1245.22 State.

"*State*" means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1245.23 Suspend.

"*Suspend*" means to issue a rule under § 553 of U.S.C. Title 5 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1245.24 Terminate.

"Terminate" means to issue a rule under § 553 of U.S.C. Title 5 to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1245.25 United States.

"*United States*" means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

U.S. Honey Producer Board

§ 1245.30 Establishment and membership.

(a) There is hereby established a U.S. Honey Producer Board, composed of no more than seven honey producers and seven alternates, appointed by the Secretary, to carry out a program of promotion, research, and information regarding U.S. honey.

(b) One producer member and one alternate shall be appointed to serve on the Board from each of the following regions:

(1) *Region 1:* Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) *Region 2:* Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) *Region 3:* North Dakota and South Dakota.

(4) *Region 4:* Minnesota, Iowa, Wisconsin, and Michigan.

(5) *Region 5:* Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) *Region 6:* Florida, Georgia, and all other U.S. territories and possessions.

(7) *Region 7:* Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(c) *Board's Ability to Serve the Diversity of the Industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the Board represents the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

§ 1245.31 Nominations and Voting.

(a) The Board shall seek nominations for members and alternates from the specific regions set forth in this subpart in accordance with the following procedures:

(1) The Board shall establish a list of producers that are eligible to serve on the Board and shall notify all producers that they may nominate persons to serve as members and alternates on the Board. Nominations shall be received by mail from any producer that resides in the region in which one or more vacancies will occur. Persons that are interested in nominating an individual to serve on the Board shall submit to the Board in writing the name and mailing address of the proposed nominee and such other information as the Board may require, in order to place such individual on the ballot.

(2) Once proposed nominations have been submitted from the applicable region, the Board shall cause each proposed nominee, if the individual qualifies, to be placed on the region's nominee ballot. The Board then shall mail a ballot to each known producer within the region.

(3) Within 45 days after a mail ballot is issued, the Board shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the two producers receiving the highest number of votes for each open position on the Board.

(b) For each region, the Board shall submit to the Secretary the name of the nominee receiving the highest number of votes and the name of the nominee receiving the second highest number of votes as the producers' first and second choice nominees. The Secretary shall select the producer members and alternates of the Board from the names of those persons receiving the highest and second highest number of votes within a specific region, as submitted by the Board.

(c) Notice of balloting to nominate candidates for the Board shall be publicized by the Board to producers in the region involved, and to the Secretary, at least 90 days before the region's nominee ballot is issued except for the initial Board.

(d) In proposing nominees for inclusion on a mail ballot, nominations must be received by the Board at least 30 days before the region's nominee ballot is issued.

(e) If a producer nominee is engaged in the production of honey in more than one region, such producer shall participate within the region that such producer so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) Each producer within a region shall cast a ballot for each open position on the Board assigned to such region in accordance with the procedures prescribed in this subpart. The completed ballot must be returned to the Board or its designee within 30 days after the ballot is issued.

(g) The Board shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Board and asked to forward such completed documentation to the Board within 14 days of such notification.

(h) The Department will conduct the nomination process for the initial Board using the same procedures described above.

§ 1245.32 Term of office.

The members of the Board and their alternates shall serve for terms of three years. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. When the Board is first established, three producers will be assigned initial terms of four years; two producers will be assigned initial terms of three years; and two producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each Board member and alternate member shall continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

§ 1245.33 Board reapportionment.

(a) At least once every five years, but not more frequently than once in a three-year period, the Board shall review the geographic distribution of the quantities of U.S. honey assessed under this subpart. The review will be based on Board assessment records and statistics from the Department.

(b) If warranted as a result of this review, the Board shall recommend for the Secretary's approval changes in the regional representation of honey producers. Any changes in the makeup of the Board shall be subject to rulemaking by the Department.

(c) Recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments and statistics from the Department, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) Any such reallocation shall be made at least six months prior to the date on which terms of office of the Board begin and shall become effective at least 30 days prior to such date.

§ 1245.34 Vacancies.

(a) In the event any member of the Board ceases to be a producer, such position shall automatically become vacant: Provided, that if, as a result of Board reallocation pursuant to § 1245.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary may remove such member from office.

(c) Should any member position become vacant, the alternate for that member shall automatically assume the position of that member. At its next meeting, the Board shall nominate a replacement for such alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in § 1245.31, except that nomination and replacement shall not be required if the unexpired terms are less than six months.

§ 1245.35 Procedure.

(a) A majority of members, including alternates acting in place of members of the Board, shall constitute a quorum. Alternates shall serve whenever the member is absent from a meeting or is disqualified.

(b) All Board members shall be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(c) Any action of the Board shall require the concurring votes of a majority of those present and voting.

(d) At the start of each fiscal period, the Board will select a chairperson and vice chairperson. The chairperson, or in the chairperson's absence the vice chairperson, shall conduct meetings throughout that fiscal period.

(e) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may act upon the concurring votes of a majority of its members by mail, telephone, electronic mail, facsimile, or any other means of communication, provided that all members are notified and given the opportunity to vote. All votes shall be promptly confirmed in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(f) There shall be no voting by proxy.

(g) The Chairperson shall be a voting member of the Board.

(h) The organization of the Board and the procedures for conducting meetings shall be in accordance with the Board's bylaws, which shall be established by the Board and approved by the Secretary.

§ 1245.36 Compensation and reimbursement.

(a) Members of the Board, alternates when acting as members, and the members of any special committees formed by the Board shall serve without compensation.

(b) Members of the Board, alternates, and the members of any special committees shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred in the performance of their Board duties. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1245.37 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and provisions of the Act and to collect assessments;

(b) To carry out promotion, research, and information plans and projects related to U.S. honey;

(c) To develop and recommend to the Department for approval such rules, regulations, and by-laws for the conduct of its business as it may deem advisable;

(d) To recommend to the Secretary amendments to the Order;

(e) To pay the costs of promotion, research, and information plans and projects with assessments collected pursuant to section 1245.41, earnings from invested assessments, and other funds authorized under this part.

(f) To appoint and convene, from time to time, special committees and subcommittees which may include producers, first handlers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, information plans, or projects for U.S. honey;

(g) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part, including the probable costs of all promotion, research, and information activities and to recommend a rate of assessment;

(h) To meet and organize and select from among its members a chairperson, and other officers;

(i) To require its employees to receive, investigate, and report to the Secretary complaints of violations of the Order;

(j) To employ persons, other than members, as it may deem necessary and to determine the compensation and define the duties of each employee;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(l) To periodically prepare and make public and to make available to producers reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To give to the Secretary the same notice of meetings of the Board and any special committees as is given to members in order that representatives of the Secretary may attend such meetings;

(n) To notify honey producers of all Board meetings through press releases or other means;

(o) To maintain such records as the Secretary may require and make such records available to the Secretary for inspection and audit;

(p) To account for the receipt and disbursement of all funds in the possession, or under the control, of the Board; and

(q) To develop plans and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for

the development and carrying out of plans or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart.

§ 1245.38 Prohibited activities.

The Board may not engage in, and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental policy or action, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

Expenses And Assessments

§ 1245.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in the administration of this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each plan or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget, including shifting funds from one plan or project to another, must be approved by the Secretary before such amendment or addition shall occur. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur expenses, including a provision for a reserve for operating contingencies, for research, promotion, advertising, or information activities and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary. Such expenses shall be paid from funds received by the Board, including assessments, contributions from persons, and other funds available to the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of research, promotion, advertising, or information activities. Voluntary contributions shall be free from any encumbrances by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referenda costs incurred in connection with the Order.

(h) For fiscal years beginning 3 years after the date of the Board's establishment, the Board shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Such limitation on spending shall not include reimbursements to the Secretary.

§ 1245.41 Assessments.

(a) The assessment rate shall be $0.02 per pound of U.S. honey produced and shall only be imposed on producers of 100,000 pounds or more per fiscal year. Such assessments shall not be levied on the portion of U.S. honey which does not enter commerce and which is utilized solely to sustain a producer's own colonies of bees.

(b) The assessment rate shall not be increased without an affirmative vote of five members of the Board. The assessment rate shall not be increased by more than $0.005 per fiscal year and shall not exceed $0.05 per pound. Any change in the assessment rate shall be announced by the Board at least 30 days prior to becoming effective and shall not be subject to a vote in a referendum. Any change in the assessment rate shall be subject to rulemaking.

(c) Except as provided in this section, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(d) First handlers shall remit to the Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce.

(e) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(f) Assessments shall be paid to the Board on a monthly basis no later than the fifteenth day of the month following the month in which the U.S. honey was produced unless the Board determines that assessments due shall be paid to the Board at a different time and manner, with approval of the Secretary. The Board may recommend different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1245.42 Late payment.

(a) There shall be a late-payment charge imposed on any person who fails to remit to the Board the total amount for which any such person is liable on or before the payment due date established by the Board. The amount of the late-payment charge shall be prescribed in regulations issued by the Secretary.

(b) There shall also be imposed on any person subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(c) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

§ 1243.43 Exemption from assessment.

(a) A producer who produces less than 100,000 pounds of U.S. honey per year shall be exempt from the payment

of assessments. Such producer may apply to the Board—on a form provided by the Board—for a certificate of exemption. Such producer shall certify that the producer's production of U.S. honey shall be less than 100,000 pounds for the fiscal year for which the exemption is claimed.

(b) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments.

(1) To obtain the exemption an eligible producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(3) If the producer complies with the requirements of this subsection, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15 of the fiscal year, the Board will have 60 days to approve the exemption request; after August 15 of the fiscal year, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(c) An exemption will apply immediately following the issuance of the certificate of exemption.

(d) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begin to pay the assessment on all U.S. honey produced.

(e) The Board may recommend to the Secretary that honey exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and any necessary safeguards to prevent improper use of this exemption.

§ 1245.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided,* that the funds in the reserve shall not exceed one fiscal period's budget.

Promotion, Research, and Information

§ 1245.50 Plans and projects.

(a) The Board shall receive and evaluate, or, on its own initiative, develop and submit to the Secretary for approval, any plan or project authorized under this part. Such plans or projects may provide for:

(1) The establishment, issuance, effectuation, or administration of appropriate activities for research, promotion, advertising, or information, including industry and consumer information, with respect to U.S. honey;

(2) The establishment and conduct of marketing research and development activities to encourage, improve, or expand the acquisition of knowledge pertaining to U.S. honey or their consumption and use, nutritional benefits or the marketing and utilization of U.S. honey;

(3) The development and expansion of the sale of U.S. honey in foreign markets; or

(4) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, U.S. honey production, and honey bees.

(b) No plan or project shall be implemented prior to approval by the Secretary. Once a plan or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each plan or project implemented under this part shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If the Board finds that any such plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such plan or project.

(d) In addition to any evaluation that may be carried out pursuant to paragraph (c) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and plans and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

(e) No plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity including but not limited to unfair or deceptive acts or practices with respect to quality, value, or use of any competing product. In addition, no reference to a brand name, trade name, or State identification will be made.

§ 1245.51 Contracts.

(a) Subject to the approval of the Secretary, the Board may:

(1) Enter into contracts and agreements to carry out promotion, research, and information activities relating to U.S. honey, including contracts and agreements with producer associations or other entities as considered appropriate by the Secretary; and

(2) Pay the cost of approved promotion, research, and information activities using assessments collected under the Order, earnings obtained from assessments, and other income of the Board.

(b) Each contract or agreement shall provide that any person who enters into the contract or agreement with the Board shall:

(1) Develop and submit to the Board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity;

(2) Keep accurate records of all of its transactions relating to the contract or agreement;

(3) Account for funds received and expended in connection with the contract or agreement;

(4) Make periodic reports to the Board of activities conducted under the contract or agreement; and

(5) Make such other reports as the Board or the Secretary considers relevant.

(c) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such plan or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit account for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receive or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

§ 1245.52 Patents, copyrights, trademarks, information, publications, and product formulations.

(a) Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart:

(1) Shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board;

(2) Shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and

(3) May be licensed subject to approval by the Department.

(b) Upon termination of this subpart, section 1245.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1245.60 First handler reports.

(a) Each first handler subject to this part shall be required to report to the Board, at such time and in such manner as the Board may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to the following:

(1) The first handler's name and address;

(2) The date of report (which is also date of payment to the Board);

(3) The period covered by report; and

(4) The total quantity of U.S. domestic honey determined as assessable during the reporting period.

(b) First handlers who collect assessments from producers or withhold assessments for their accounts or pay the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and the total assessable quantities handled for each such producer.

(c) First handlers shall also include with each report the following:

(1) The total quantity of U.S. honey acquired during the reporting period;

(2) The total quantity of U.S. honey handled during such period;

(3) The amount of U.S. honey acquired from each producer, giving the name and address of each producer;

(4) The assessments collected during the reporting period;

(5) The quantity of U.S. honey purchased from a first handler responsible for paying the assessment due pursuant to this Order;

(6) The date that assessment payments were made on U.S. honey handled;

(7) The first handler's tax identification number;

(8) The quantity of U.S. honey processed for sale from a first handler's own production; and

(9) A record of each transaction for U.S. honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(d) In the event of a first handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or his or her estate, shall be considered the first handler for the purposes of this part.

§ 1245.61 Books and records.

Each first handler and producer shall maintain, and during normal business hours, make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting inspections authorized by this section. Such books and records shall be maintained for two years beyond the fiscal period of their applicability.

(a) The Board may request any other information from first handlers and producers, that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

§ 1245.62 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained by producers shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department, and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart.

(b) Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of producers or first handlers or statistical data collected therefrom, if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1245.70 Right of the Secretary.

All fiscal matters, plans or projects, rules or regulations, reports, contracts, agreements, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1245.71 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether producers of U.S. honey favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of the producers voting for approval in the referendum and who also represent a majority of the volume of U.S. honey produced.

(2) At the request of the Board or when petitioned by ten (10) percent or more of the number of persons eligible to vote under the Order, but not more often than once every five years under this paragraph; or

(3) Whenever the Department deems that a referendum is necessary.

§ 1245.72 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers voting who, during a representative period determined by the Secretary, have been engaged in the production of U.S. honey.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or

terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this Order and regulations issued hereunder in an orderly manner.

§ 1245.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to Section 1245.37;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1245.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1245.75 Personal liability.

No member, alternate member, employee, or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

§ 1245.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1245.77 Amendments.

Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1245.78 OMB control numbers.

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator.

[FR Doc. 2010–7575 Filed 4–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0275; Directorate Identifier 2009–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, 747SR, and 747SP series airplanes. This proposed AD would require reworking or replacing certain duct assemblies in the environmental control system (ECS). This proposed AD results from reports of duct assemblies in the ECS with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This proposed AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are proposing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

DATES: We must receive comments on this proposed AD by May 27, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sue McCormick, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (303) 342–1082; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0275; Directorate Identifier 2009–NM–231–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation on two Model 767–200 series airplanes. The airplane manufacturer has also notified us that certain Model 767–200 and 767–300 series airplanes and certain Model 747 airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation. The fire-retardant properties of the BMS 8–39 polyurethane foam insulation deteriorate with age. This, along with dust, dirt, and other carbon particulate contamination of the insulation on the ducts, adds an available fuel source for a potential fire. Once ignited, the foam insulation emits noxious smoke, does not self-extinguish, and drips droplets of liquefied polyurethane, which can further propagate a fire. Because the insulation is wrapped around the duct assemblies, which are located throughout the airplane, if the insulation is ignited a fire could potentially travel along the ducts and spread throughout the airplane. This condition, if not corrected, could result in a potential electrical arc igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that may spread throughout the airplane through the ECS.

Other Relevant Rulemaking

On January 14, 2008, we issued AD 2008–02–16, amendment 39–15346, applicable to certain Model 767–200 and 767–300 series airplanes. That AD requires reworking certain duct assemblies in the ECS. That AD resulted from reports of duct assemblies in the ECS with burned BMS 8–39 polyurethane foam insulation. That AD also resulted from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We issued that AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

Additionally, on December 14, 2001, we issued AD 2001–26–09, amendment 39–12573 (66 FR 66734, December 27, 2001), applicable to certain Model 767–200 series airplanes. That AD requires a one-time inspection for damage of the water line heater tape where it passes close to the duct assemblies of the air distribution system for the flight compartment. That AD also requires eventual replacement of certain duct assemblies or foam insulation on those duct assemblies with new assemblies or improved foam insulation. That AD was prompted by a report of burned BMS 8–39 polyurethane foam insulation on an air distribution system duct located in the electronics and electrical compartment. The actions required by that AD are intended to prevent ignition of foam insulation on the air distribution ducts, which could result in a fire in the airplane.

We are considering additional rulemaking for Model 737–100, –200, –200C, and –300 series airplanes, which have been determined to be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–21A2421, Revision 2, dated December 19, 2006. This service bulletin describes procedures for reworking the affected duct assemblies in approximately 44 locations within the ECS systems. The affected duct assemblies vary depending on airplane configuration. These are some examples of affected ECS systems:

- Air conditioning, flight deck
- Duct installation, conditioned air
- Duct installation, air distribution system
- Duct installation, individual air system
- Anemostat installation, air distribution system
- Humidifier duct installation
- Heat exchanger installation, air conditioning system
- Recirculation fan installation, flight deck

We have also reviewed Boeing Service Bulletin 747–21A2422, Revision 2, dated November 16, 2006. This service bulletin describes procedures for reworking or replacing the single duct assembly in the forward lower cargo bay. The rework includes removing the BMS 8–39 polyurethane foam insulation and replacing it with BMS 8–300 polyimide foam insulation that meets flammability criteria of Section 25.856 ("Fire Protection: Thermal/Acoustic Insulation Materials") of the Federal Aviation Regulations (14 CFR 25.856(a)).

These service bulletins also describe procedures for part-marking reworked duct assemblies with new part numbers.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

Differences Between the Proposed AD and the Service Bulletins

Boeing Service Bulletin 747–21A2421, Revision 2, dated December 19, 2006, recommends reworking the affected duct assemblies "during the next heavy maintenance visit, not to

exceed 30,000 flight-hours" from the date on that service bulletin. Boeing Service Bulletin 747–21A2422, Revision 2, dated November 16, 2006, does not recommend any compliance time for reworking or replacing the affected duct assemblies. This proposed AD would require operators to rework or replace the affected duct assemblies within 72 months after the effective date of the AD. In developing the compliance time for this action, we considered the degree of urgency associated with addressing the subject unsafe condition. We also considered the availability of required parts and the practical aspect of reworking or replacing the affected duct assemblies within an interval that parallels normal scheduled maintenance for most affected operators. We have determined that the average utilization of the Model 747 fleet is approximately 5,000 flight hours each year. Therefore, we have determined that 72 months is equivalent to the recommended compliance time of 30,000 flight hours and it represents an appropriate interval in which an ample number of required parts will be available to modify the affected fleet without adversely affecting the safety of these airplanes. This difference has been coordinated with Boeing.

Costs of Compliance

There are about 558 airplanes of the affected design in the worldwide fleet. The average labor rate is $85 per work-hour. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts cost, per airplane	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Duct assembly rework, specified in Boeing Service Bulletin 747-21A2421.	8 per duct (average of 130 ducts per airplane).	$12,305 (average) ...	$100,705 (average)	185	$18,630,425.
Duct assembly rework or replacement, specified in Boeing Service Bulletin 747-21A2422.	1 per duct (1 duct per airplane).	The manufacturer states that it will supply required parts to the operators at no cost..	$85	Up to 168	Up to $14,280.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0275; Directorate Identifier 2009–NM–231–AD.

Comments Due Date

(a) We must receive comments by May 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes identified in Boeing Service Bulletin 747–21A2421, Revision 2, dated December 19, 2006.

(2) The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400F, 747SR, and 747SP series airplanes identified in Boeing Service Bulletin 747–21A2422, Revision 2, dated November 16, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air conditioning.

Unsafe Condition

(e) This AD results from reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are issuing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could

propagate a small fire and lead to a larger fire that could spread throughout the airplane through the ECS.

Compliance

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

ECS Duct Assembly Rework or Replacement

(g) Within 72 months after the effective date of this AD, rework or replace the applicable duct assemblies in the ECS specified in and in accordance with the Accomplishment Instructions and Appendices A through F of Boeing Service Bulletin 747–21A2421, Revision 2, dated December 19, 2006 (for Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes); and the Accomplishment Instructions and Appendices A through C of Boeing Service Bulletin 747–21A2422, Revision 2, dated November 16, 2006 (for Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400F, 747SR, and 747SP series airplanes).

Parts Installation

(h) As of the effective date of this AD, no person may install an ECS duct assembly with BMS 8–39 polyurethane foam insulation on any airplane.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sue McCormick, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (303) 342–1082; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–8249 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1017]

RIN 1625–AA11

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington; Amendment

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the Regulated Navigation Area (RNA) covering the Umpqua River Bar in Oregon so that it does not include those waters between "Navigation Aid Number 8" and "Navigation Aid Number 6" on the Umpqua River. The change has been requested by a number of individuals and organizations that believe they are able to safely use those waters when the bar is restricted or closed.

DATES: Comments and related material must be received by the Coast Guard on or before May 12, 2010. Requests for public meetings must be received by the Coast Guard on or before May 12, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1017 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Kion Evans, Thirteenth Coast Guard District, Prevention Division; telephone 206–220–7232, e-mail *Kion.J.Evans@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1017), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2008–1017" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble

as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2008–1017" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before May 12, 2010 using one of the four methods specified under **ADDRESSES.** Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On November 17, 2009, the Coast Guard published a Final Rule entitled "Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington" in the **Federal Register** (74 FR 59098), which established Regulated Navigation Areas covering each of the coastal bars in Oregon and Washington. Following implementation of the rule, as codified at 33 CFR 165.1325, on December 17, 2009, the Coast Guard began receiving feedback from a number of individuals and organizations that use the waters near the Umpqua River Bar in Oregon indicating that the RNA covering that bar, as defined in 33 CFR 165.1325(a)(12), is too large in that they believe they are able to safely use the area between "Navigation Aid Number 8" and "Navigation Aid Number 6" in the Umpqua River when the bar is restricted or closed.

In light of the public desires expressed, the possible economic impact on the local community, and the Coast Guard's assessment that mariners are, in most circumstances, able to safely operate between "Navigation Aid Number 8" and "Navigation Aid Number 6" on the Umpqua River when the bar is restricted or closed, the Coast Guard proposes to change the Umpqua River Bar RNA as defined in 33 CFR 65.1325(a)(12) to allow such use without obtaining permission of the Captain of the Port or his/her designated representatives.

Discussion of Proposed Rule

The proposed rule will change the Umpqua River Bar Regulated Navigation Area as defined in 33 CFR 165.1325(a)(12) so that it does not include those waters between "Navigation Aid Number 8" and "Navigation Aid Number 6" on the Umpqua River.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that this rule will simply reduce the size of an established Regulated Navigation Area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect those small entities that use the waters near the Umpqua River Bar. The rule would not have a significant economic impact on a substantial number of small entities, however, because it will simply reduce the size of an established Regulated Navigation Area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Kion Evans, Thirteenth Coast Guard District, Prevention Division; telephone 206–220–7232, e-mail *Kion.J.Evans@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the reduction in size of a Regulated Navigation Area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Amend § 165.1325 by revising paragraph (a)(12) to read as follows:

§ 165.1325 Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.

(a) * * *

12) Umpqua River Bar, Oreg.: From a point on the shoreline at 43°41′20″ N., 124°11′58″ W. thence westward to 43°41′20″ N., 124°13′32″ W. thence southward to 43°38′35″ N., 124°14′25″ W. thence eastward to a point on the shoreline at 43°38′35″ N., 124°12′35″ W. thence northward along the shoreline to the north end of the training jetty at 43°40′15″ N., 124°11′49″ W. thence northward to a point on the west bank of the entrance channel at 43°40′40″ N., 124°11′41″ W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

* * * * *

Dated: March 26, 2010.

G.T. Blore,

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

[FR Doc. 2010–8208 Filed 4–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0073]

RIN 1625–AA87

Safety and Security Zones; Tall Ships Challenge 2010, Great Lakes; Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety and security zones around each Tall Ship visiting the Great Lakes during the Tall Ships Challenge 2010 race series. These safety and security zones will provide for the regulation of vessel traffic in the vicinity of each Tall Ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these Tall Ships and to ensure public safety during Tall Ships events.

DATES: Comments and related material must be received by the Coast Guard on or before May 12, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0073 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Yamaris Barril, Inspections, Prevention Department, Ninth Coast Guard District, Cleveland, OH via telephone at (216) 902–6343, or e-mail at *Yamaris.D.Barril@uscg.mil.*

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0073), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0073" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0073" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These temporary safety and security zones are necessary to protect the Tall Ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of these types of ships. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas along the navigable waters of the United States. Therefore, the Coast Guard is proposing to implement a safety and security zone around each ship to ensure the safety of all Tall Ships while they operate throughout the Great Lakes. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways, and low maneuverability of the Tall Ships could easily result in serious injuries or fatalities.

Discussion of Proposed Rule

This proposed temporary final rule is intended to ensure the safety of the public and vessels during the Tall Ships Challenge 2010. Tall Ships will be participating in parades and then mooring for official events in the harbors of Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; and Chicago, IL. Tall Ships may also visit other harbors while in the Great Lakes.

The Coast Guard proposes to establish temporary safety and security zones around each Tall Ship participating in these events. These safety and security zones will move with the Tall Ships as they travel throughout the Great Lakes. The safety and security zones will be effective from 12:01 a.m. June 23, 2010 through 12:01 a.m. on September 13, 2010.

Upon the navigable waters of the United States, except as discussed below, no vessel or person is allowed within 100 yards of a Tall Ship that is underway or at anchor, unless authorized by the Captain of the Port or the on-scene Official Patrol. Any vessel authorized to enter into a Tall Ship safety and security zone must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene Official Patrol. Even if operating within a Tall Ship safety and security zone under proper authority, except as discussed in the following paragraph, no vessel or person is allowed within 25 yards of a Tall Ship. In addition, upon the navigable waters of the United States, no vessel or person is allowed within 25 yards of any Tall Ship that is moored.

Vessels constrained by their navigational draft or restricted in their ability to maneuver are permitted to transit, in accordance with the Navigational Rules, within 100 yards of a Tall Ship in order to ensure a safe passage. When navigational constraints of channels, rivers, or waterways prohibit vessels from remaining 100 or more yards from a Tall Ship, such vessels are permitted to enter a security

and safety zone but must remain at the greatest possible distance away from the Tall Ships while operating at the minimum speed necessary to maintain a safe course.

The Coast Guard expects the temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with the limited maneuverability during Tall Ships events.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety and security zone around each Tall Ship will be relatively small. Because the safety and security zones will move along the Tall Ships course through the Great Lakes, the zones will exist for only a minimal time in any one particular geographical area and restrictions on vessel movement within any particular geographical area of the Great Lakes is expected to be minimal. Additionally, under certain conditions vessels may still transit through the safety and security zone when permitted by proper authority.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because each zone will be relatively small and vessels may still transit through a zone with permission from the Official Patrol or when navigation restraints require. However, this proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in an area of water in which a participating Tall Ship is transiting, anchored, or moored between 12:01 a.m. on June 23, 2010 and 12:01 a.m. on September 13, 2010.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Yamaris Barril, Inspections, Ninth Coast Guard District, Cleveland, OH at (216) 902–6343. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety and security zone around each Tall Ship participating in the Tall Ships Challenge 2010 race series. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 figure 2–1, paragraph (34)(g) of the Instruction and neither an environmental assessment nor a environmental impact statement is required.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–0073 to read as follows:

§ 165.T09–0073 Safety and Security Zones; Tall Ships Challenge 2010; Great Lakes; Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Chicago, IL

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

Navigation Rules means the Navigation Rules, International and Inland (*See,* 1972 COLREGS and 33 U.S.C. 2001 *et seq.*).

Official Patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie, Duluth and Lake Michigan to monitor a Tall Ship safety and security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

Public Vessel means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

Tall Ship means any sailing vessel participating in the Tall Ships Challenge 2010 in the Great Lakes. This includes, but is not limited to, the following: Sailing Vessel (S/V) AMISTAD, S/V APPLEDORE IV, S/V APPLEDORE V, HMS BOUNTY, S/V DENIS SULLIVAN, S/V EUROPA, S/V FAZISI, S/V FRIENDS OF GOOD WILL, S/V INLAND SEAS, S/V LAREVENANTE, S/V LYNX, S/V MADELINE, S/V FLAGSHIP NIAGARA, S/V PATHFINDER, S/V PLAYFAIR, S/V PRIDE OF BALTIMORE II, S/V ROALD AMUNDSEN, S/V RED WITCH, S/V ROTALISTE, S/V ROSEWAY, S/V UNICORN, S/V WELCOME, and S/V WINDY.

(b) *Location.* The following area is a safety and security zone: all navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any Tall Ship.

(c) *Regulations.* (1) Entry into a safety and security zone described in paragraph (b) of this section is prohibited unless authorized by the cognizant Coast Guard Captain of the Port or the Official Patrol.

(2) Vessels may request permission to enter into a safety and security zone described in paragraph (b) of this section by contacting the Official Patrol on VHF channel 16.

(3) Any vessel operating within a safety and security zone established by this section must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or the on-scene Official Patrol. Any vessel or person allowed to enter a safety and security zone established by this section must still remain at least 25 yards from any Tall Ship, unless authorized to come within such a distance pursuant to paragraph (c)(4) of this section or permitted to come within such a distance by the cognizant Captain of the Port, his or her designated representative, or the on-scene Official Patrol.

(4) Vessels are permitted to transit through the safety and security zone in waterways that do not provide adequate navigable waters greater than 100 yards from the Tall Ships. Vessels transiting such areas must operate at the minimum speed necessary to maintain a safe course while also maintaining the greatest possible distance away from the Tall Ships.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Wednesday, June 23, 2010 through 12:01 a.m. on Monday September 13, 2010.

(e) *Navigation Rules.* The Navigation Rules must apply at all times within a Tall Ships safety and security zone.

(f) When a Tall Ship approaches within 25 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Tall Ship's safety and security zone unless ordered by or given permission from the cognizant Captain of the Port, his or her designated representative, or the on-scene official patrol to do otherwise.

Dated: March 30, 2010.

Lorne W. Thomas,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 2010–8204 Filed 4–9–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0925; FRL–9130–6]

RIN 2060–AQ02

Mandatory Reporting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule amendment.

SUMMARY: EPA is proposing to amend the Mandatory Greenhouse Gas (GHG) Reporting Rule, to require reporters subject to the rule to provide: The name, address, and ownership status of their U.S. parent company; their primary and all other applicable North American Industry Classification System (NAICS) code(s); and an indication of whether or not any of their reported emissions are from a cogeneration unit. The Mandatory GHG Reporting Rule requires greenhouse gas emitting facilities and suppliers of fuels and industrial gases from all sectors of the economy to report their greenhouse gas emissions and to provide certain additional supporting data in annual reports submitted to EPA.

DATES: *Comments.* Comments must be received on or before June 11, 2010.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by April 19, 2010. If requested, the public hearing will be conducted on or about April 19, 2010 in the Washington, DC area. EPA will provide further information about the hearing on its webpage if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0925, by one of the following methods:

- *Federal eRule amendment making Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *E-mail: GHGReportingCPNAICS@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA–HQ–OAR–2009–0925, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2009–0925. 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–OAR–2009–0925, GHG Reporting Corporate Parent and NAICS Code. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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) 566–1742.

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: *GHGMRR@epa.gov.*

SUPPLEMENTARY INFORMATION: *Additional Information on Submitting Comments:* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail *GHGReportingCPNAICS@epa.gov.*

Regulated Entities. This proposed amendment to the Mandatory GHG Reporting Rule would affect facilities that are direct emitters of GHGs, and suppliers of fuels and industrial gases, that are already subject to the rule. Regulated categories and entities would include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF REGULATED ENTITIES BY CATEGORY

Category	NAICS code	Examples of regulated entities
General Stationary Fuel Combustion Sources	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.

TABLE 1—EXAMPLES OF REGULATED ENTITIES BY CATEGORY—Continued

Category	NAICS code	Examples of regulated entities
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Manure[1] Management	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey Production.
	112320	Broilers and Other Meat type Chicken Production.
Suppliers of Coal Based Liquids Fuels	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO_2)	325120	Industrial gas manufacturing facilities.

[1] EPA is not implementing subpart JJ of the Mandatory GHG Reporting Rule due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Table 1 lists the types of entities that EPA currently is aware of that could be potentially affected by this action. Other types of entities not listed in the table could also be subject to reporting requirements. To determine whether an entity is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CBI confidential business information
CFC chlorofluorocarbon

CFR Code of Federal Regulations
CO_2 carbon dioxide
CO_2e CO_2-equivalent
CUSIP Committee on Uniform Security Identification Procedures
DUNS Data Universal Numbering System
eGRID Generation Resource Integrated Database
EO Executive Order
EPA U.S. Environmental Protection Agency
FEIN Federal Employee Identification Numbers
GHG greenhouse gas
HCFC hydrochlorofluorocarbon
HFC hydrofluorocarbon
HFE hydrofluoroether
ICIS Integrated Compliance Information System
ICR Information Collection Request
NAICS North American Industry Classification System
NIH National Institutes of Health
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management and Budget
RCRAInfo Resource Conservation and Recovery Act database
RFA Regulatory Flexibility Act
RGGI Regional Greenhouse Gas Initiative
SBREFA Small Business Regulatory Enforcement Fairness Act
SEC Securities and Exchange Commission
SIC Standard Industrial Classification
TCR The Climate Registry
TRI Toxics Release Inventory
TSCA Toxic Substances Control Act
UMRA Unfunded Mandates Reform Act
U.S. United States
WCI Western Climate Initiative
WRI World Resources Institute

Table of Contents

I. Background

A. Background on Proposed Rule Amendment

The Mandatory GHG Reporting Rule, published on October 30, 2009 (74 FR 56260), requires reporting by facilities that emit GHGs ("facilities") and by suppliers of fuels and industrial gases ("suppliers"). Facilities and suppliers that meet the applicability criteria in subpart A of 40 CFR part 98 ("regulated entities" or "reporters") must submit annual GHG reports.[2] A list of the information that all reporters must submit in their annual reports is included in the general provisions of the rule (see 40 CFR 98.3(c)). This list includes owner/operator identification information, but does not currently require reporters to provide information on their U.S. parent company, on their primary and other applicable NAICS code(s), or on whether any of their reported emissions are from a cogeneration unit. In this notice, EPA proposes amendments to the Mandatory GHG Reporting Rule that would require facilities and suppliers subject to the rule to provide this additional information in their annual reports.

This preamble is divided into four sections. The first section of the preamble provides background and an overview of the proposed rule amendment, discusses EPA's legal authority under the Clean Air Act (CAA) for collecting the proposed additional information and describes the relationship between this information and the information already collected by other Federal, regional, and State reporting programs. The second section of the preamble states the proposed rule requirements and summarizes the rationale for requiring facilities and suppliers subject to the rule to report this additional information on an annual basis. This section also includes a summary of issues associated with the proposed rule amendment upon which EPA is particularly interested in receiving comment. The third section of the preamble provides a summary of the impacts and costs of the proposed rule amendment. The fourth and final section of the preamble discusses the various statutory and executive order requirements applicable to the proposed rule amendment.

B. Summary of the Proposed Rule Amendment

EPA is proposing to add three data elements to the list of data elements specified in 40 CFR 98.3. These data elements would be included in the annual GHG reports that facilities and suppliers subject to the Mandatory GHG Reporting Rule are required to submit. Specifically, this proposed rule amendment would require each reporter to (1) provide the legal name and physical address of its highest-level U.S. parent company and to indicate its ownership status by selecting from a list of codes provided by EPA;[3] (2) provide its primary and other applicable North American Industry Classification System (NAICS) code(s); and (3) indicate whether any of its reported emissions are from a cogeneration unit.

This proposed rule amendment applies to all facilities and suppliers required to report under 40 CFR part 98, published on October 30, 2009 (74 FR 56260).[4] Therefore, all facilities and suppliers that meet the applicability criteria in 40 CFR part 98, subpart A would be required to report the additional data elements included in this proposal.[5]

C. Legal Authority

EPA is proposing this rule amendment under the existing authority provided in CAA section 114. As noted in the Mandatory GHG Reporting Rule, CAA section 114 provides EPA with broad authority to require the information mandated by this proposed rule amendment because such information will inform EPA's implementation of various CAA provisions (74 FR 66264). Under CAA section 114(a)(1), the Administrator may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment,

[2] Because they are not covered under 40 CFR part 98, this rule does not apply to mobile sources.

[3] This information would not be required if, upon finalization of this rule amendment, EPA decides to require reporters to list all of their U.S. parent companies and their respective percentages of ownership.

[4] If additional categories are proposed and finalized in 40 CFR part 98, then this rule amendment would apply to those categories as well.

[5] EPA is not implementing subpart JJ of the Mandatory GHG Reporting Rule due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

or persons whom the Administrator believes may have necessary information, to monitor and report emissions and to provide such other information as the Administrator requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to motor vehicles).

As discussed in greater detail in the response to comments for the final Mandatory GHG Reporting Rule, 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 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 greenhouse gases. The data collected under this proposed rule amendment could inform EPA's implementation of section 103(g) of the CAA regarding improvements in sector based nonregulatory strategies and technologies for preventing or reducing air pollutants.

In addition, corporate parent and NAICS code data could assist EPA in developing and improving air pollution emission inventories. A more detailed understanding of the sources and operational categories of GHG emissions could lead to improvements in air pollution emissions information that is relied upon to develop effective control methods. The additional information may also inform regulatory strategies being evaluated by EPA.

Given the broad scope of CAA section 114, it is appropriate for EPA to gather the information required by this proposed rule amendment because such information is relevant to EPA's carrying out a wide variety of CAA provisions.

D. Relationship to Other Programs

This section of the preamble discusses other Federal and non-Federal reporting programs that collect information similar to the information that EPA would collect under this proposed rule amendment. Although considerable information on GHG emitting industrial facilities and on suppliers of fuel and industrial gas is already collected by EPA, other Federal and State agencies, and private and nonprofit organizations, no other source of information meets all of the objectives that EPA has set out for this proposed rulemaking. Specifically, no other reporting program meets all of the following criteria: Identifies each reporter's highest-level U.S. parent company; identifies each reporter's primary and all other applicable NAICS codes; includes information on cogeneration; covers all reporters to the Greenhouse Gas Mandatory Reporting Rule; is collected annually; and is available to EPA.

This section of the preamble reviews the data collected under other reporting programs and compares those data with the data that would be collected under this proposed rule amendment. Section II of the preamble (Proposed Rule Amendment and Rationale) compares the specific definitions that EPA is proposing to use for U.S. parent company, NAICS code, and cogeneration unit, for purposes of this rule amendment, with the definitions used by other Federal and non-Federal programs, and explains why we have selected the particular definitions that are used here.

1. EPA and Other Federal Data Collection Programs U.S. Parent Company

Currently, three EPA programs collect parent company information: The Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act; Risk Management Plans under Section 212(r) of the Clean Air Act; and the Inventory Update Rule under the Toxic Substances Control Act (TSCA). Of these three programs, TRI is the only one that requires reporters to submit information on their highest-level U.S. parent company.[6] TRI requires the parent's name and Dun & Bradstreet Universal Numbering System (DUNS)[7] identifier to be reported annually. EPA estimates that approximately two-thirds of the reporters to the Mandatory GHG Reporting Rule are also required to report to TRI.

Risk Management Plans under CAA section 212(r) are required to include information on "parent company."[8] However, the parent company reported in a Risk Management Plan is not necessarily the highest-level U.S. parent company. Risk Management Plans are generally submitted only once every five years, but must be updated when a chemical accident occurs at a facility. The Inventory Update Rule under TSCA requires reporting of both the production facility where a specific chemical is produced and the corporate unit responsible for the production or importation of the chemical. However, reporters are not required to identify the highest-level U.S. parent company and the program does not define "company."

Several EPA programs under the CAA, including the Mandatory GHG Reporting Rule, require reporters to identify the "owner or operator" of each affected facility. In these programs, "owner"[9] refers to the person or legal entity that owns the facility and its productive infrastructure. "Operator"[10] refers to the legal entity that controls day-to-day operations. Under some regulatory and reporting programs, "operator" refers specifically to the plant or site manager. Although in some cases, the owner or operator is also the highest-level U.S. parent company, the information currently collected under the majority of CAA programs is not designed to specifically identify the highest-level U.S. parent company or to provide insight into the corporate ownership structure because that information is not necessary to determine compliance with particular regulatory requirements. EPA does generate information on the highest-level U.S. parent company of electric generating facilities in its Emissions and Generation Resource Integrated Database (eGRID). However, these parent company data are based on ownership information reported to the Energy Information Administration of the U.S. Department of Energy, and on internal EPA research. eGRID contains U.S. parent company data for approximately 5,000 electric generating facilities, of which approximately 2,000

[6] For purposes of TRI Form R, a reporter's parent company is defined as the highest-level company, located in the United States that directly owns at least 50 percent of the voting stock of the company (Toxic Chemical Release Inventory Reporting Forms and Instructions, EPA 260–R–09–006, October 2009, page 34).

[7] The Data Universal Numbering System (DUNS) is a unique 9-digit numerical identifier used to identify individual business entities in databases maintained by Dun & Bradstreet.

[8] EPA's guidance for Risk Management Plans states "Your parent company is the corporation or other business entity that owns at least 50 percent of the voting stock of your company. If you are owned by a joint venture, enter the first of your two major owners here. If your company does not have a parent company, leave this data element blank." Risk Management Plan Guidance, *http://www.epa.gov/emergencies/docs/chem/RMPeSubmit_users_manual.pdf#page=33*.

[9] Under 40 CFR 98.6, "owner" means any person who has a legal or equitable title to, has a leasehold interest in, or control of a facility or supplier, except a person whose legal or equitable title to or leasehold interest in the facility or supplier arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility or supplier shall not be considered an "owner" of the facility or supplier.

[10] Under 40 CFR 98.6, "Operator" means any person who operates or supervises a facility or supplier.

are projected to be subject to the Mandatory GHG Reporting Rule.[11]

Primary and Other NAICS Codes

In addition to collecting information on reporters' U.S. parent companies, this proposed rule amendment would require facilities and suppliers reporting under the Mandatory GHG Reporting Rule to report their primary and other applicable NAICS codes.[12] This information is useful for benchmarking the environmental performance of companies and facilities relative to others in their sector. Among all EPA programs, only TRI requires reporters to submit primary NAICS codes as well as other relevant NAICS codes. As noted above, EPA estimates that approximately two-thirds of the reporters under the Mandatory GHG Reporting Rule are also required to report to TRI.

EPA does collect NAICS code information through routine compliance reporting in multiple programs, but those data are not complete. The air compliance data contained in the Air Facilities System and the water compliance data contained in the Permit Compliance System both include primary NAICS codes, but not other relevant NAICS codes. Conversely, the compliance data for hazardous waste management contained in the Resource Conservation and Recovery Act database (RCRAInfo) include multiple NAICS codes for facilities with more than one relevant code, but do not identify the primary NAICS code. The Integrated Compliance Information System (ICIS), which houses a variety of enforcement records, also includes NAICS codes, but does not explain how these codes are derived. In addition, none of the compliance databases provide complete coverage of the facilities subject to the Mandatory GHG Reporting Rule.

[11] Of the approximately 3,000 electric generating facilities that are not projected to be subject to the Mandatory GHG Reporting Rule, about half do not combust any fossil fuel (*e.g.,* they utilize hydro, nuclear, wind or solar power) and the other half emit or are expected to emit less than 25,000 metric tons of CO2e per year. The approximately 2,000 electric generating facilities that are projected to be subject to the Mandatory GHG Reporting Rule account for 99.7% of the total GHG emissions from all electric generators.

[12] A reporter's primary North American Industrial Classification System (NAICS) code is defined as the six-digit NAICS code that represents the reporter's primary product/activity/service as defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service. All other NAICS codes relating to product(s)/activity(s)/service(s) which provide economic profit (but which are not related to the principal source of revenue) are additional NAICS codes.

Cogeneration

There are currently no EPA programs that require facilities or suppliers to report the use of cogeneration units. EPA's Combined Heat and Power Partnership, a voluntary program created in 2001, requires that Partners complete a Letter of Intent stating that they agree to provide data on existing combined heat and power (also known as cogeneration) projects and on new project development to help EPA determine climate benefits.[13] However, this is a voluntary program and does not provide coverage of all cogeneration units. The Energy Information Administration does collect information on cogeneration from utility and non-utility power generators greater than 1 megawatt (MW).[14]

2. Non-Federal Data Collection Programs

EPA is aware of a number of State, regional, and international GHG reporting programs that are in place or under development. In developing this proposed rule amendment, EPA reviewed 18 State programs. A summary of these State programs may be found in the docket at EPA–HQ–OAR–2009–0925. EPA also reviewed four other reporting initiatives or protocols: The Climate Registry (TCR), the World Resources Institute (WRI) Greenhouse Gas Protocol, the Regional Greenhouse Gas Initiative (RGGI), and the Western Climate Initiative (WCI). In reviewing these GHG reporting programs, EPA considered whether they contain information on U.S. parent company, NAICS code(s), or cogeneration that is comparable in coverage (of facilities and suppliers), specific information collected, data quality and timeliness, to what would be required under this proposed rule amendment. EPA also considered whether the Agency had access to the data collected under these programs.

In general, EPA found that the data collected under State and other non-Federal data collection programs are designed to serve the specific purposes of those programs and do not appear to meet the objectives of this proposed rule amendment.

U.S. Parent Company

EPA identified two State programs—those in California and Delaware—that require reporting of parent company information. The Climate Registry and WRI Greenhouse Gas Protocol also encourage reporters to list their parent company on a voluntary basis but do not require this information. The Climate Registry and WRI Greenhouse Gas Protocol encourage participating organizations to report their GHG emissions at the highest organizational level (*e.g.,* corporate level), and that the organization account for all emissions sources. RGGI collects information on corporate associations from those organizations that submit bids in its annual GHG allowance auctions. Additional information on the collection of corporate and/or parent company information by California, Delaware, TCR, WCI, and RGGI, as well as on the WRI Greenhouse Gas Protocol, may be found in the docket at EPA–HQ–OAR–2009–0925.

Primary and Other NAICS Codes

All of the State programs require reporting of either the NAICS codes or Standard Industrial Classification (SIC) codes. The Western Climate Initiative is the only regional reporting program that requires reporters to submit their NAICS codes as part of their annual report.

Cogeneration

Most State reporting programs do not require separate reporting of cogeneration emissions or notification regarding the operation of cogeneration units. RGGI does not require any additional reporting for cogeneration units. WCI requires limited information on type of unit and thermal output.[15] [16] However, WCI is considering including separate reporting requirements for cogeneration units.[17]

Of the State programs that require cogeneration reporting, the California and New Mexico programs have the most extensive reporting requirements. For these programs, reporters with a cogeneration unit must report detailed information on the type of unit; the amount of electricity generated; the amount of thermal energy produced; the amount of electricity and thermal energy used on site, sold to a distributer,

[13] *http://www.epa.gov/chp.*

[14] EIA–860, Annual Electric Generator Report *http://www.eia.doe.gov/cneaf/electricity/page/eia860.html:* and,

EIA–861, Annual Electric Power Industry Report *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[15] Regional Greenhouse Gas Initiative: Final Model Rule, December 31, 2008 (*http://www.westernclimateinitiative.org/component/remository/Reporting-Committee-Documents/Draft-Essential-Requirements-for-Mandatory-Reporting—Final-Draft-(May-7&-2009)/orderby,4/page,1/*).

[16] Western Climate Initiative: Final Essential Requirements for Mandatory Reporting—July 15, 2009 (*http://www.westernclimateinitiative.org/component/remository/func-startdown/118/*).

[17] Western Climate Initiative: Background Document and Progress Report for Essential Requirements of Mandatory Reporting for the Western Climate Initiative, January 6, 2009 (*http://www.westernclimateinitiative.org/component/remository/func-startdown/74/*).

or provided directly to another company; the total GHG emissions for the unit; the GHG emissions allocated to thermal energy output; and the GHG emissions allocated to electricity generation. The California reporting rule also requires the amount of supplemental fuel consumed by duct burners for heat recovery steam generators.[18] [19]

Although reporting of cogeneration is not required by TCR, reporters are encouraged to report emissions at the unit level and to allocate emissions between electric and thermal energy outputs for cogeneration units.[20]

II. Proposed Rule Amendment and Rationale

This section of the preamble explains the requirements of the proposed rule amendment as well as the rationale for EPA's proposal for collecting the additional data elements summarized in Section I.B. of this preamble.

This proposed rule amendment would provide information useful to EPA in carrying out a number of potential nonregulatory and regulatory efforts authorized under the CAA, including informing the development of future climate change strategies. For example, through data collected under this proposed rule amendment, EPA would gain a better understanding of the aggregate GHG emissions of corporations and specific industry sectors.

A. U.S. Parent Company

Although the proposed rule language includes the requirements for only one option (i.e., Option 2 below), EPA is proposing two options for collecting U.S. parent company information:

Option 1

EPA is proposing to require all facilities and suppliers subject to the Mandatory GHG Reporting Rule (40 CFR part 98) to provide the legal name and physical address of their U.S. parent company. Under this option, a reporter's U.S. parent company is defined as the highest-level company, located in the United States, and with the largest ownership interest in the reporting entity as of December 31 of the reporting year. The U.S. parent company's physical address is defined as the street address, city, state and zip code of the U.S. parent company's physical location.

Each reporter would also be required to indicate one of the following with respect to its ownership status:

- "S"—single ownership (the reporting entity is entirely owned by a single company which is not owned by any other company, *e.g.,* it is not a subsidiary or division of another company).
- "W"—wholly owned (the reporting entity is entirely owned by a single company which is, itself, owned by another company, *e.g.,* it is a subsidiary or division of another company).
- "M"—multiple owners (the reporting entity is owned by more than one company).[21]

Option 2

EPA is also proposing that reporters list the names and physical addresses of all of their U.S. parent companies and their respective percentages of ownership. Under Option 2, EPA proposes to define U.S. parent company(s) as the highest-level U.S. company(s) with an ownership interest in the reporting entity as of December 31 of the reporting year. The physical address of a U.S. parent company is defined as the street address, city, state and zip code of the U.S. parent company's physical location.

With this option EPA recognizes that some facilities and suppliers may be owned by multiple companies and seeks to gather a more complete picture of the ownership status for each reporter. Facilities and suppliers would be required to report all of their U.S. parent companies regardless of the percentage of their ownership stake. Note that this option would not necessarily ask for all of the owners in an individual reporter's corporate structure, just the highest-level parent companies. If a facility or supplier has only one parent company, that company should be reported at 100 percent.

Reporting all U.S. parent companies by their percentage of ownership would provide EPA with a more complete picture of a facility's or supplier's parent companies rather than having information solely on the parent company with the largest ownership interest. This option would provide EPA with a more complete data set.

EPA is proposing to provide the following instruction to reporters on how to report the U.S. parent company(s) data element under options 1 and 2 as described above:

Each reporter must provide the legal name(s) and physical address(es) of their U.S. parent company(s). Table 2 of this preamble provides examples along with additional instruction to assist with the determination of a reporter's U.S. parent company(s):

TABLE 2—PROPOSED INSTRUCTION FOR REPORTERS ON HOW TO REPORT U.S. PARENT COMPANY(S)

Reporting scenario	How to report U.S. parent company under Option 1	How to report U.S. parent company under Option 2
The reporting entity is entirely owned by a single U.S. company that is not owned by any other company (e.g., it is not a subsidiary or division of another company).	Provide that company's legal name and physical address as the U.S. parent company. Mark "S" for Single Ownership in the associated box.	Provide that company's legal name and physical address as the U.S. parent company. Enter 100% as the percent ownership
The reporting entity is entirely owned by a single U.S. company which is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company).	Provide the legal name and physical address of the highest-level company in the ownership hierarchy as the U.S. parent company. Mark "W" for Wholly Owned in the associated box.	Provide the legal name and physical address of the highest-level company in the ownership hierarchy as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is owned by more than one U.S. company (e.g., company A owns 40%, company B owns 35% and company C owns 25%).	Provide the legal name and physical address of the company with the largest ownership interest as the U.S. parent company. Mark "M" for Multiple Owners.	Provide the legal names and physical addresses of all of the companies with an ownership interest as U.S. parent companies. Enter the percent ownership of each company.

[18] California Code of Regulations, Title 17, Section 95112.

[19] New Mexico Greenhouse Gas Mandatory Emissions Reporting: Emissions Quantification Procedures for 20.2.73 NMAC and 20.2.87 NMAC, Emissions Year 2009. *http://www.nmenv.state.nm.us/aqb/ghg/documents/NM_GHGEI_quantif_procedures_2009.pdf*).

[20] The Climate Registry: General Reporting Protocol, Version 1.1, May 2008 (*http://www.theclimateregistry.org*).

[21] This information, "S", "W" and "M" would not be required under Option 2.

TABLE 2—PROPOSED INSTRUCTION FOR REPORTERS ON HOW TO REPORT U.S. PARENT COMPANY(S)—Continued

Reporting scenario	How to report U.S. parent company under Option 1	How to report U.S. parent company under Option 2
The reporting entity is entirely owned by a foreign company.	Provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Mark "W" for Wholly Owned in the associated box.	Provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is partially owned by a foreign company.	(1) If the reporting entity is not entirely owned by the foreign company, but the foreign company has the largest ownership interest, then provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Mark "M" for Multiple Owners in the associated box. (2) If the foreign company does not have the largest ownership interest in the reporting entity, then provide the name and physical address of the company with the largest ownership interest as the U.S. parent company. Mark "M" for Multiple Owners in the associated box.	Provide the legal name and physical address of the foreign entity's highest-level company based in the U.S., along with the legal names and physical addresses of all the other companies with an ownership interest, as U.S. parent companies. Enter the percent ownership of each company.
The reporting entity is owned by a joint venture or cooperative.	The joint venture or cooperative is its own U.S. parent company. Provide the joint venture or cooperative's legal name and physical address as the U.S. parent company. Mark "W" for Wholly Owned in the associated box.	The joint venture or cooperative is its own U.S. parent company. Provide the joint venture or cooperative's legal name and physical address as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is a Federally-owned facility	Enter U.S. Government, and leave the address field and ownership box blank.	Enter U.S. Government, and leave the address and percent ownership fields blank.

EPA may issue additional guidance for reporters after this proposed rule amendment is finalized.

The proposed definition of U.S. parent company used in this proposed rule amendment is similar to that used in the TRI program. However, to improve data quality, EPA is proposing to slightly modify the definition of the U.S. parent company used in the TRI program for the purposes of this proposed rule amendment. EPA is proposing to adjust the ownership criteria used in the TRI definition of U.S. parent company from over 50 percent of voting stock to largest ownership interest in the company for the purpose of this action only. EPA is not proposing to alter the definition used for the TRI program. In reviewing TRI data, EPA has determined that the TRI definition may result in incomplete information in situations where a company has multiple owners, but no one company owns over 50 percent.

In addition, EPA reviewed how corporations and/or parent companies are defined in the WRI Greenhouse Gas Protocol, TCR, and RGGI to determine if some or all of the definitions could be applied to this proposed rule amendment. Neither WRI, TCR, nor RGGI have a definition of U.S. parent company, and after a review of the programs, EPA determined that the definitions of corporation (and similar terminology depending on the program) are not appropriate for this proposed rule amendment. For a summary of this analysis please see the docket at EPA–HQ–OAR–2009–0925.

Rationale

The purpose of collecting the name and physical address of the U.S. parent company(s) on the annual reporting form for the Mandatory GHG Reporting Rule is to assist in aggregating facility-based GHG emissions data to the corporate level. This additional data element would allow EPA to compile more comprehensive information on corporate GHG emissions and conduct a variety of analyses. EPA received some comments on the Mandatory GHG Reporting Rule from various entities supporting the collection of parent company data and emphasizing the importance of being able to aggregate the data to the corporate level. For example, one commenter stated that "Company identification is a critical requirement for * * * understanding the impact, risks, and opportunities * * * due to climate change."[22] Another commenter stated, "That the EPA [should] add a requirement that facilities subject to reporting under the proposed rule clearly identify their parent company and the proportion of the facility the parent/holding company owns. Without this information it is very difficult to consolidate facility level data to company level data * * *"[23]

EPA recognizes that data aggregated at the corporate level would likely be incomplete because the Mandatory GHG Reporting Rule requires reporting of only those emissions for which calculation methods are provided in the rule and, for certain source categories, requires reporting only from those facilities and suppliers whose emissions are above specified thresholds. In other words, corporate-level data might be incomplete, because 40 CFR part 98 does not cover all GHG emissions from every source, and some facilities and operations within a company may not be required to report their GHG emissions.

However, collecting information on U.S. parent company(s) would augment and complement the facility-level GHG emission data currently collected under the Mandatory GHG Reporting Rule and would not be repetitive of information already collected in the rule. In addition, the Mandatory GHG Reporting Rule covers approximately 85 percent of U.S. GHG emissions, therefore the data

[22] Comment Docket ID No. EPA–HQ–OAR–2008–0508–0415.1.

[23] Comment Docket ID No. EPA–HQ–OAR–2008–0508–0984.1.

collected under this proposed rule amendment would be useful.

Under Option 1, each reporter would report the legal name and physical address of their highest-level U.S. parent company and would select from a list of three possible ownership structures, selecting the type of ownership that best describes the ownership structure for the facility or supplier. Using this approach, EPA would collect information on whether a facility or supplier is owned by a single entity or multiple entities. Option 1 would enable EPA to collect additional data on the ownership structure of a facility or supplier, which would allow (with additional research) a more complete picture of a facility's or supplier's GHG emissions among U.S. parent companies, without requiring facilities to list all of their owners.

Under Option 2, facilities and suppliers would report the legal names and physical addresses of all their U.S. parent companies together with each U.S. parent company's percentage of ownership. The advantage of this option is that it would provide EPA with a more complete picture of a facility's or supplier's parent companies rather than having information on solely the parent company with the largest ownership interest.

Other Data Element Considered

EPA considered adding a requirement to this proposed rule amendment to report a numeric corporate identifier derived from a database that would verify the facility-parent company linkage. EPA considered both private and public sources of facility-parent company identifiers including the following: Dun & Bradstreet Data Universal Numbering System (DUNS), Securities and Exchange Commission (SEC) Central Index Key, Stock Tickers, Committee on Uniform Security Identification Procedures (CUSIP), Federal Employee Identification Numbers (FEIN), National Institutes of Health (NIH) Electronic Research Administration, and LexisNexis. For a summary of these corporate identifiers please see the docket at EPA–HQ–OAR–2009–0925. EPA decided not to propose a numeric identifier because none of the options considered meet the Agency's data needs. The privately held databases such as Dun & Bradstreet DUNS and CUSIP require a licensing agreement with the Agency, which potentially restricts the use of the data. In addition, users outside of EPA would need to purchase a license to use the numeric identifier data element. Several of the options considered, such as stock tickers, CUSIP, SEC central index key, and LexisNexis only cover public corporations. The Mandatory GHG Reporting Rule covers both private and public corporations. In accordance with Internal Revenue Code 6103, FEINs can only be collected and released on a voluntary basis and EPA would have no method for evaluating the quality of the information. Accordingly we are not proposing a corporate numeric identifier.

B. NAICS Code

In addition to collecting information on each reporter's U.S. parent company(s), this proposed rule amendment would require each facility or supplier reporting under the Mandatory GHG Reporting Rule to report its primary NAICS code and any other NAICS codes applicable to its facility. This information is useful because it would provide an additional data element that can assist EPA to further aggregate and analyze the data collected under the Mandatory GHG Reporting Rule at the sector level.

For the purposes of this proposed rule amendment, EPA is proposing to define a reporter's primary North American Industry Classification System (NAICS) code as the six-digit code that represents the reporter's primary product/activity/service at the facility, as defined in "North American Industry Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service. The primary NAICS code is the principal source of revenue. EPA is proposing to define additional NAICS codes as those codes that correspond to product(s)/activity(s)/service(s) that provide economic profit, but that are not related to the principal source of revenue. EPA considered using three and four digit NAICS codes, but chose the six digit NAICS code(s) because they provide more detailed information. In addition, use of the six digit NAICS codes is consistent with TRI and other EPA databases. Therefore, the six digit NAICS codes allow data to be compared across EPA data sets.

EPA is proposing the following instructions to reporters regarding the designation of NAICS code(s):

Enter the six-digit North American Industry Classification System (NAICS) code that most accurately describes the primary product/activity/service at the facility, based on value of shipments. A facility may consist of two or more distinct and separate economic units that may have different NAICS codes. Provide all other NAICS codes relating to product(s)/activity(s)/service(s) that provide economic profit, but that are not related to the principal source of revenue for your facility, in order of largest revenue to smallest. For additional guidance on how to determine the proper NAICS code(s) go to *http://www.census.gov/eos/www/naics/*.

Federal facilities should report the NAICS code that most closely represents the activities taking place at the site. For example, a federally-owned, fossil-fuel fired electrical power plant would be classified as 221112—electric power generation, fossil fuels.

The proposed definition and instructions for reporting NAICS codes are consistent with those used by TRI and other EPA data collections. In addition, the definition and methodology for determining the primary NAICS code for a facility are consistent with the definition and methodology used by the Bureau of the Census and other government agencies.

C. Cogeneration

EPA is proposing to require that reporters subject to the Mandatory GHG Reporting Rule indicate (by checking yes or no) whether some or all of the GHG emissions they report are from a cogeneration (also known as combined heat and power (CHP)) unit located at the facility. For the purposes of this proposal, a cogeneration unit is defined as a unit that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential [or simultaneous] use of the original fuel energy.[24] EPA based this proposed definition of cogeneration on the Agency's Acid Rain Program to promote consistency and comparable data collection across EPA regulatory programs.

Cogeneration units generate both electricity and thermal energy from a single fuel source. Because less fuel is burned to produce each unit of energy output, cogeneration is more efficient than separate generation of electricity and thermal energy to meet the facility's loads, thereby reducing air pollution and GHG emissions. Additional efficiencies and emissions reductions are gained by the reduction or elimination of transmission and distribution line losses associated with transporting central station generation.

Facilities with cogeneration units may increase their on-site GHG emissions when compared to similar facilities purchasing central-station electricity and generating separate thermal energy on-site. This can occur because the facility is using cogeneration to efficiently generate electric and thermal

[24] 40 CFR 72.2.

energy for its own use and in some cases, selling excess power to the grid. While more fuel is being burned on site, it is displacing purchased central electric generation off-site, as well as the stand-alone generation of on site thermal energy, and the associated GHG emissions. Even in these cases, cogeneration units can result in net reductions of GHG emissions compared to separate power and heat generation.

Information on the types and characteristics of facilities that employ cogeneration technologies and the performance of cogeneration units could be important to future development of greenhouse gas mitigation strategies. EPA recognizes that the information required under this proposal may not, by itself, be sufficient to determine the actual quantity of GHG emissions occurring from cogeneration units at individual reporting facilities, companies or NAICS sectors. It would also not provide the degree to which those cogeneration emissions displace fossil fuel or other fuel source emissions from central station generation plants. However, the proposed information would allow EPA and States to identify facilities using cogeneration. In addition, EPA recognizes that not all emissions at individual reporting facilities with cogeneration are attributable to the cogeneration unit(s). As such, it should not be inferred that all emissions at an individual reporting facility with cogeneration are attributed to the cogeneration unit(s).

This information is not currently collected by EPA and only limited data are available from other Federal and State programs. EPA's Combined Heat and Power Partnership,[25] a voluntary program created in 2001, requires that Partners complete a Letter of Intent that states that Partner agrees to provide data on existing Combined Heat and Power (also known as cogeneration) projects and new project development to help EPA determine climate benefits. Because the Combined Heat and Power Partnership is a voluntary program, it is not a comprehensive source for this data. The data available from the Energy Information Administration of the U.S. Department of Energy is limited to utility and non-utility power generators greater than 1 MW.[26] By requiring all facilities subject to the Mandatory GHG Reporting Rule to report the operation of cogeneration units at their facility, EPA would significantly broaden its knowledge regarding the current implementation of cogeneration in all sectors of the economy. By collecting this information annually, EPA would also be able to track changes in the use of this technology in individual sectors and across the entire U.S. economy.

The burden of reporting this additional information to EPA would be minimal, because reporters are already required to submit annual reports and should readily know (or could quickly determine), whether there is a cogeneration unit at the facility.

D. Frequency of Reporting

EPA is proposing to require that facilities and suppliers subject to the Mandatory GHG Reporting Rule submit information regarding their U.S. parent company, their NAICS code(s), and whether or not any of their reported emissions are from a cogeneration unit, on an annual basis, as part of their annual reports. EPA is further proposing to require that regulated entities report this information as it exists on December 31 of the reporting year, to be consistent with other EPA reporting programs, such as TRI.

EPA recognizes that a reporter's U.S. parent company and/or NAICS code(s) may change during the course of the year. In some instances this information may even change multiple times throughout the year. However, EPA determined that if it were to require reporters to update these data elements more than once a year, such as every time there is a change in a reporter's U.S. parent company, or in its primary product, activity, or service, the burden of this information collection would be greater than the benefit of obtaining that additional information. Therefore, EPA is proposing that reporters only be required to report on these data elements once a year, as part of their regularly scheduled annual reports.

E. Applicability

EPA proposes that all facilities and suppliers subject to the Mandatory GHG Reporting Rule be required to report the additional information proposed in this amendment. The proposed definitions of "U.S. parent company," "primary and other applicable NAICS code(s)," and "cogeneration unit" would apply only to this proposal to add these data elements to the list of items that must be reported under 40 CFR 98.3(c) of subpart A. The proposed definitions would not change the applicability of any subpart in the promulgated Mandatory GHG Reporting Rule (40 CFR part 98). They also would not change the level of reporting or who is required to submit reports.

The proposed definition of U.S. parent company would not override or change the meaning of similar terms that refer to company level or corporate level requirements. Many subparts (including subparts A, C, G, K, P, Q, R, Y, GG, and HH) use the term "company records," which is defined in subpart A. The term "corporate level" is used in subpart MM to require importers and exporters to report at the corporate level, rather than the facility level. "Corporate documents" are referred to in subpart A. None of these terms, definitions, or associated requirements would be affected by the proposed definition of "U.S. parent company."

In addition, the proposed definition of U.S. parent company would also not affect the definitions of "importer" and "exporter" in subpart A, or the applicability of the suppliers source categories (40 CFR part 98). The proposed definition also does not affect the term "local distribution company" as described in 40 CFR part 98, subpart NN. These terms retain their meaning in the Mandatory GHG Reporting Rule.

F. Request for Comment

EPA requests comments on its proposal to require reporters under the Mandatory GHG Reporting Rule (40 CFR part 98) to provide information regarding their U.S. parent company, their NAICS code(s), and whether any of their reported emissions are from a cogeneration unit.

While EPA is interested in receiving comments on the proposal in its entirety, EPA is particularly interested in receiving comments on the following issues. First, EPA is interested in receiving comments on using numeric corporate identifiers and whether there are additional numeric identifiers the Agency should consider for this proposed rule amendment.

Second, EPA solicits comments on whether it should be mandatory or voluntary for reporters to indicate whether or not any of their emissions arise from the operation of cogeneration units. EPA is interested in receiving comments, data, and analysis on both the option of mandating the disclosure of this information, and the option of making the reporting of this information voluntary.

Third, EPA solicits comments on whether facilities and suppliers owned by foreign companies always have a U.S.-based parent company as defined in today's proposal. EPA is interested in receiving comments, data and analysis on whether there may be instances where foreign-owned facilities and suppliers do not have a U.S. parent company. Where commenters believe

[25] *http://www.epa.gov/chp.*

[26] EIA–860, Annual Electric Generator Report *http://www.eia.doe.gov/cneaf/electricity/page/eia860.html:* and, EIA–861, Annual Electric Power Industry Report *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

that such instances may occur, EPA seeks suggestions on how to address this issue.

Lastly, EPA solicits comments regarding the utility and burden of updating the additional information required by this proposed rule amendment on a more frequent basis than the proposed annual reporting. For example, should reporters be required to update the information whenever changes occur with respect to a reporter's U.S. parent company or NAICS code(s)?

While this notice seeks comments on EPA's proposal to collect information on the U.S. parent company(s) and NAICS code(s) of facilities and suppliers required to report under the Mandatory GHG Reporting Rule, and on whether any of the emissions reported by these entities are from cogeneration units, EPA is not reopening the final Mandatory GHG Reporting Rule, and is seeking no further comment on the Mandatory GHG Reporting Rule.

III. Economic Impacts of the Proposed Rule Amendment

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 on the economic impacts of the proposed rule can be found in the text of the Economic Impact Analysis (EIA) (EPA–HQ–OAR–2009–0925).

A. How were compliance costs estimated?

1. Summary of Method Used To Estimate Compliance Costs

The cost analysis estimates the incremental contributions to total reporting burden expected under the Mandatory GHG Reporting Rule and compliance costs associated with reporting the data elements described above. EPA estimated compliance costs based on the time reporters spend meeting the proposed requirements and the associated labor wage rates. EPA's estimated costs of compliance are discussed below and in greater detail in Section 4 of the Economic Impact Analysis (EIA) (EPA–HQ–OAR–2009–0925).

Labor Costs. All of the reporting costs include the time of managers, lawyers, and technical staff in both the private sector and the public sector. To reflect that both management and technical staff will be involved in reporting the above data elements, an overall blended wage rate was developed based on estimates from the Toxics Release Inventory (TRI) program for similar data element reporting at similar facilities. Management staff is estimated to be involved in approximately 0.8 percent of the reporting, while technical staff is likely to be needed for the remaining 99.2 percent. Thus, the blended wage rate used in this analysis is $60.22 per hour. The amount of time required to provide the required information is estimated to be, under Option 1, 80 minutes per facility in the first year and 40 minutes per facility in subsequent years. Under Option 2, the amount of time required for facilities with one owner is 80 minutes per facility in the first year and 40 minutes per facility in subsequent years; time estimated for facilities with more than one owner is 125 minutes per facility in the first year and 85 minutes per facility in subsequent years.

Cost basis. The cost analysis is based on facilities and suppliers currently subject to the Mandatory GHG Reporting Rule and does not account for those expected to be added to the program through upcoming supplemental proposals. The methods and assumptions used to estimate the compliance costs for facilities and suppliers currently subject to the rule would likewise apply to those that may be added to the Mandatory GHG Reporting Rule program in the future. The addition of new facilities or suppliers would increase the total compliance costs in proportion to the increase of the reporting universe. Accordingly, EPA does not expect the burden for newly added industries to change the conclusions of this economic analysis.

B. What are the costs of the rule?

1. Summary of Costs

As shown in Table 3 of this preamble, the total national cost under Option 1 is approximately $877,000 in the first year and about $436,000 in subsequent years (all estimates are in $2006). These estimates include a public sector burden estimate of $85,000 in the first year and $40,000 in subsequent years for program implementation and verification activities.

Total national cost under Option 2 is approximately $889,000 in the first year and about $443,000 in subsequent years (all estimates are in $2006). Option 2 costs include a public sector burden estimate of $90,000 in the first year and $40,000 in subsequent years for program implementation and verification activities. See Table 3 in the next section for a summary of the costs.

C. What are the economic impacts of the rule?

1. Summary of Economic Impacts

EPA prepared an economic analysis to evaluate the impacts of the proposed rule. The analysis estimates the private direct compliance costs per facility and provides a national burden estimate, which includes public costs associated with program implementation and verification activities. Reporting costs were estimated to be less than $100 per facility. As a result, the rule is unlikely to result in significant changes in firms' production decisions or economic choices.

D. What Are the Impacts of the Rule on Small Businesses?

1. Summary of Impacts on Small Businesses

As required by the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA assessed the potential impacts of the rule on small entities (small businesses, governments, and non-profit organizations). (See Section VI.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 average ratio of annualized reporting program costs to revenues would be less than 0.01%. As a result, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

IV. 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 (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

Although this is not a significant economic rule, EPA prepared an analysis of the potential costs and benefits associated with the proposed rule amendment to provide insights on the potential effects. This analysis is contained in the Economic Impact Analysis. A copy of the analysis is available in the docket (EPA–HQ–OAR–

2009–0925) for this action and is briefly summarized here. In the economic analysis, EPA has identified the proposed rule's two alternative options as well as a summary of the compliance burden and the costs. The cost analysis, presented in Section III of this preamble, estimates the total annualized burden, which is presented in Table 3 of this preamble:

TABLE 3—COST SUMMARY FOR TWO ALTERNATIVES UNDER THE PROPOSED RULEMAKING

Cost	Option 1 (in thousands, $2006)		Option 2 (in thousands, $2006)	
	Year 1	Subsequent years	Year 1	Subsequent years
National compliance	$792	$396	$799	$403
Public	85	40	90	40
Total	877	436	889	443

Note: Numbers may not add due to rounding.

Overall, EPA has concluded that the costs of the proposal to collect U.S. parent company(s), NAICS codes, and cogeneration information as part of the Mandatory GHG Reporting Rule are outweighed by the potential benefits of more comprehensive information about GHG emissions.

B. Paperwork Reduction Act

The information collection requirements for this proposed rule amendment has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was previously prepared for the final Mandatory GHG Reporting Rule and was assigned EPA ICR number 2300.03. The information collection requirements of this proposed rule amendment to the Mandatory GHG Reporting Rule are documented in an additional ICR document, which was assigned EPA ICR number 2374.01.

The collection of additional information from facilities and suppliers reporting under the Mandatory GHG Reporting Rule identifying U.S. parent company(s), primary and other applicable NAICS codes, and an indication of whether or not the reported emissions include any emissions from a cogeneration unit, would assist EPA in aggregating facility level data to the corporate and sector levels. In addition, users of the data could compare emissions among facilities with and without cogeneration. This proposed rule amendment would provide information useful for a variety of policies, and potential nonregulatory and regulatory efforts, including informing the development of future climate change regulatory strategies. For example, through data collected under this proposed rule amendment, EPA would gain a better understanding of the aggregate GHG emissions of corporations and specific industry sectors.

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 information collected under CAA section 114 cannot be claimed as CBI and will be made public.

The projected average annual cost and hour burden for non-Federal respondents is about $528,000 and 8,800 hours under option 1 and $535,000 and 8,900 hours under option 2. The estimated average annual burden per response is 0.15 hour per either option; the proposed frequency of response is annual for all respondents that must comply with the proposed rule amendment; and the estimated average number of likely respondents per year is 9,868 under either option. 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), a total operation and maintenance component (averaging $0 per year), and a labor cost component (averaging $528,000 per year under Option 1 and $535,000 under Option 2). Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule amendment. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 12, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by May 12, 2010. The final rule amendment will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule amendment subject to notice and comment requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule amendment 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 the proposed rule amendment on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The additional per-entity costs under

each option are substantially smaller (option 1: Less than $81 in year 1 and $41 in subsequent years) (option 2: Less than $81 in year 1 and $41 in subsequent years) than the burden for the overall rule. The costs are therefore not enough to constitute a significant economic impact on a substantial number of small entities. The small entities directly regulated by the proposed rule amendment include small businesses across all sectors encompassed by the rule, small governmental jurisdictions and small non-profits. We have determined that some small businesses will be affected because their production processes emit GHGs that must be reported, or because they have stationary combustion units on site that emit GHGs that must be reported. Small governments and small non-profits are generally affected because they have regulated landfills or stationary combustion units on site, or because they own a local distribution company subject to 40 CFR part 98, subpart NN (natural gas suppliers).

At promulgation of the final Mandatory GHG Reporting rule, EPA examined the impact on small entities (74 FR 56369). In addition, EPA described the steps the EPA took to reduce the impact of the Mandatory GHG Reporting Rule on small entities (74 FR 56369).

EPA continues to be interested in the potential impacts of the proposed rule amendment on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed rule amendment 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. As shown in the Economic Impact Analysis, EPA estimated the several national cost estimates and found annual expenditures were below $100 million threshold ($400,000 to $1.5 million, including the sensitivity analysis.) Thus, the proposed rule amendment is not subject to the requirements of sections 202 or 205 of UMRA.

The proposed rule amendment is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed new rule requires facilities and suppliers already subject to the Mandatory GHG Reporting Rule to provide additional data in each annual GHG report, and the additional data elements required are the same for all reporters (private and public). In addition, EPA's small entity analysis shows the average ratio of annualized reporting program costs to revenues would be less than 0.01 percent.

The proposed rule amendment to the Mandatory GHG Reporting Rule applies directly to reporters that supply fuel or industrial gases that when used emit greenhouse gases, and to reporters that directly emit greenhouses gases. The proposed rule amendment does not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels such as a landfill or large stationary combustion source. In addition, the proposed rule amendment does not impose any implementation responsibilities on State, local, or Tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impacts on governments affected by the proposed rule amendment are expected to be minimal.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. However, for a more detailed discussion about how the Mandatory GHG Reporting Rule relates to existing State programs, please see Section II of the preamble to the final Mandatory GHG Reporting Rule (74 FR 56266).

This proposed rule amendment applies directly to reporters that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. It does not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels such as a landfill or large stationary combustion source, so relatively few government facilities would be affected. This proposed rule amendment 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 action.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed action from State and local officials.

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

This proposed rule amendment is not expected to have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). The proposed amendment applies directly to entities that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. This proposed rule amendment does not pose significant costs on either a per-entity or national basis; few, if any, facilities or suppliers that are expected to be affected by the proposed rule amendment are anticipated to be owned by Tribal governments. This proposed rule amendment also does not limit the power of Tribes to collect GHG data and/or regulate GHG emissions. Thus, EO 13175 does not apply to the proposed amendment.

Although EO 13175 does not apply to this proposed rule amendment, EPA sought opportunities to provide information to Tribal governments and representatives during development of the rule amendment, as documented in the preamble to the promulgated Mandatory GHG Reporting Rule (74 FR 56371).

EPA specifically solicits additional comment on this proposed rule amendment from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to EO 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 12866.

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 (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 proposed rule amendment does not involve technical standards. Therefore, EPA is not considering 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, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule amendment will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule amendment does not affect the level of protection provided to human health or the environment because it addresses information collection and reporting.

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: March 22, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

2. Section 98.3 is amended as follows:

a. By adding paragraph (c)(4)(v).

b. By adding paragraph (c)(10).

c. By adding paragraph (c)(11).

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(c) * * *

(4) * * *

(v) Indicate whether reported emissions from the facility include emissions from a cogeneration unit (yes or no).

* * * * *

(10) NAICS code(s) that apply to the facility or supplier.

(i) Primary NAICS code. Report the NAICS code(s) that most accurately describes the primary product/activity/service at the facility, based on revenue. The primary product/activity/service at the facility provides economic profit and is the principal source of revenue.

(ii) Additional NAICS code(s). Report additional NAICS codes that correspond to product(s)/activity(s)/service(s) at the facility that provide economic profit, but that are not related to the principal source of revenue. If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.

(11) Legal name(s) and physical address(es) of the highest-level United States parent company(s) and the percentage of ownership interest for each listed parent company as of December 31 of the reporting year.

(i) For reporting the United States parent company(s) and their percentage(s) of ownership interest, follow these instructions:

(A) If the reporting entity is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report 100 percent ownership.

(B) If the reporting entity is entirely owned by a single United States company that is, itself, owned by another company (*e.g.,* it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report 100 percent ownership.

(C) If the reporting entity is owned by more than one United States company (*e.g.,* company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), provide the legal names and physical addresses of all the companies with an ownership interest as the United States parent companies and report the percent ownership of each.

(D) If the reporting entity is owned by a joint venture or a cooperative, the joint venture or cooperative is its own U.S. parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report 100 percent ownership by the joint venture or cooperative.

(E) If the reporting entity is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report 100 percent ownership.

(F) If the reporting entity is partially owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of all the other companies with an ownership interest, as United States parent companies, and report the percent ownership of each of these companies.

(G) If you are reporting for a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(ii) [Reserved]

* * * * *

3. Section 98.6 is amended by adding definitions of "Cogeneration unit", "North American Industry Classification System (NAICS) code(s)", "Physical address", and "United States parent company(s)" in alphabetical order to read as follows:

§ 98.6 Definitions.

* * * * *

Cogeneration unit means a unit that produces electrical energy and useful thermal energy for industrial, commercial, or heating or cooling purposes, through the sequential or

simultaneous use of the original fuel energy.

* * * * *

North American Industry Classification System (NAICS) code(s) means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service.

* * * * *

Physical address, with respect to a United States parent company as defined in this section, means the street address, city, State and zip code of that company's physical location.

* * * * *

United States parent company(s) mean the highest-level United States company(s) with an ownership interest in the reporting entity as of December 31 of the reporting year.

* * * * *

[FR Doc. 2010–6765 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 69
Monday, April 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.

EXECUTIVE OFFICE OF THE PRESIDENT

National Commission on Fiscal Responsibility and Reform

April 2010 Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Commission on Fiscal Responsibility and Reform announces the following meeting:

Name: National Commission on Fiscal Responsibility and Reform April 2010 Meeting.

Time and Date: Tuesday, April 27, 10 a.m.–1 p.m. EDT.

Place: The location of the meeting is Washington, DC. If you would like to attend, please RSVP to the Designated Federal Office (DFO), Bruce Reed at *commission@fc.eop.gov.* Those who have expressed interest in attending this meeting will be contacted once the location is finalized.

Status: The meeting will be open to the public, but limited by the space available.

Purpose: This will be the first meeting of the recently established National Commission on Fiscal Responsibility and Reform (Commission). At this meeting the Commission will discuss the Nation's long-term fiscal challenges and define the scope of the Commission's work.

Contact Person for Additional Information: Please contact Bruce Reed for any additional information about the meeting at *commission@fc.eop.gov.*

Agenda: This meeting will be the inaugural gathering of Commission members. In addition to introducing members to one another, at this meeting the Commission will discuss the Nation's long-term fiscal challenges and define the scope of the Commission's work. Additionally the Commission will discuss its internal operating structure and seek to identify what subcommittees should be formed to support its work. A more complete agenda will be made publicly available prior to the April 27 meeting and can be requested from the DFO at *commission@fc.eop.gov.*

Public Comment: If you would like to submit written comment for distribution prior to the meeting it should be received no later than April 17, 2010. The preferred written comment format is MS Word submitted to *commission@fc.eop.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, please inform the DFO at *commission@fc.eop.gov* as soon as possible.

Dated: April 7, 2010.

Bruce Reed,

Executive Director of the Commission.

[FR Doc. 2010–8370 Filed 4–9–10; 8:45 am]

BILLING CODE 3160–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 6, 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.

Forest Service

Title: National Visitor Use Monitoring, and Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Control Number: 0596–0110.

Summary of Collection: The National Forest Management Act (NFMA) of 1976 and the Government Performance and Results Act of 1993(GPRA) require a comprehensive assessment of present and anticipated uses, demand for and supply of renewable resources from the nation's public and private forests and rangelands. An important element in the reporting is the number of visits to National Forests and Grasslands, as well as to Wilderness Areas that the agency manages. The Forest Service and Department of Interior agencies will use the National Visitor Use Monitoring (NVUM) survey to collect the information.

Need and Use of the Information: The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) study combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use face-to-face interviewing for collecting information on-site as well as written survey instruments to be mailed back by respondents. The NVUM results and data are a source of data and information in addressing forest land management planning, national strategic planning, service to minorities, and identification of a forest's recreation niche.

Description of Respondents: Individuals or households.

Number of Respondents: 66,900.

Frequency of Responses: Reporting; Quarterly; Annually.

Total Burden Hours: 9,067.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–8201 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic National Forest; Federal Register—Title II Resource Advisory Committee Meeting Advisory

AGENCY: Olympic National Forest, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Olympic Peninsula Resource Advisory Committee will meet this May in Shelton, Washington. The purpose of this meeting will be to review project proposals and provide recommendations for Title II projects to be funded by the Secure Rural Schools and Community Self-Determination Act.

DATES: The meeting will be held on May 5, 2010, from 9 a.m. until 5:30 p.m. A public input session will be provided at the meeting. Comments will be limited to three minutes per person.

ADDRESSES: The meeting will he held at the Green Diamond Colonial House, located at 222 West Pine Street, Shelton, WA 98584.

FOR FURTHER INFORMATION CONTACT: Dale Horn, Forest Supervisor, the Designated Federal Official for the Olympic National Forest Resource Advisory Committee, at 360–956–2300, 1835 Black Lake Blvd., SW., Olympia, WA 98512.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Project discussion will be limited to Resource Advisory Committee members and Forest Service personnel. However, a public input session will be provided on the agenda, and individuals will have the opportunity to address the committee at that time.

Dated: April 5, 2010.

Dale Horn,

Forest Supervisor.

[FR Doc. 2010–8248 Filed 4–9–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0023; FV10–930–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intent to request an extension for and revision to a currently approved information collection for Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930 (7 CFR part 930).

DATES: Comments on this notice must be received by June 11, 2010.

Additional Information or Comments: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–6862, Fax: (202) 720–8938.

Small business may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone (202) 690–3919; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930 (7 CFR part 930).

OMB Number: 0581–0177.

Expiration Date of Approval: August 31, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Under the authority of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries may enter into marketing orders. The Secretary of Agriculture oversees their operations and issues regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, and to administer the program, which has operated since 1996.

The tart cherry marketing order (7 CFR part 930) regulates the handling of tart cherries in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order authorizes volume regulations that provide for a reserve pool in times of heavy cherry supplies. Provisions not currently in use include minimum grade and size regulations, and market research and development projects, including paid advertising.

The order, and rules and regulations issued there under, authorize the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in carrying out marketing decisions.

The Board has developed forms as a means for persons to file the required and minimum necessary information with the Board relating to tart cherry inventories, shipments, diversions, and other information needed to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order. Since this order regulates canned and frozen forms of tart cherries, reporting requirements will be in effect all year. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, tart cherry growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the Secretary. Formal rulemaking amendments to the order must be approved in grower referenda conducted by the Secretary. In addition, USDA may conduct a referendum to determine industry support for continuation of the order. Finally, handlers are asked to sign an agreement to indicate their willingness to comply with the provisions of the order if the order is amended. These forms are included in this request.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized

Board employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .183 hours per response.

Respondents: Tart cherry growers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 943.

Estimated Number of Responses per Respondent: 4.93.

Estimated Total Annual Burden on Respondents: 852 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection 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.

Interested persons are invited to submit written comments concerning this rule. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the same address, or can be viewed at: *http://www.regulations.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 7, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8280 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–10–0022; FV10–033–1NC.]

Notice of Request for Renewal of a Recordkeeping Burden

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for renewal a recordkeeping burden for the information collection for the Export Fruit Acts covering exports of apples and grapes.

DATES: Comments on this notice must be received by June 11, 2010 to be assured of consideration.

Additional Information or Comments: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC, 20250–0237; telephone (202) 720–6862 or Fax (202) 720–8938.

Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 690–3919, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Title: Export Fruit Regulations—Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

OMB Number: 0581–0143.

Expiration Date of Approval: November 30, 2010.

Type of Request: Request for Renewal of a Recordkeeping Burden.

Abstract: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599)(Acts), which are found respectively at 7 CFR parts 33 and 35. Currently, plums are not regulated under the Act. The regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico. Certain limited quantity provisions may exempt some shipments and exporters from this information collection. The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity.

The information collection requirements in this request are essential to carry out the intent and administration of the Acts. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes).

Specific regulations issued under the Acts (7 CFR § 33.11 for apples, and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes is in compliance with quality and shipping requirements effective under the Acts. Shipments are inspected and certified by Federal or Federal-State Inspection Program (FSIP) inspectors. FSIP is administered by USDA.

The information collection requirements in this request impose the minimum burden necessary to effectively administer the Acts.

The information collection burden for this action is primarily in the form of recordkeeping. Export Form Certificates (certificates) issued by FSIP are used to facilitate the export process. The certificates are not completed by the exporters or carriers and are not filed with USDA. The certificates are retained by each exporter, and third party carrier which ships the commodity, to verify their compliance with the Acts. There are an estimated 80 exporters of apples and grapes and an estimated 20 carriers which transport those shipments. Pursuant to the Acts, exporters and carriers must retain inspection certificates for three (3) years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Recordkeepers: Apple and grape exporters and carriers.

Estimated Number of Recordkeepers: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

All comments received will be available for public inspection during regular business hours at the same address, or can be viewed at: *http://www.regulations.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 7, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8286 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent to Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the National Agricultural Library's (NAL) intent to request the approval of the Food Safety Education and Training Materials Sharing form from people who work in the food safety education and training fields.

DATES: Comments on this notice must be received by June 16, 2010 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Tara Smith, U.S. Department of Agriculture, National Agricultural Library, 10301 Baltimore Avenue, Room #304, Beltsville, Maryland 20705. Comments may be sent by fax to (301) 504–7680, or by e-mail to *tara.smith@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Tara Smith, telephone (301) 504–5515.

SUPPLEMENTARY INFORMATION:

Title: Food Safety Education and Training Materials Sharing Form.

Authority: Pub. L. 104–13; 5 CFR Part 1320 (60 FR 44978, August 29, 1995).

OMB Number: 0518–XXXX.

Expiration Date: Three years from the date of approval.

Type of Request: Approval for data collection from individuals working in the areas of food safety education and training.

Abstract: The Food Safety Education and Training Materials Sharing form contains three sections and is used to collect information about materials developed to support food safety education (*e.g.* DVDs, posters, curriculum, kits) for inclusion in NAL's Food Safety Education and Training Materials Database. The questionnaire collects the name and email address of the person submitting the form, information on the resource/education material developed (*e.g.* title, target audience focus, a description, publisher/distributor information and information on the author) to determine if a readability formula was used or if the project is associated with a grant or other funded mechanism.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per respondent.

Respondents: Individuals working in the areas of food safety education and training.

Estimated Number of Respondents: 35 per year.

Estimated Total Annual Burden on Respondents: 525 minutes or 8.75 hours.

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, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 18, 2010.

Caird E. Rexroad, Jr.,

Associate Administrator, ARS.

[FR Doc. 2010–8258 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cooperative Conservation Partnership Initiative

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of request for proposals.

SUMMARY: Section 2707 of the Food, Conservation, and Energy Act of 2008 (2008 Act) establishes the Cooperative Conservation Partnership Initiative (CCPI) by amending section 1243 of the Food Security Act of 1985 [16 U.S.C. 3843]. The Secretary of Agriculture has delegated the authority to administer CCPI to the Chief of the Natural Resources Conservation Service (NRCS), who is Vice President of the Commodity Credit Corporation (CCC). NRCS is an agency of the Department of Agriculture (USDA). The CCPI is a voluntary conservation initiative that enables the use of certain conservation programs along with resources of eligible partners to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands. In fiscal year (FY) 2010, NRCS will make Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), and Wildlife Habitat Incentive Program (WHIP) funds available to owners and operators of agricultural and nonindustrial private forest lands who participate in approved CCPI project areas.

The purpose of this notice is to solicit proposals from potential partners who seek to enter into partnership agreements with NRCS to provide assistance to producers enrolled in the various programs listed above, and to inform agricultural producers of the potential availability of program funds through approved projects.

DATES: *Effective Date:* The notice of request is effective April 12, 2010.

Eligible partners may submit proposals by mail or via courier.

- *By mail:* Proposals must be postmarked May 27, 2010.
- *By courier:* Proposals must be delivered by: May 27, 2010.

ADDRESSES: Written proposals should be submitted to the addresses identified below, with copies to the appropriate NRCS State Conservationist whose names and addresses are identified as an attachment to this notice. If a project is multi-State in scope, potential partners must send each State Conservationist in the proposed project area the proposal for review.

- *By mail:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, "National CCPI Proposal," 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250. (**Note:** Registered or Certified Mail to a Post Office Box will not be accepted.)
- *By courier:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, "National CCPI Proposal," 1400 Independence Ave., SW., Room 5239 South Building, Washington, DC 20250. Proposals will be accepted between 9 a.m. and 4 p.m. Eastern time, Monday through Friday, except Federal holidays. Please ask the guard at the entrance to the South Building to call (202) 720–1845.

Note: Proposals submitted by fax, e-mail, or after the deadline date listed in this notice will not be considered.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250; Telephone: (202) 720–1845; fax: (202) 720–4265; or e-mail: *CCPI@wdc.usda.gov.* Additional information regarding CCPI is available at the following NRCS Web page: *http://www.nrcs.usda.gov/programs/CCPI/.*

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Revisions to the CCPI Notice

The fiscal year (FY) 2010 notice of request for proposals includes significant additions in comparison with the notice issued in FY 2009. Generally, the basic authority, procedures, and program requirements have not changed. Partners who responded to the FY 2009 notice reported difficulty in understanding where and how to apply, confusion about administration and purpose of the new CCPI authority and requirements of partners, misunderstanding that CCPI was not a grant program for partners, lack of knowledge about NRCS resource concerns and conservation practices that needed to be addressed through the partnership, frustration in NRCS terminology used in the notice, and other concerns. As the result of these concerns, the agency is revising this notice to provide better explanation of the program and requirements for proposal submission. This notice includes more explanation of the program, added definitions, clarification of the requirements and criteria to be addressed in the proposal, links to resources to help partners apply, and other general improvements. While the FY 2010 notice is longer than the FY 2009, the actual requirements for submission of the proposal are not significantly different and pose no additional burden or workload.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of at least $5 million in financial assistance to support new projects during FY 2010. NRCS will implement CCPI by entering into partnership agreements with eligible State and local governments, federally recognized Indian tribes, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers.

NRCS will implement CCPI by entering into partnership agreements with eligible entities to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands to address priority natural resource concerns. Eligible partners must submit complete proposals to Gregory K. Johnson, Director, Financial Assistance Programs Division. Proposals are submitted by eligible partners, and project evaluation will be based upon a competitive process and the criteria established in this notice. Once the Chief approves and announces the proposals selected, agricultural producers within the approved project areas may submit an application directly to NRCS for one or more of the following programs that may be approved for the project: EQIP, CSP, or WHIP.

The following are eligible to submit a proposal and enter into a partnership agreement with NRCS: Federally recognized Indian tribes; State and local units of government; producer associations; farmer cooperatives; and institutions of higher education or nongovernmental organizations with a history of working cooperatively with producers. Nongovernmental organizations are entities as defined by the Internal Revenue Service and as cited in the definitions section of this notice. This is not a grant program, and all Federal funds made available through this request for proposals will be paid directly to producers through program contract agreements. No technical assistance funding may be provided to a partner through the CCPI partner agreement. However, if requested by a partner, the State Conservationist may consider development of a separate contribution agreement with a qualified partner to provide funding for delivery of technical services to producers participating in an approved CCPI project.

Individual agricultural producers are not CCPI eligible entities and may not submit proposals, nor may they apply for program benefits through this proposal submission process. No Federal CCPI funding may be used to cover partner's administrative expenses. Administrative activities include any indirect or direct costs relating to submitting or implementing the project proposal. This notice provides information about CCPI and instructions for submitting partner proposals. Project approval and development of partnership agreements for projects will be based on competitive evaluation and the criteria established in this notice.

Definitions

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation in reference to CSP means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the producer for the term of the proposed contract; and

(2) Which is operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

Animal waste storage or treatment facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a person, legal entity, joint operation, or tribe that has an interest in an agricultural or forestry operation, as defined in 7 CFR part 1400, who has requested to participate in EQIP, CSP, or WHIP.

Beginning Farmer or Rancher means a person or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of the Natural Resources Conservation Service, or designee.

Conservation Activity Plan means a resource-specific conservation plan prepared by a certified Technical Service Provider (TSP) as authorized by the 2008 Act for financial assistance payment through EQIP for eligible land of the producer.

Conservation activities related to CSP means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS. In general and for other programs, the term conservation activities includes any kind of measure, treatment, practice, or activity associated with an agricultural operation which may or may not be associated with an NRCS conservation practice or program support.

Conservation Measurement Tool means procedures developed by NRCS to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance improvement.

Conservation planning means using the NRCS planning process outlined in the NRCS National Planning Procedures Handbook (NPPH). The NPPH is available at: *http://directives.sc.egov.usda.gov/.*

Conservation practice means one or more conservation improvements and planning activities including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes that are planned and installed in accordance with standards and specifications contained in the NRCS Field Office Technical Guide (FOTG). Only EQIP may provide financial assistance for support of the activity of conservation planning. Conservation practices funded through CCPI are subject to requirements of each of the authorized programs:

(1) EQIP regulation 7 CFR part 1466.—*http://www.nrcs.usda.gov/programs/eqip.*

(2) CSP regulation 7 CFR part 1470—*http://www.nrcs.usda.gov/programs/new_csp/csp.html/.*

(3) WHIP regulation 7 CFR part 636—*http://www.nrcs.usda.gov/programs/whip/.*

Conservation Stewardship Plan means a record of the participant's decisions that describes the schedule of operations and conservation activities to be implemented, managed, maintained, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant's conservation objectives will be maintained with the plan.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract as defined in the EQIP and CSP regulation means a legal document that specifies the rights and obligations of any participant accepted to participate in EQIP or CSP. A program contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices.

Cost-share agreement as defined in the WHIP regulation means a legal document that specifies the rights and obligations of any participant accepted into WHIP. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation.

Conservation Stewardship Program means a program administered by NRCS in accordance with 7 CFR part 1470, which provides for technical and financial assistance to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities and improving, maintaining, and managing existing conservation activities.

Cropland means land used primarily for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural crops, orchards, vineyards, cropped woodland, marshes, cranberry bogs, and other lands used for crop production.

Cropped woodland and marshes means woodland and marshes in which at least 50 percent of the area is actively managed to produce an agricultural product. The crop may be grown symbiotically within the system, such as ginseng and wild rice, or harvested directly from the trees, such as maple syrup. Once established, the agricultural product is harvested annually.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of NRCS programs at the local level.

Enhancement means a type of conservation activity associated with CSP used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.

Environmental Quality Incentives Program means a program administered by NRCS in accordance with 7 CFR part 1466 (*http://www.nrcs.usda.gov/programs/eqip*) which provides technical and financial assistance to eligible producers for the installation and implementation of conservation practices and activities on private agricultural and nonindustrial forest land.

Field Office Technical Guide means the official local NRCS source of

resource information, conservation practice standards, specifications, and interpretation of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains natural resource quality criteria to be achieved to provide for the conservation and sustainability of soil, water, air, plant, and animal resources applicable to the geographic area where resource concerns are addressed. The FOTG can be accessed online at: *http://www.nrcs.usda.gov/technical/efotg/.*

Financial assistance means a payment made to the program participant.

Forest Management Plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in Section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan must comply with Federal, State, tribal, and local laws, regulations, and permit requirements.

Hayland means a subcategory of cropland managed for the production of forage crops that are machine harvested. The crop may be grasses, legumes, or a combination of both.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands that are subject to the rights of use, occupancy, and benefit of certain tribes. For purposes of this notice, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government owned land under Bureau of Indian Affairs jurisdiction.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint agreement means a business arrangement where two or more participants cooperate to carry out conservation practices that can best be accomplished by combining resources. Such agreements must be formally documented and signed by all applicable parties.

Joint operation means a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales of not more than $155,200 in each of the previous 2 years (adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce data).

Local working group means the advisory body pursuant to 16 U.S.C. 3861 and described in 7 CFR part 610. Information regarding these groups can be found at: *http://www.nrcs.usda.gov/programs/StateTech/.*

Management measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program, administered by the USDA Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of the USDA which has responsibility for administering programs such as EQIP, WHIP, and CSP using the funds, facilities, and authorities of the CCC.

Nongovernmental organization is any legal entity that is organized for, and at all times since, the formation of the organization has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986; is an organization described in section 501(c)(3) or that is described in section 509(a)(2) of that Code; or is described in section 509(a)(3) of that Code and

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Participant means a person or legal entity, joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of a contract or cost-share agreement under a program covered by CCPI.

Partner means an entity that enters into a partnership agreement with NRCS to carry out the approved CCPI project. Eligible partners include federally recognized Indian tribes, State and local units of government, producer associations, farmer cooperatives, and institutions of higher education or nongovernmental organizations with a history of working cooperatively with producers.

Note: Individual agricultural producers are not partners under provisions of CCPI and are not eligible to submit proposals as outlined in this notice.

Partnership agreement means a multi-year agreement between NRCS and the partner. The CCPI partnership agreement describes the activities and resources, such as technical or financial assistance, that may be provided by NRCS and the partner to help producers meet the objectives of CCPI in an approved project area. The CCPI partnership agreement does not transfer financial or technical assistance funding to a partner, nor provide for the administrative expenses of the partner. Individual producers may not enter into partnership agreements under CCPI authority.

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. They receive periodic renovation and cultural treatments such as tillage, fertilization, mowing, weed control, and may be irrigated. They are not grown in rotation with crops.

Payment means financial assistance provided to a program participant under the terms of the contract or cost-share agreement. Payments and payment rates are established by program rule. Payments are only provided to assist with implementation of approved conservation practices and activities listed in the FOTG and must meet all other applicable program requirements.

Priority resource concern means a resource concern that is identified by the State Conservationist, with advice from the State Technical Committee and local work groups, as a priority for a State or the specific geographic areas within a State.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to

7 CFR part 1400, or who is engaged in agricultural production or forestry management.

Projects of special environmental significance means projects, as defined in 7 CFR 1466(d) and approved by the Chief, which meet the following criteria:

(1) Site-specific evaluations have been completed, documenting that the project will have substantial positive impacts on critical resources in or near the project area (*e.g.,* impaired water bodies or at-risk species);

(2) The project clearly addresses a national priority and State, tribal, or local priorities, as applicable; and

(3) The project assists the participant in complying with Federal, State, and local regulatory requirements.

Rangeland means land on which the historic climax plant community is predominantly grasses, grass-like plants, forbs, or shrubs and includes lands revegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region, and is identified in the proposal to be addressed through the implementation of conservation practices by producers. Resource concerns used by NRCS are found in section III of each State or local FOTG which can be viewed at: *http://www.nrcs.usda.gov/technical/efotg/.* Examples of natural resource concerns include soil quality, water conservation, water quality, plant condition, air quality, domestic animals, fish and wildlife habitat, and other sub-categories of resource concerns.

Resource-conserving crop means a crop that is one of the following:

(1) A perennial grass, legume, or grass/legume grown for use as forage, seed for planting, or green manure.

(2) A high residue producing crop.

(3) A cover crop following an annual crop.

Resource-conserving crop rotation means a crop rotation that:

(1) Includes at least one resource conserving crop as determined by the State Conservationist.

(2) Reduces erosion.

(3) Improves soil fertility and tilth.

(4) Interrupts pest cycles.

(5) Reduces depletion of soil moisture or otherwise reduces the need for irrigation in applicable areas.

Socially Disadvantaged Farmer or Rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan natives, Hispanics, Asians, and native Hawaiians or other Pacific Islanders.

State Conservationist means the NRCS employee who is authorized to implement conservation programs administered by NRCS and who directs and supervises NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the USDA Secretary in a State pursuant to 16 U.S.C. 3861 and described in 7 CFR part 610. Information regarding these committees can be found at: *http://www.nrcs.usda.gov/programs/StateTech/.*

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes: (1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and (2) technical infrastructure including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses. Information regarding technical assistance can be found at: *http://www.nrcs.usda.gov/programs/cta/.*

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS, in accordance with 7 CFR part 652, to provide technical services to program participants in lieu of or on behalf of NRCS.

Wildlife Habitat Incentive Program means a program administered by NRCS in accordance with 7 CFR part 636, which provides for technical and financial assistance to protect, restore, develop, and enhance wildlife habitat.

Overview of the Cooperative Conservation Partnership Initiative

Background

The CCPI is a voluntary conservation initiative that enables the use of certain conservation programs along with resources of eligible partners to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands and will enhance conservation outcomes. Depending upon the program available, the assistance provided enables participants to implement conservation practices and enhancements, including the development and adoption of innovative conservation practices and management approaches. The partner is not required to provide financial or technical resources toward the project (match); however, proposals that include or offer partner provided resources will be given higher priority consideration in the evaluation process. CCPI financial assistance is delivered directly to producers in approved project areas through program contracts or cost-share agreements; no CCPI funding may be used to cover the partner's administrative expenses.

CCPI uses the funds, policies, and processes of EQIP, CSP, and WHIP to deliver assistance to owners and operators of agricultural and nonindustrial private forest land to implement approved conservation practices and activities. Under CCPI, NRCS enters into partnership agreements with eligible entities that want to enhance conservation outcomes on agricultural and nonindustrial private forest land. As part of the partnership agreement, approved partners may also help facilitate the submission of producers' program applications, or they may provide additional technical or financial assistance to participating agricultural producers or provide other resources as defined in the partnership agreement. A primary intent of CCPI is to leverage non-Federal government resources along with NRCS program resources to achieve resource conservation objectives. The purposes of the CCPI partnership agreement are to:

(1) Address conservation priorities involving agriculture and nonindustrial private forest land on local, State, multi-State, or regional levels;

(2) Encourage producers to cooperate in meeting applicable Federal, State, and local regulatory requirements related to production;

(3) Encourage producers to cooperate in the installation and maintenance of conservation practices; and

(4) Promote the development and demonstration of innovative conservation practices and delivery methods, including practices associated with specialty crop and organic production and precision agriculture operations.

Partners who may enter into partnership agreements with NRCS include federally recognized Indian tribes, State and local units of

government, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Individual agricultural producers are not an eligible partner entity and may not submit CCPI proposals. Potential entity partners may submit proposals that request assistance for a specified project area that may be defined by geo-political boundaries, watershed boundaries, or resource concern. The written proposal must describe the area to be covered by the project, conservation priorities in the area, conservation objectives to be achieved, and the number of producers including nonindustrial private forest landowners who are likely to participate; a description of the partner or partners collaborating to achieve the objectives of the agreement, and the roles, responsibilities, and capabilities of the partner(s); the resources requested from the Chief and the partner; the plan for monitoring, evaluating, and reporting on progress made towards achieving the objectives of the agreement; and other information that may be required.

Once a partnership proposal is selected and the project announced, eligible individual producers located within the project area may apply directly to NRCS for funding under the appropriate conservation program. Individual applications from eligible producers will be evaluated and ranked to ensure that producer applications selected for funding are most likely to achieve project objectives. All Federal funds made available through this CCPI request for proposals will be provided directly to eligible participants through EQIP and CSP program contracts and WHIP cost-share agreements. Producers interested in applying must meet the eligibility requirements of the program for which they are applying.

No technical or financial assistance funding may be provided to a partner through the CCPI partner agreement. However, if requested by a partner, the State Conservationists or Chief may consider development of a separate funding agreement with a qualified partner for delivery of technical services to producers participating in an approved CCPI project.

During FY 2010, an objective of CCPI is to deliver EQIP, CSP, and WHIP assistance to producers to achieve high-priority conservation objectives in geographic areas defined by the partner. Where flexibility is needed to meet project objectives, the partner may request that program adjustments be allowed, provided such policy adjustments are within the scope of the applicable programs' statutory and regulatory program authorities. An example of a program adjustment may be to expedite the applicable program ranking process in a situation where a partner has identified the producers approved to participate in the project. Other examples of program adjustments may include flexibility in payment rate, or using a single area-wide plan of operations rather than individual plans of operations.

Submitting Proposals

Potential partners must submit proposals to Gregory K. Johnson, Director, Financial Assistance Programs Division, addressing all questions and items listed in the "Proposal Requirements" section of this notice. The proposals must be submitted by the date and time identified in this notice. The proposal must include sufficient detail to allow agency reviewers to understand the partner's priority resource concerns, objectives, and expected outcomes.

Incomplete proposals and those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. State Conservationists are expected to provide guidance to potential partners regarding resource concerns that may be addressed in the proposed project area, local working group and State Technical Committee natural resource priorities, approved conservation practices and activities, and other program requirements the partner should consider when developing a proposal. No agency form is provided; potential partners must provide a narrative proposal following the requirements set forth in this notice.

NRCS will review and evaluate the proposals based on the criteria set forth in this notice. Positive consideration will be given to proposals that provide for outreach to beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the area covered by the project. Priority consideration will also be given to proposals that both achieve program purposes, including regional efforts that cross State boundaries, and further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration. CCPI proposals submitted to NRCS become the property of the agency for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted for review and ranking, there will be no further opportunity to change or re-submit the proposal.

Partner Entity Eligibility

Those eligible to participate as partners include federally recognized Indian tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, or nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Individual producers are not eligible to submit proposals under CCPI authorities.

Land Eligibility

The following land is eligible for enrollment in the CCPI:

- Private agricultural and nonindustrial private forest land
- Land meeting the covered programs (EQIP, CSP, and WHIP) eligibility rules Eligible land is defined for each program in regulation:
- EQIP: 7 CFR 1466.8(c)
- CSP: 7 CFR 1470.6(b)
- WHIP: 7 CFR 636.4(b)

Producer Application and Program Contracts

Producers interested in participating in an approved CCPI project may apply for assistance at their local USDA service center. The designated conservationist will help the producer determine which program (EQIP, CSP, or WHIP) is appropriate based on the practices and activities the applicant seeks to install or perform to meet the approved partner project objectives.

Producers seeking to participate in a CCPI project must meet all program-specific eligibility requirements. The requirements that apply to the contract or cost-share agreement are determined by the program selected. For information on program payment limitations and benefits or other program requirements that may apply to land and producers enrolled in EQIP, CSP, and WHIP, consult the appropriate programs' regulation as stated in this notice. Additional information can be found at NRCS Web site at: *http://www.nrcs.usda.gov/programs/.* An agricultural producer may elect to use a TSP for technical assistance associated with conservation planning or practice design and implementation. Producers

applying for CCPI are not required to have an existing program contract, although they must be determined eligible for the assistance being requested from each program prior to entering into a program contract.

Proposal Requirements

For consideration of a proposal, a potential partner must submit five copies of the written proposal and one electronic copy. Projects may not exceed 5 years in length. The proposal must be in the following format and contain the information set forth below:

Proposal Format: There are no forms required or associated with the CCPI proposal process. Five copies of the proposal should be typewritten or printed on 8½″ x 11″ white paper. The text of the application should be in a font no smaller than 12-point, with one-inch margins. One additional copy of the proposal shall be in a format such as Microsoft Word or PDF on one CD ROM. If submitting more than one project proposal, submit a separate complete document for each project. Consult the NRCS national CCPI Web site for an example of an acceptable CCPI proposal document at: *http://www.nrcs.usda.gov/programs/ccpi/.* The entire project proposal may not exceed 12 pages in length including summary, maps, reference materials, and related reports.

Proposal Summary

The basic format for the CCPI proposal is a narrative written response to the questions and information requested in this notice. The proposal must include the following:

(1) Proposal Cover and Summary: The first two pages of the proposal must include:

(a) Project Title.

(b) Project director/manager name, telephone number, and e-mail address.

(c) Name of lead partner entity submitting proposal and other collaborating partners.

(d) Mailing address and telephone numbers for lead partner submitting proposal.

(e) Short general description/summary of project and description of resource issues to be addressed. Identify the specific natural resource concerns to be addressed.

(f) List of approved FOTG conservation practices, enhancements, and conservation activity plans that will be used to address those resource concerns.

(g) Specify the geographic location: State; county(s); congressional districts; and whether proposal is a national multi-State or within-State proposal. Include a general location map.

(h) Proposed project start and end dates (not to exceed a period of 5 years).

(i) Total amount of CCPI financial assistance being requested for project.

(2) Project Natural Resource Objectives and Actions:

The proposal must include the project objectives and the natural resource concerns that will be addressed. A complete list of NRCS approved natural resource concerns may be found on the CCPI Web site at: *http://www.nrcs.usda.gov/programs/ccpi/.*

(a) Identify and provide detail about the natural resource concern(s) to be addressed and how the proposal objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a timeline for completion.

(b) For each objective, identify the actions to be completed to achieve the objective and to address the identified natural resource concern. Note which actions are to be addressed through this project using NRCS program assistance and which are being addressed through alternate non-Federal funding sources or other resources provided.

(3) Detailed Proposal Criteria:

Potential partners must fully describe their project and demonstrate their history of working with agricultural producers to address resource issues. Information provided in the proposal must include:

(a) A description of the partner or partners' history of working with agricultural producers to address the conservation objectives to be achieved.

(b) A detailed description of the geographic area covered by the proposal, conservation priorities in the area, conservation objectives to be achieved, lands to be treated, and the expected level of participation by producers.

(1) Include a detailed map showing the project area. Describe the location and size of the proposed project area. Are the size and scope of the project and the proposed practices to address resource concerns reasonable and achievable?

(2) Outline on the maps the areas which need conservation treatment and identify the number of acres involved. What kinds of conservation practices or enhancements needed to treat priority resource concerns in each area? Are specific areas or conservation practices prioritized in the project area so they will best address specific resource concerns? Which priority areas need to be addressed first?

(c) A description of how the partner(s) will collaborate to achieve the objectives of the agreement and the roles, responsibilities, and capabilities of the partner(s). Proposals that include resources from other than the submitter of the proposal must include a letter or other documentation from the other partners confirming this commitment of resources. Proposals that demonstrate efforts to collaborate with other partners and producers are likely to provide increased environmental benefits, meet the objectives of CCPI, and receive higher ranking consideration in the evaluation process.

(d) A description of the project duration which cannot exceed 5 years in length, plan of action, and project implementation schedule that details when the potential partner anticipates finishing the project and submitting a final report.

(e) A description of the resources (financial and technical assistance) requested from each of the applicable NRCS programs (EQIP, WHIP, and CSP) and the non-Federal resources provided by the partner that will be leveraged by the Federal contribution. A primary intent of CCPI is to leverage other non-Federal resources along with NRCS program resources to achieve project objectives. The partner is not required to provide financial or technical resources (match) toward the project; however, proposals that include or offer non-Federal resources will be given higher priority through the evaluation process. Partners need to clearly state, by project objective, how they intend to leverage Federal funds along with partner resources. The funding and time contribution by agricultural producers to implement agreed-to conservation practices in program contracts may not be considered any part of a match from the potential partner for purposes of CCPI. One purpose of CCPI is to leverage non-Federal resources from partners above and beyond those contributions made by individual producers.

(f) A description of the plan for monitoring, evaluating, and reporting on progress made toward achieving the objectives of the agreement. Priority will be given to projects where the partner can provide resources or services or conduct activities to monitor and evaluate effects of conservation practices and activities implemented through the project.

(g) Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' CCPI applications in the project area. Potential partners should collaborate with NRCS in the State where the

project is proposed to develop meaningful criteria that NRCS can use to evaluate and rank producer program applications. For approved projects, this joint effort will help NRCS select producer applications which will best accomplish the projects' intended conservation goals and address priority resource issues identified by the partner in the proposal. Additional information regarding the process NRCS uses to evaluate and rank individual producer applications is found in each of the authorized programs' regulations. Proposals which include specific ranking criteria developed in collaboration with NRCS may receive higher consideration in the evaluation process. Additional guidance and assistance to develop appropriate criteria may be obtained from State NRCS office where the project will be located.

(h) An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that may participate in the project along with an estimate of the total number of producers located in the project area. Producer participation is a requirement for delivery of CCPI program benefits. How will the partner encourage participation to guarantee success of the project? Does the project include any tribal producers, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or limited resource farmers or ranchers? If so, how many are expected to participate? Are there groups of producers who may submit joint applications to address resource issues of common interest and need?

(i) A listing and description of the conservation practices, conservation activity plans, enhancements, and partner activities to be implemented during the project timeframe and the general sequence of implementation of the project. Also address technical assistance efforts that will be made by the partner and those that the partner requests NRCS implement using eligible approved conservation practices, enhancements, and project financial assistance funding. In this section, list all the NRCS conservation practices and enhancements the partner wishes NRCS to offer to producers through the CCPI project. Information about approved NRCS practices is found in the FOTG at: *http://www.nrcs.usda.gov/technical/efotg/* and descriptions of practices at: *http://www.nrcs.usda.gov/technical/standards/.* For each conservation practice, estimate the amount of practice extent (feet, acres, number, etc.) the partner expects producers to implement each fiscal year during the life of the project and the amount of financial assistance requested to support implementation of each practice through producer contracts. Information on eligible enhancements can be found at the CSP Web site at: *http://www.nrcs.usda.gov/programs/new_csp/csp.html.* Indicate whether the project will address regulatory compliance and any other outcomes that partner expects to complete during the project period. Describe any activities that are innovative or include outcome-based performance measures implemented by the partner.

(j) A description of the amount of CPPI financial assistance funds needed annually for producer contracts that will be used to implement the conservation practices and enhancements identified in previous sections. This section of the proposal must include the total amount of financial assistance funds requested for each fiscal year of the project (for multi-State projects, provide the funds or acres by State as appropriate) to be made available for producer contracts and cost-share agreements.

(k) A description of any requested policy adjustments, by program, with an explanation of why the adjustment is needed in order to achieve the objectives of the project. If a partner is requesting specific program flexibilities that depend on detailed participant or project information, the proposal must provide the needed information. Partners should contact their State Conservationist, or designee, to determine the specific information that may be required.

(l) A description of how the partner will provide for outreach to beginning farmers or ranchers, limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, and Indian tribes.

(m) A description of how the proposal's objectives may provide additional benefits to address renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration, if applicable.

(4) State Conservationist Letter of Review:

Potential partners must include a copy of the letter showing that the written proposal was sent to the appropriate State Conservationist(s). If a project is multi-State in scope, all State Conservationists in the proposed project area must be sent the proposal for review. A list of NRCS State Conservationists, addresses, and phone numbers is included as an attachment at the end of this notice. The State Conservationist(s) will review the proposal to address:

(a) Potential duplication of efforts with other projects or existing programs.

(b) Adherence to, and consistency with, program regulation including requirements related to land and producer eligibility and use of approved NRCS resource concerns and conservation practices, enhancements, and other program requirements.

(c) Expected benefits for project implementation in their State(s).

(d) Other issues or concerns the State Conservationist is aware of that should be considered by the Chief.

(e) A general recommendation for support or denial of project approval.

State Conservationists must submit letters of review to Gregory K. Johnson, Director, Financial Assistance Programs Division no later than 10 calendar days after the deadline for proposal submission. Prior to submission of the proposal, potential partners are strongly encouraged to consult with the appropriate State Conservationist(s) during proposal development to obtain guidance as to appropriate resource concerns to address conservation practices needed and other details of the project proposal. All CCPI proposals become the property of NRCS for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the partner. Once proposals have been submitted to the agency for review and ranking, there will be no further opportunity to change or re-submit the proposal document.

Acknowledgement of Submission and Notifications

Partners whose proposals have been selected will receive a letter of official notification. Upon notification of selection, the partner should contact the State Conservationist listed in the letter to develop the required partnership agreement and other project implementation requirements. Potential partners should note that, depending upon available funding and agency priorities, NRCS may offer a reduced amount of program financial assistance from what was requested in the proposal. Applicants of CCPI proposals not selected will be notified by official letter.

Withdrawal of Proposals

Partner proposals may be withdrawn by written notice to the Director, Financial Assistance Programs Division at any time prior to selection.

Ranking Considerations

The Chief or designee will evaluate proposals using a national competitive

process. A higher priority may be given to proposals that:

(a) Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the proposed project area;

(b) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts;

(c) Deliver high percentages of applied conservation practices to address water quality, water conservation, or State, regional, or national conservation initiatives;

(d) Provide innovation in approved conservation practices, conservation methods, and delivery, including outcome-based performance measures and methods;

(e) Complete the application of the conservation practices and activities on all of the covered program contracts or cost-share agreements in 5 years or less;

(f) Assist the participants in meeting local, State, and Federal regulatory requirements;

(g) Provide for monitoring and evaluation of conservation practices, enhancements, and activities;

(h) Provide for matching financial funds or technical assistance to assist participants with the implementation of their EQIP and CSP contracts and WHIP cost-share agreements;

(i) Further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration;

(j) Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the proposed project area; and

(k) Identify other factors and criteria which best achieve the purposes of CCPI.

Partnership Agreements

Upon selection and approval, NRCS will enter into a partnership agreement with the partner. The partnership agreement will not obligate funds, but will address:

(a) The role of the partner;

(b) The role of NRCS;

(c) The responsibilities of the partner as it relates to the monitoring and evaluation;

(d) The frequency and duration of monitoring and evaluation to be completed by the partner;

(e) The format and frequency of reports (semi-annual, annual, and final) required as a condition of the partnership agreement;

(f) Budget which includes other funding sources (if applicable) for financial and technical assistance;

(g) The specified project schedule and timeframe; and

(h) Other requirements deemed necessary by NRCS to further the purposes of the CCPI project.

Once a proposal is selected, the partnership agreement is signed, and subject to the availability of funding, NRCS begins entering into EQIP and CSP contracts or WHIP cost-share agreements directly with eligible producers including nonindustrial private forest landowners who are participating in the project and located in the approved geographic area. Producer applicants must meet all program eligibility requirements. The program used will depend upon the type of conservation practices to be applied. Participants may have multiple contracts through CCPI if more than one covered program is needed to accomplish the project objectives.

Waiver Authority

To assist in the implementation of CCPI projects through EQIP, CSP, or WHIP, the Chief may waive the applicability of the Adjusted Gross Income Limitation, on a case-by-case basis in accordance with 7 CFR 1400.500(d)(2). Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local designated conservationist.

Signed the 5th day of April, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

State Conservationists

AL—William E. Puckett, 3381 Skyway Drive, P.O. Box 311, Auburn, Alabama 36830, Phone: 334/887–4500, Fax: 334/887–4552, (V) 9027–4557, (E) *william.puckett@al.usda.gov*

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CT—Douglas Zehner, 344 Merrow Road, Suite A, Tolland, Connecticut 06084, Phone: 860/871–4011, Fax: 860/871–4054, (V) 9013–114, (E) *douglas.zehner@ct.usda.gov*

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NH—George Cleek, Federal Building, 2 Madbury Road, Durham, New Hampshire 03824–2043, Phone: 603/868–7581 ext. 125, Fax: 603/868–5301, (V) 9000–868–8035, (E) *george.cleek@nh.usda.gov*

NJ—Thomas Drewes, 220 Davidson Avenue, Somerset, New Jersey 08873, Phone: 732/537–6040, Fax: 732/537–6095, (V) 9000–767–1000, (E) *tom.drewes@nj.usda.gov*

NM—Dennis L. Alexander, 6200 Jefferson Street, NE., Suite 305, Albuquerque, New Mexico 87109–3734, Phone: 505/761–4402 (Rita), Fax: 505/761–4481, (V) 9016–4401, (E) *dennis.alexander@nm.usda.gov*

NY—Astor Boozer, 441 South Salina Street, Suite 354, Syracuse, New York 13202–2450, Phone: 315/477–6504, Fax: 315/477–6550, (V) 9015–6501, (E) *astor.boozer@ny.usda.gov*

NC—J.B. Martin, Acting, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609–6293, Phone: 919/873–2102, Fax: 919/873–2156, (V) 9025–2101, (E) *JB.martin@nc.usda.gov*

ND—Paul Sweeney, 220 E. Rosser Avenue, Room 278, P.O. Box 1458, Bismarck, North Dakota 58502–1458, Phone: 701/530–2000, Fax: 701/530–2110, (V) 9051–2003, (E) *paul.sweeney@nd.usda.gov*

OH—Terry J. Cosby, 200 North High Street, Room 522, Columbus, Ohio 43215–2478, Phone: 614/255–2472, Fax: 614/255–2548, (V) 9000–881–1870, (E) *terry.cosby@oh.usda.gov*

OK—Ronald L. Hilliard, 100 USDA, Suite 206, Stillwater, Oklahoma 74074–2655, Phone: 405/742–1204, Fax: 405/742–1126, (V) 9037–1280, (E) *ron.hillard@ok.usda.gov*

OR—Ron Alvarado, 101 SW Main Street Suite 1300, Portland, Oregon 97204–3221, Phone: 503/414–3200, Fax: 503/414–3103, (V) 9019–3201, (E) *ron.alvarado@or.usda.gov*

PA—Dave Brown, Acting, 1 Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, Phone: 717/237–2203, Fax: 717/237–2238, (V) 9039–2203, (E) *dave.brown@pa.usda.gov*

PR—Angel Figueroa, Acting, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, Puerto Rico 00918–4123, Phone: 787/766–5206, ext. 237, Fax: 787/766–5987, (V) 9000–769–1030, (E) *angel.figueroa@wdc.usda.gov*

RI—Richard "Pooh" Vongkhamdy, 60 Quaker Lane, Suite 46, Warwick, Rhode Island 02886–0111, Phone: 401/828–1300, Fax: 401/828–0433, (V) 9023–115, (E) *pooh.vongkhamdy@ri.usda.gov*

SC—Keisha Brown, Acting, Strom Thurmond Federal Building, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201–2489, Phone: 803/253–3935, Fax: 803/253–3670, (V) 9031–3940, (E) *Keisha.brown@sc.usda.gov*

SD—Janet L. Oertly, Federal Building, Room 203, 200 Fourth Street, S.W., Huron, South Dakota 57350–2475, Phone: 605/352–1200, Fax: 605/352–1288, (V) 9036–1201, (E) *janet.oertly@sd.usda.gov*

TN—Kevin Brown, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203–3878, Phone: 615/277–2531, Fax: 615/277–2578, (V) 9058–2530, (E) *kevin.brown@tn.usda.gov*

TX—Donald W. Gohmert, W.R. Poage Federal Building, 101 South Main Street, Temple, Texas 76501–7602, Phone: 254/742–9800, Fax: 254/742–9819, (V) 9038–9803, (E) *don.gohmert@tx.usda.gov*

UT—Sylvia A. Gillen, W.F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84111, Phone: 801/524–4555, Fax: 801/524–4403, (V) 9000–625–1550, (E) *sylvia.gillen@ut.usda.gov*

VT—Judith M. Doerner, 356 Mountain View Drive, Suite 105, Colchester, Vermont 05446, Phone: 802/951–6795, Fax: 802/951–6327, (V) 9000–768–1240, (E) *judy.doerner@vt.usda.gov*

VA—Vicky Drew, Acting, Jack Bricker, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, Phone: 804/287–1691, Fax: 804/287–1737, (V) 9003–1682, (E) *jack.bricker@va.usda.gov*

WA—Roylene Rides at the Door, Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, Washington 99201–2348, Phone: 509/323–2900, Fax: 509/323–2909, (V) 9035–2901, (E) *door@wa.usda.gov*

WV—Kevin Wickey, 75 High Street, Room 301, Morgantown, West Virginia 26505, Phone: 304/284–7540, Fax: 304/284–4839, (V) 9049–7542, (E) *kevin.wickey@wv.usda.gov*

WI—Ivan Dozier, Acting, Patricia Leavenworth, 8030 Excelsior Drive, Suite 200, Madison, Wisconsin 53717, Phone: 608/662–4422, Fax: 608/662–4430, (V) 9018–222, (E) *pat.leavenworth@wi.usda.gov*

WY—J. Xavier Montoya, Federal Building, Room 3124, 100 East B Street, Casper, Wyoming 82601–1911, Phone: 307/233–6750, Fax: 307/233–

6753, (V) 9000–951–1015, (E) *Xavier.montoya@wy.usda.gov*

[FR Doc. 2010–8244 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on April 28, 2010, from 8:30 a.m. to 12 noon. The purpose of this meeting is to discuss project updates and proposals, information on monitoring efforts and a timeline for the upcoming year.

DATES: Wednesday, April 28 at 8:30 a.m.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator Rita Vollmer at (530) 226–2595 or *rvollmer@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: April 5, 2010.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2010–8250 Filed 4–9–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is presentation on research of generating plants that have been built and project reviews.

DATES: The meeting will be held April 27, 2010.

ADDRESSES: The meeting will be held at 1801 N. First Street. Written comments should be sent to Stevensville RD, 88 Main Street, Stevensville, MT 59870. Comments may also be sent via e-mail to *dritter@fs.fed.us* or via facsimile to 406–777–5461.

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 88 Main Street, Stevensville, MT 59870. Visitors are encouraged to call ahead to 406–777–5461 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, District Ranger, or Nancy Trotter Coordinator 406–777–5461.

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. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring bio hazards use matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 19, 2010 will have the opportunity to address the Council at those sessions.

Dated: April 6, 2010.

Julie K. King,

Forest Supervisor.

[FR Doc. 2010–8257 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its quarterly meeting to discuss environmental technologies trade liberalization, industry competitiveness issues, and general Committee administrative items.

DATES: April 23, 2010.

ADDRESSES: U.S. Department of Commerce, 1401 and Constitution Avenue, NW., Washington, DC 20230, Room 4830.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9 a.m. to 3:30 p.m. This meeting is open to the public and time will be permitted for public comment from 3–3:30 p.m. Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2010.

Dated: April 7, 2010.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2010–8240 Filed 4–9–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XV36

Stanford University Habitat Conservation Plan

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior (DOI).

ACTION: Notice of availability of draft environmental impact statement, multi-species habitat conservation plan, and receipt of application; notice of public meeting.

SUMMARY: This notice announces the availability of the Draft Environmental Impact Statement (DEIS) for Authorization for Incidental Take and Implementation of Stanford University

Habitat Conservation Plan (Plan), and the Implementing Agreement (IA) for public review and comment. In response to receipt of an application from The Board of Trustees of Leland Stanford Junior University (Stanford; Applicant), the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration, National Marine Fisheries Service (Services), are considering the proposed action of issuing a 50–year permit for four federally listed species and one currently unlisted species. The proposed permit would authorize the incidental take of individual species listed under the Federal Endangered Species Act of 1973, as amended (ESA). The permit is needed because take of species could occur during the operation and maintenance of the University, academic activities, athletic and recreational activities, leasehold activities, urban development, and resource conservation activities associated with the Plan at Stanford, which is located on 8,180–acres in San Mateo County and Santa Clara County, California.

DATES: Written comments on the DEIS, Plan, and IA, must be received by 5 p.m. Pacific Time on July 12, 2010.

ADDRESSES: Comments concerning the DEIS, Plan, and IA can be sent by U.S. Mail, facsimile, or email to (1) Eric Tattersall, Chief, Conservation Planning and Recovery Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825; facsimile (916) 414–6713; (2) Gary Stern, San Francisco Bay Region Supervisor at National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404, facsimile (707) 578–3435; or (3) Stanford.HCP@noaa.gov. Include the document identifier: Stanford HCP.

A public meeting will be held on May 25, 2010, from 7 p.m. to 9 p.m. at the Stanford University Tresidder Student Student Union Oak West Lounge, 459 Lagunita Drive, Stanford, CA.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Senior Staff Biologist, U.S. Fish and Wildlife Service; telephone 707–575–6060.

SUPPLEMENTARY INFORMATION: Copies of the DEIS, Plan and IA are available for public review during regular business hours from 9 a.m. to 5 p.m. at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), and the National Marine Fisheries Service, Santa Rosa Office (see **FOR FURTHER INFORMATION CONTACT**). Additionally, hard bound copies of the DEIS, Plan, and IA are available for viewing, or for partial or complete duplication, at the following locations:

1. Social Sciences Resource Center, Green Library, Room 121, Stanford, CA 94305

2. Palo Alto Main Library, 1213 Newell Road, Palo Alto, CA 94303.

Individuals wishing copies of the DEIS, Plan, or IA should contact either of the Services by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**). These documents are also available electronically for review on the NMFS Southwest Region website at: *http://swr.nmfs.noaa.gov* or the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office Website at *http://www.fws.gov/sacramento/*.

Background

Section 9 of the Federal ESA of 1973, as amended, and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). The National Marine Fisheries Service further defines harm as an act which actually kills or injures fish or wildlife, and expands the list of essential behavioral patterns that can be impaired by habitat modification or degradation to include breeding, spawning, rearing, migrating, feeding or sheltering (50 CFR 222.102). Under limited circumstances, the Services may issue permits to authorize incidental take of listed fish or wildlife; i.e., take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Each of the Services has received an application for an incidental take permit for implementation of the Plan. The applications were prepared and submitted by The Board of Trustees of Leland Stanford Junior University (Applicant). The Applicant has prepared the Plan to satisfy the application requirements for a section 10(a)(1)(B) permit under the Federal ESA, of 1973, as amended.

The Applicant seeks a 50–year incidental take permit for covered activities within a proposed 8,180 acre permit area located in southern San Mateo and northern Santa Clara counties. The permit area includes all of Stanford's lands, which are located on portions of the Santa Cruz Mountains and at the base of the San Francisco Peninsula. Stanford University is located in two main watersheds, Matadero/Deer Creek and San Francisquito Creek watersheds. The San Francisquito Creek watershed spans San Mateo and Santa Clara Counties, and encompasses an area of approximately 45 square miles. This watershed includes San Francisquito, Los Trancos, Corte Madera, Bear, Dennis Martin, Sausal, and Alambique creeks, and portions of San Francisquito, Los Trancos, Corte Madera, and Bear creeks flow through Stanford lands. The Matadero Creek watershed is entirely within Santa Clara County, and portions of Matadero and Deer creeks flow through Stanford. In addition to significant riparian areas associated with the creeks, the permit area includes foothills, and most of the main campus is located on an alluvial plain located between the foothills and San Francisco Bay.

The Applicant has requested permits that will authorize the take of four animal species, which are currently listed as threatened or endangered under the Federal ESA, and one animal species that may become listed under the ESA. Proposed covered species includes the federally listed as threatened California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and Central California Coast steelhead (*Oncorhynchus mykiss*). Proposed covered species also includes one animal species that is not listed under the Federal ESA at the current time: the western pond turtle (*Clemmys marmorata*).

If the proposed Plan is approved and the permit issued, take authorization of covered listed species would be effective at the time of permit issuance. Take of the currently non-listed covered species would be authorized concurrent with the species' listing under the Federal ESA, should it be listed during the duration of the permit.

The proposed Plan is intended to be a comprehensive document, providing for species conservation and habitat planning, while allowing the applicant to better manage ongoing operations and future growth. The proposed Plan also is intended to provide a coordinated process for permitting and mitigating the take of covered species as an alternative to a project-by-project approach.

In order to comply with the requirements of the Federal ESA, the proposed Plan addresses a number of required elements, including: species and habitat goals and objectives; evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed species.

The Plan divides the permit area into four "zones." Zone 1 supports one or more of the covered species or provides critical resources for the species. Zone 2 areas are occasionally occupied by a covered species and provide some of the resources used by the species, or buffers between occupied habitat and urbanized areas. Zone 3 consists of generally undeveloped land that provides only limited and indirect benefit to the covered species. Zone 4 includes urbanized areas that do not support the covered species. The Plan covers the ongoing operation and maintenance of the University, existing facilities, and a limited amount of future development. Ongoing operations and maintenance are divided into the following categories of activities: water management; creek maintenance; academic activities; utility installation and maintenance; general infrastructure; recreation and athletics; grounds and vegetation; agricultural and equestrian leaseholds; and commercial and institutional leaseholds. Up to 180 acres of development in Zones 1, 2, and 3 are also covered by the Plan, but the Plan does not supersede any permitting or entitlement required by other regulations.

The Plan's proposed conservation strategy is designed to minimize and mitigate the impacts of covered activities, improve habitat conditions for listed covered species, and protect populations of the non-listed covered species. The Plan includes minimization measures that would avoid and minimize the take of covered species from ongoing operation and maintenance of the University and future development. The Plan also includes mitigation for the loss of habitat, and proposes to conserve approximately 360 acres of riparian habitat within conservation easements within one year of issuance of the permits. Additional riparian habitat would be preserved as needed. A 315–acre "California Tiger Salamander Reserve" also would be established at the outset of the Plan. No development would be permitted within the Reserve for the term of the permits, and habitat within the Reserve would be permanently protected to offset any loss of tiger salamander habitat that occurs during the permit term. Habitat protected under the Plan would be managed and monitored, and annual reports documenting the status of the species and compliance with the Plan would be submitted to the Services. In addition to the minimization measures and mitigation for the loss of habitat, the Plan includes a number of potential habitat enhancements that Stanford may perform during the term of the permits. Other conservation activities include a California tiger salamander management plan that covers 95 acres, including Lagunita Reservoir and habitat around Lagunita Reservoir.

National Environmental Policy Act Compliance

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA). As co-lead agencies, the Services have prepared a DEIS which evaluates the impacts of the proposed issuance of the permit and implementation of the Plan, as well as a reasonable range of alternatives.

The DEIS analyzes three alternatives including the issuance of incidental take permits and applicant implementation of the proposed Plan described above. The issuance of 50–year take permits and applicant implementation of the proposed Plan is considered the Preferred Alternative. Two other alternatives being considered by the Services include the following:

Under the No Action Alternative, the Services would not issue incidental take permits for implementation of the Stanford University Habitat Conservation Plan. As a result, the Applicant would likely seek individual incidental take authorization as needed for new projects and ongoing operations that would result in the take of federally listed species.

Under the California Tiger Salamander Only Alternative, Stanford would prepare a Habitat Conservation Plan only for the California tiger salamander, and obtain section 10 authorization only for the take of California tiger salamander. Future development and ongoing activities that would result in the take of other listed species would be permitted individually, as needed.

Public Comments

The Services invite the public to comment on the draft Plan, draft IA, and DEIS during a 90–day public comment period beginning on the date of this notice. All comments and materials received, including names and addresses, will become part of the administration record and may be released to the public. Our practice is to make comments, including names, home addresses, home telephone numbers, and email addresses of respondents available for public review. 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 may 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.

This notice is provided pursuant to section 10(c) of the Act and regulations for implementing NEPA, as amended (40 CFR 1506.6), We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gary Stern, National Marine Fisheries Service, at 707–575–6060, at least 5 working days prior to the meeting date.

Next Steps

The Services will evaluate the applications, associated documents, and public comments submitted to them to prepare a final EIS. A permit decision will be made no sooner than 30 days after the publication of the final EIS and completion of the Record of Decision.

Dated: April 7, 2010.

Ken McDermond,

Deputy Region Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Dated: April 7, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–8300 Filed 4–9–10; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Open Meeting

The Emerging Technology and Research Advisory Committee (ETRAC)

will meet on April 26, 2010, 10 a.m., Room 3884, and on April 27, 2010, 8:30 a.m., Room 6087B, both meetings will be held at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Monday, April 26

Open Session

1. Opening Remarks.
2. Bureau of Industry and Security Q&A on Emerging Technology Tasking.
3. Development of Guiding Principles Document.
4. Emerging Technologies Forecasting and Discussion.
5. Emerging Technologies Analysis Process by NAS and Discussion.
6. Emerging Technologies Analysis Portal and Discussion.

Tuesday, April 27

Open Session

1. First Thoughts on Emerging Technologies Analysis.
2. ETRAC Panel on Emerging Technologies.
3. History of the Laser.
4. Technology Risk Analysis.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than April 19, 2010.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: April 6, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–8297 Filed 4–9–10; 8:45 am]

BILLING CODE 3510–JT–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Notice of Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 67, Thursday, April 8, 2010, page 17903.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m.–11 a.m., Thursday, April 15, 2010, Room 410.

CHANGES IN MEETING: The Agenda is revised to change the time of the meeting to 9 a.m.–12 Noon and to add an additional item:

1. Pending Decisional Matter: Public Database—Notice of Proposed Rulemaking (NPR)
2. Testing and Conformance—Notice of Proposed Rulemaking (NPR) and Testing Component Parts—Notice of Proposed Rulemaking (NPR)

This meeting will be recorded and posted on CPSC's Web site for viewing on the afternoon of April 15th. The meeting can be viewed at *http://www.cpsc.gov/webcast/previous.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 8, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–8428 Filed 4–8–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Notice of Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 58/Friday, March 26, 2010, page 14577.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1 p.m.–3 p.m., Thursday, April 8, 2010.

CHANGES IN MEETING: Agenda Item on Testing and Conformance—Notice of Proposed Rulemaking (NPR) is postponed to April 15, 2010, 9 a.m.–12 Noon.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 7, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–8429 Filed 4–8–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–HA–0042]

Proposed Collection, Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the following extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 11, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers of contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Assistant Secretary of Defense for Health Affairs, Force Health Protection and Readiness, ATTN: Caroline Miner, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041, or call (703) 575–2677.

Title; Associated Form; and OMB Number: Researcher Responsibilities Form, OMB Number 0720–0042.

Needs and Uses: This collection instrument serves to document researcher's understanding and acceptance of the regulatory and ethical responsibilities for including humans as subjects in research. Principal and co-principal investigators must have the proposed, signed form on file before they may engage in research conducted, sponsored, or supported by entities under the purview of the USD(P&R).

Affected Public: Federal Government, For-profit Businesses; Not-for-profit Businesses.

Annual Burden Hours: 44.5.

Number of Respondents: 89.

Responses per Respondent: 1.

Average Burden per Response: .50.

Frequency: On occasion; original document submitted one time per researcher. Once their document is on file, a researcher may reaffirm their commitment every three years electronically if they remain engaged in human subject research.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Federal Government institutions wishing to conduct, sponsor, or support research on human subjects must first submit for approval to duly designated authorities an Assurance that they will comply with established guidelines in such research. Such Assurances are granted by components of DoD and by the Department of Health and Human Services (HHS). DoD guidance requires principal and associate investigators individually and explicitly to acknowledge that they understand and accept responsibility for protecting the rights and welfare of human research subjects. All principal and associate investigators engaged in research supported or conducted under the purview of the USD(P&R) must read and sign a document that attests to their commitment to abide by the provisions of: (a) *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research;* (b) the U.S. Department of Defense (DoD) regulations for the protection of human subjects at Title 32, Code of Federal Regulations, Part 219 (32 CFR 219) and DoD Directive 3216.02; (c) the Assurance of the engaged institution; relevant institutional policies and procedures where appropriate; and other Federal, State, or local regulations where appropriate. The Office of the Assistant Secretary of Defense for Health Affairs announces the intent to establish and use a new document format for this purpose and seeks public comment on the provisions thereof. Respondents are professionals who have been designated as principal or associate investigators. When preparing to initiate work on their first human subject research protocol, each principal investigator and associate investigator must assure they have the proposed Researcher Responsibilities form on file with the OUSD(P&R) Component Designated Official Office. This may require new forms from approximately 90 investigators. The form is two pages in length including statements agreed to and half a page for respondent signature and contact information. Respondents generally will be required to have the signed form scanned and forwarded electronically. The form will be filed electronically and form completion will be logged into a database. After three years, if a researcher still is engaged in research with OUSD(P&R), he/she will be asked to reaffirm his/her commitment electronically. This information collection does not involve sensitive personal information and requires no special confidentiality measures.

Dated: April 7, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8265 Filed 4–9–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment and Renewal—Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Charter amendment and renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b), 41 CFR 102–3.65, and 41 CFR 102–3.80 the Department of Defense announces that it has amended the 2008–2010 charter for the Defense Advisory Committee on Women in the Services (hereafter referred to as "the committee"), and that it intends to renew the committee's charter for another two years effective April 17, 2010.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The committee's mission was amended to reflect that military family issues will no longer be addressed by the Defense Advisory Committee on Women in the Services. Instead these issues will be addressed by the Department of Defense Military Family Readiness Council which was established by Act of Congress (section 581 of Pub. L. 110–181).

The committee, through the Under Secretary of Defense for Personnel and Readiness, provides independent advice and recommendations to the Secretary of Defense on matters and policies relating to women in the Armed Forces of the United States. Pursuant to DoD policy, the Under Secretary of Defense for Personnel and Readiness may act upon the committee's advice and recommendations.

The committee shall be composed of not more than 35 members who have experience with the military or with women's workforce issues. Committee members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. Generally, Board members will be approved by the appointing authority to serve on the Board for a term of three years with approximately one-third of the membership rotating annually, to the extent possible. With the exception of travel and per diem for official travel, Board members shall serve without compensation. The Secretary of Defense shall designate the Defense Advisory Committee on Women in the Services Chairperson.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations are reminded that they may submit written statements to the committee membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Advisory Committee on Women in the Services.

All written statements shall be submitted to the Designated Federal Officer for the Defense Advisory

Committee on Women in the Services, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Advisory Committee on Women in the Services' Designated Federal Officer may be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Advisory Committee on Women in the Services. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 7, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8269 Filed 4–9–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Termination and Committee Establishment—Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Committee termination and establishment.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972, (5 U.S.C., Appendix), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.60 and 102–3.65 the Department of Defense announces: the establishment of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College; and that effective April 30, 2010, it will terminate the Board of Advisors to the President Naval Postgraduate School.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The mission of the Board of Advisors to the President Naval Postgraduate School will be included in the mission for the new Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College (hereafter referred to as "the Board of Advisors").

The Board of Advisors shall advise and assist the Department of the Navy, the Presidents of the Naval Postgraduate School and the Naval War College in educational and support areas by providing independent advice and recommendations on items such as, but not limited to, organizational management, curricula, methods of instruction, facilities, and other matters of interest. Pursuant to DoD policy, the Secretary of the Navy may act upon the Board of Advisor's advice.

The Board of Advisors shall be comprised of not more than 10 members who are eminent authorities in the fields of academia, business, national defense, the defense industry, and research and analysis. Not less than fifty percent of the members shall be eminent authorities in the field of academia. Board of Advisors members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees.

Members may be appointed for terms ranging from one to four years. Such appointments will normally be staggered among the Board membership to ensure an orderly turnover in the Board's overall composition on a periodic basis. With the exception of travel and per diem for official travel, they shall normally serve without compensation, unless otherwise authorized by the appointing authority.

The Chief of Naval Personnel shall serve as an ex-officio Board member. As an ex-officio member this individual shall have no voting rights whatsoever on the Board or any of its subcommittees. In addition, he or she shall not count toward the Board's total membership.

With DoD approval, the Board of Advisors is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, The Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal statutes and regulations.

Such subcommittees or working groups shall not work independently of the chartered Board of Advisors, and shall report all their recommendations and advice to the Board of Advisors for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Board of Advisors nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board of Advisors members.

The Board of Advisors shall establish and maintain two permanent subcommittees:

a. The Naval Postgraduate School subcommittee shall be comprised of no more than 19 members and shall focus primarily on the Naval Postgraduate School. The subcommittee shall meet a minimum of twice annually.

b. The Naval War College subcommittee shall be comprised of no more than 10 members and shall focus primarily on the Naval War College. The subcommittee shall meet a minimum of twice annually.

Subcommittee members, who are not Board of Advisors members, shall be appointed in the same manner as Board of Advisors members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations are reminded that they may submit written statements to the committee membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College.

All written statements shall be submitted to the Designated Federal Officer for the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College's Designated Federal Officer, may be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 7, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8268 Filed 4–9–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent application 12/421,124 filed on April 9, 2009, entitled "System and Method for the Deconvolution of Mixed DNA Profiles Using a Proportionately Shared Allele Approach" to Niche Vision Forensics, LLC, with its principal place of business at 526 South Main Street Suite 714 G, Akron, OH 44311.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, 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 & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the granting 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. 2010–8237 Filed 4–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Enhanced Assessment Instruments Grants Program—Enhanced Assessment Instruments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368A.

DATES: *Applications Available:* April 12, 2010.

Deadline for Transmittal of Applications: May 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to enhance the quality and validity of assessment instruments and systems used by States for measuring the achievement of all students. The grant funds may be used for the development of new assessment products or procedures, such as innovative test formats, empirical analysis of variations in test formats or procedures, or statistical models useful for combining data from multiple measures, or charting student progress over time.

Background: In addition to this competition, the Department recently announced that it will use approximately $350 million under the Race to the Top Fund for a Race to the Top Assessment program to award grants to consortia of States for the development of common, high-quality assessments aligned with an applicant consortium's common set of K–12 standards that are internationally benchmarked and that build toward college and career readiness by the time of high school completion. We plan to publish a notice inviting applications for that competition in the near future.

In addition, the Department intends to announce shortly a competition under the Individuals with Disabilities Education Act (IDEA) General Supervision Enhancement Grants (GSEG) program, inviting consortia of States to apply for support to develop common alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities who are eligible for such assessments. We encourage you to conduct a comprehensive review of these announcements and design your respective applications accordingly.

Priorities: This competition includes four absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are based on those established in section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7301a). The competitive preference priorities are those established in Appendix E to the notice of final requirements for optional State consolidated applications submitted under section 9302 of the ESEA, published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Absolute Priorities: For FY 2009 funds to be awarded through a competition conducted in 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities.

These priorities are:

Absolute Priority 1. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of the ESEA.

Absolute Priority 2. Measure student academic achievement using multiple measures of student academic achievement from multiple sources.

Absolute Priority 3. Chart student progress over time.

Absolute Priority 4. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance- and technology-based academic assessments.

Competitive Preference Priorities: Under 34 CFR 75.105(c)(2)(i), we award up to an additional 35 points to an application, depending on how well the application meets these competitive preference priorities.

For FY 2009 funds to be awarded through a competition conducted in 2010, these priorities are:

Competitive Preference Priority 1. Accommodations and alternate assessments (20 points). Applications that can be expected to advance practice significantly in the area of increasing accessibility and validity of assessments for students with disabilities or limited English proficiency, or both, including strategies for test design, administration with accommodations, scoring, and reporting.[1]

Competitive Preference Priority 2. Collaborative efforts (10 points). Applications that are sponsored by a consortium of States.

Competitive Preference Priority 3. Dissemination (5 points). Applications that include an effective plan for dissemination of results.

Program Authority: 20 U.S.C. 7301a and 7842.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final requirements published in the

[1] As noted above, the Department also intends to announce shortly a competition under the General Supervision Enhancement Grants (GSEG) program that will invite State consortia to apply for funding to support the development of common alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities.

Federal Register on May 22, 2002 (67 FR 35967).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,732,000 in FY 2009 funds.

Contingent upon the availability of funds and the quality of applications, we may make additional awards with FY 2010 funds from the list of unfunded applicants from this competition.

Estimated Range of Awards: $750,000–$2,000,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) as defined in section 9101(41) of the ESEA and consortia of such SEAs.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the fiscal agent.

IV. Application and Submission Information

1. *Address to Request Application Package:* Address to Request Application Package: To obtain an application package via the Internet use the following address: *http://www.ed.gov/programs/eag/applicant.html.* To obtain an application package from the U.S. Department of Education use the following address: Collette Roney, Enhanced Assessment Grants Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W210, Washington, DC 20202–6200. Telephone: (202) 401–5245 or by e-mail: *collette.roney@ed.gov.*

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 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 IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application and the absolute and competitive preference priorities. You must limit the application narrative (Part IV) to the equivalent of no more than 40 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, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font no smaller than 11.0 point for all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs. (Font sizes that round up to 11, such as 10.7 point, will be considered as smaller than 11.0.)
- Any screen shots included as part of the application narrative should follow these standards or, if other standards are applied, be sized to equal the equivalent amount of space if these standards were applied.

The page limit does not apply to: The cover sheet or table of contents; Part I (including the response regarding research activities involving human subjects); Parts II and V (the budget sections, including the chart and narrative budget justification); Part III (one-page project abstract); Part VI (other attachments forms, including references for the application narrative, personnel résumés, letters of commitment and support, copy of indirect cost rate agreement, and indication in the list of ESEA Programs included in the Consolidated State Application); and Part VII (the assurances and certifications, including the General Education Provisions Act 427 response). Applicants are encouraged to limit each résumé to no more than 5 pages. The project narrative (Part IV) must include a discussion of how the application meets the absolute priorities, how well the application meets the competitive preference priorities, and how well the application addresses each of the selection criteria; therefore, the page limit applies to this discussion. The page limit also applies to any attachments to the project narrative other than references. In other words, the entirety of Part IV of the application, including the aforementioned discussion and any attachments to the narrative, must be limited to the equivalent of no more than 40 pages. Applicants should include in their applications only the other attachments (Part VI) outlined in the application package. Additional attachments other than those included in the project narrative will not be accepted or reviewed.

Our reviewers will not read any pages of your application that exceed the page limit or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: April 12, 2010.

Deadline for Transmittal of Applications: May 27, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in 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 competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Enhanced Assessment Instruments Competition—CFDA Number 84.368A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application. We will not grant an extension for other technical problems unrelated to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Collette Roney, Enhanced Assessment Grants Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W210, Washington, DC 20202–4260. FAX: (202) 260–7764.

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 84.368A, 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 84.368A, 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 Appendix E to the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) 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 in 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, or at the end of your no-cost extension, if any, you must submit a final performance report, including financial information, as directed by the Secretary. Grantees must also submit an interim progress report approximately twelve months after the award date 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.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed four measures to evaluate the overall effectiveness of the Enhanced Assessment Instruments Grants program: (1) The number of States that participate in Enhanced Assessment Instruments Grants projects funded by this competition; (2) the percentage of grantees that, at least twice during the period of their grants, make available to SEA staff in non-participating States and to assessment researchers information on findings resulting from the Enhanced Assessment Instruments Grants through presentations at national conferences, publications in refereed journals, or other products disseminated to the assessment community; (3) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools regarding assessment systems or assessments; and (4) for each grant cycle and as determined by an expert panel, the percentage of Enhanced Assessment Instruments Grants that yield significant research, methodologies, products, or tools specifically regarding accommodations and alternate assessments for students with disabilities and limited English proficient students. Grantees will be expected to include in their interim and final performance reports information about the accomplishments of their projects because the Department will need data on these measures.

VII. Agency Contact

For Further Information Contact: Collette Roney, Enhanced Assessment Grants Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W210, Washington, DC 20202–6132. Telephone: (202) 401–5245, or by e-mail: *collette.roney@ed.gov.*

If you use a TDD, call the 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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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

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

Dated: April 7, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–8305 Filed 4–9–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OII–0012]

RIN 1855–AA06

Investing in Innovation Fund; Correction

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants).

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On March 12, 2010, the Department of Education published in the **Federal Register** (75 FR 12072) a notice inviting applications for new awards for FY 2010 (NIA) for the Investing in Innovation Fund. This notice makes a correction to the March 12 NIA.

FOR FURTHER INFORMATION CONTACT: Margo Anderson. Telephone: (202) 453–7122; or by e-mail: *i3@ed.gov;* or by mail: (Attention: Investing in Innovation), U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

On page 12073, we included a footnote providing the Department's interpretation of the core academic subject of science as including STEM education (science, technology, engineering, and mathematics) which encompasses a wide range of disciplines. As an example of those disciplines, we intended to include computer science rather than science. To correct this error, the Department makes the following correction to the March 12 NIA:

On page 12073, under the heading *Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments,* in the third column, in footnote number one, in line six, "including science" is replaced with "including computer science." *Program Authority:* Section 14007 of division A of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, as amended by section 307 of division D of the Consolidated Appropriations Act, 2010, Public Law 111–117.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Dated: April 7, 2010.

James H. Shelton III,

Assistant Deputy Secretary For Innovation and Improvement.

[FR Doc. 2010–8304 Filed 4–9–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13569–000]

Southern Nevada Water Authority; Notice of Application Accepted for Filing, Ready for Environmental Analysis, and Soliciting Motions To Intervene and Protests, Comments, Final Terms and Conditions, Recommendations, and Prescriptions

April 5, 2010.

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

a. *Type of Filing:* Original Minor License.

b. *Project No.:* 13569–000.

c. *Dated Filed:* March 24, 2010.

d. *Submitted By:* Southern Nevada Water Authority (SNWA)

e. *Name of Project:* Arrow Canyon Conduit Energy Recovery Hydroturbine.

f. *Project description:* proposed project would capture power by bypassing a pressure-reducing valve in the SNWA's existing Coyote Spring 24-inch- diameter water pipeline. The project would consist of a turbine generator, installed within a small building, inlet and outlet pipelines, and an access road. By routing water through the hydroturbine, the applicant would generate about 3.5 million kilowatt-hours (kWh) per year of renewable energy. To convey the power, Overton Power District No. 5 would extend an existing 12.47-kilovolt (kV) distribution line about 1,400 feet to the site.

g. *Location:* The proposed project would be located next to the existing Coyote Spring Well and Moapa Transmission System project in northeast Clark County, Nevada. The project would be located about 12 miles northwest of Glendale Nevada and occupy 0.68 acre of federal land.

h. *Filed Pursuant to:* 18 CFR 4.61 of the Commission's regulations.

i. *Potential Applicant Contact:* Scott P. Krantz, 100 City Parkway, room 1211, Las Vegas, NV 89106; (702) 691–5240.

j. *FERC Contact:* Jim Fargo at (202) 502–6095; or e-mail at *james.fargo@ferc.gov.*

k. A copy of the license application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 (P–13569). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. This application has been accepted for filing and is now ready for environmental analysis.

m. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

n. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should file such within 45 days from issuance of this notice.

Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the

environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001). All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "e-Filing" link. For a simpler method of submitting text only comments click on "Quick Comment". For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

o. We notice that we intend to waive scoping and shorten the filing and comment date on final terms and conditions, recommendations, and prescriptions. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period for the application, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping.

p. *Deadline for filing motions to intervene and protests, comments, and final terms and conditions, recommendations, and prescriptions:* 45 days from the issuance of this notice. All reply comments must be filed with the Commission within 60 days from the date of this notice.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Recommendations, preliminary terms & conditions, and fishway prescriptions due.	May 24, 2010.
Commission issues EA	July 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8213 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 05, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–56–000.

Applicants: Lost Creek Wind, LLC.

Description: Application of Lost Creek Wind, LLC for Authorization of Disposition of Jurisdictional Facilities, and Requests for Waivers of Certain Filing Requirements, Shortened Comment Period and Expedited Consideration.

Filed Date: 03/26/2010.

Accession Number: 20100326–5110.

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: EC10–58–000.

Applicants: Florida Power & Light Company, New Hampshire Transmission, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Action of Florida Power & Light Company and New Hampshire Transmission, LLC.

Filed Date: 04/01/2010.

Accession Number: 20100401–5164.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–25–000.

Applicants: Cedro Hill Wind LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cedro Hill Wind LLC.

Filed Date: 04/02/2010.

Accession Number: 20100402–5031.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–48–016.

Applicants: Powerex Corp.

Description: Powerex Corp submits amendment to the notice in status with respect to events that have taken place since the date of its last change in status filing.

Filed Date: 04/01/2010.

Accession Number: 20100402–0011.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER03–1330–003.

Applicants: Ebersen, Inc.

Description: Ebersen, Inc submits Second Substitute First Revised Sheet 1 that supersedes Original Sheet 1 to Rate Schedule FERC No 1.

Filed Date: 04/02/2010.

Accession Number: 20100402–0224.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER08–1439–002; EL09–32–002.

Applicants: New Brunswick Power Generation Corporation.

Description: Response to January 15, 2010 Request for Additional Information of New Brunswick Power Generation Corporation.

Filed Date: 03/31/2010.

Accession Number: 20100331–5167.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–900–001.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power requests that FERC accept its Notice of Cancellation of its Rate Schedule FERC No 48, to be effective 4/1/10.

Filed Date: 04/02/2010.

Accession Number: 20100405–0201.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–942–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England Inc *et al* submit revisions to their Financial Assurance Policy and Billing Policy.

Filed Date: 03/26/2010.

Accession Number: 20100329–0207.

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: ER10–989–000.

Applicants: DTE East China, LLC.

Description: DTE East China, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume No. 3 effective 4/1/2010.

Filed Date: 04/01/2010.

Accession Number: 20100401–0255.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–990–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc et al submits proposed revisions to: Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service et al.

Filed Date: 04/01/2010.

Accession Number: 20100401–0254.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–991–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits revisions to the

formula transmission rate of its Open Access Transmission Tariff concerning the treatment of new transmission radials commencing after 3/31/10.

Filed Date: 04/01/2010.

Accession Number: 20100401–0253.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–992–000.

Applicants: Northern States Power Company—Wisconsin.

Description: Northern States Power Company submits Wisconsin Electric Sales Tariff for Wholesale Full Requirements Services that establishes the rates terms and conditions applicable to service *etc.*

Filed Date: 04/01/2010.

Accession Number: 20100401–0256.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–993–000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co submits Localized Costs Responsibility Agreements.

Filed Date: 04/01/2010.

Accession Number: 20100401–0265.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–994–000.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Co submits an executed construction agreement.

Filed Date: 04/01/2010.

Accession Number: 20100401–0264.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–995–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits First Revised Sheet No. 15C *et al* to FERC Electric Tariff No. 3.

Filed Date: 04/01/2010.

Accession Number: 20100401–0263.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–996–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits reconciled tariff sheets for compliance with Order No. 614.

Filed Date: 04/01/2010.

Accession Number: 20100401–0272.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–997–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England, Inc *et al* submits FCM Conforming changes to Appendix A to Market Rule 1.

Filed Date: 04/01/2010.

Accession Number: 20100401–0270.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–1002–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits amendments to their Delivery Service Rate Schedule 96 *et al.*

Filed Date: 04/01/2010.

Accession Number: 20100402–0208.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–1003–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revised tariff sheets of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, LLC.

Filed Date: 04/01/2010.

Accession Number: 20100402–0207.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Docket Numbers: ER10–1004–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an executed Amended and Restated Interconnection Agreement with the City of Columbia *etc.*

Filed Date: 04/02/2010.

Accession Number: 20100402–0214.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–1005–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Open Access Transmission Tariff and Market Administration and Control Area Services Tariff *etc.*

Filed Date: 04/02/2010.

Accession Number: 20100402–0215.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–1006–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with SunDurance Energy, LLC *et al.*

Filed Date: 04/02/2010.

Accession Number: 20100402–0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–1007–000.

Applicants: Midwest Independent System Operator, Inc.

Description: Midwest Independent System Operator, Inc submits an unexecuted Generator Interconnection Agreement.

Filed Date: 04/02/2010.

Accession Number: 20100402–0226.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–1008–000.

Applicants: ALLETE, Inc.

Description: Allete, Inc submits filing to amend the annual "true up" procedures included in its formula rate, full energy and capacity requirements contracts with their wholesale customers located in Northeastern Minnesota *et al.*

Filed Date: 04/02/2010.

Accession Number: 20100405–0202.

Comment Date: 5 p.m. Eastern Time on Friday, April 23, 2010.

Docket Numbers: ER10–1009–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Dynamic Energy Resources, LLC *et al.*

Filed Date: 04/05/2010.

Accession Number: 20100405–0207.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Docket Numbers: ER10–1010–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Dynamic Energy Resources, LLC *et al.*

Filed Date: 04/05/2010.

Accession Number: 20100405–0206.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Docket Numbers: ER10–1011–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the Service Agreement for Wholesale Distribution Service with the City of Banning *etc.*

Filed Date: 04/05/2010.

Accession Number: 20100405–0205.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Docket Numbers: ER10–1012–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet reflecting cancellation of the 1995 San Juan Unit 3 Firm Transmission Service Agreement with the City of Azusa, Rate Schedule FERC 376.

Filed Date: 04/05/2010.

Accession Number: 20100405–0204.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Docket Numbers: ER10–1013–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits the Large Generator Interconnection Agreement and Service Agreement for Wholesale Distribution Service with Mountain View Power Partners IV, LLC.

Filed Date: 04/05/2010.

Accession Number: 20100405–0203.

Comment Date: 5 p.m. Eastern Time on Monday, April 26, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA10–7–000.

Applicants: Avista Corporation.

Description: Annual Informational Filing of Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A.

Filed Date: 03/12/2010.

Accession Number: 20100312–5065.

Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–8232 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–569–000]

XTO Energy Inc., Cross Timbers Energy Services, Inc., Complainants v. Midcontinent Express Pipeline LLC, Respondent; Notice of Complaint

April 5, 2010.

Take notice that on April 1, 2010, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d (2006) and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2009), XTO Energy Inc. and Cross Timbers Energy Services, Inc. (Complainants) filed a formal complaint against Midcontinent Express Pipeline LLC (Respondent) alleging that, Respondent (1) charged reservation rates for firm service without contractual authority and prior to its facilities properly being placed fully in service and (2) provided incomplete and incorrect information to the Commission in seeking authorization to place its facilities in service.

The Complainants certify that a copy of the complaint has been served on the contacts for the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 April 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8210 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–55–000]

Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC., and Entergy Texas, Inc.; Notice of Complaint

April 1, 2010.

Take notice that on March 31, 2010, the Louisiana Public Service Commission (LPS) filed a formal complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf State Louisiana, LLC, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825(e) and 18 CFR 386.206, seeking to change the depreciation and decommissioning data and rates included in the Entergy rough equalization bandwidth formula found

in Service Schedule MSS–3 of the Entergy System Agreement.

The LPS certifies that copies of the complaint were served on the contacts for Entergy, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 April 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8211 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–57–000]

Notice of Complaint Filing

April 5, 2010.

PSEG Energy Resources & Trade, LLC, PSEG Power Connecticut LLC, NRG Power marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, Somerset Power LLC, Joint Complainants v. *ISO New England Inc., New England Power Pool, Respondents.*

Take notice that on April 2, 2010, pursuant section 206 of the Federal Power Act and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, PSEG Energy Resources & Trade, LLC, PSEG Power Connecticut LLC, NRG Power marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC (Joint Complainants) filed a formal complaint against ISO New England Inc. (ISO–NE) and New England Power Pool, alleging that the current and proposed tariffs governing the Forward Capacity Market (FCM) of ISO–NE are ineffective at preventing artificial price distortions due to, inter alia, the lack of proper zonal formation and that, as a consequence, the capacity prices arising out of these rules are not just and reasonable. In order to alleviate this problem, the FCM rules should be amended to more fully allow for zonal formation.

The Complainant states that a copy of the complaint has been served on the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 April 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8212 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–12–005]

Enterprise Texas Pipeline LLC; Notice of Compliance Filing

April 1, 2010.

Take notice that on March 30, 2010, Enterprise Texas Pipeline LLC (Enterprise Texas), filed its Statement of Operating Conditions in compliance with the March 2, 2010 Letter Order (March 2 Order) and pursuant to section 284.123(e) of the Commission's regulations. Enterprise Texas states that the revisions include modifications consistent with the March 2 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 Thursday, April 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8214 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–13–000; PR03–17–000]

Chevron Keystone Gas Storage, LLC; Notice of Notification of Change in Market Power Analysis and Request for Renewed Approval of Market-Based Rates

April 5, 2010.

Take notice that on March 31, 2010, Chevron Keystone Gas Storage, LLC (Keystone) filed pursuant to section 284.504 of the Commission's regulations and the January 23, 2004 Commission order in Docket No. PR03–17–000, a notification of change in market power analysis and request for renewed approval of market-based rates for its storage and hub services, including wheeling services, provided under its limited jurisdiction certificate.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest 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 April 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8215 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–9–000]

Guidance on Simultaneous Transmission Import Limit Studies for the Northwest Region; Notice of Pre-Filing Technical Conference for Northwest Region Transmission Owners

April 5, 2010.

Take notice that Commission staff will convene a telephonic technical conference in the above-referenced proceeding on Tuesday, April 13, 2010 at 1 p.m. (Eastern Standard Time). The conference is expected to last for approximately two hours.

The purpose of the conference is to give transmission owners in the Northwest region an opportunity to ask questions regarding the Simultaneous Transmission Import Limit Studies (SIL) required as part of their updated market power analyses associated with their market based rate authorizations, which are due in June 2010.

Participants are encouraged to review the SIL study requirements beforehand. In particular, participants should review recent Commission orders on SIL studies [1] and the December 16, 2009 Technical Conference "Guidance on Simultaneous Transmission Import Limit Studies." To view the archive of the December 16, 2009 Technical Conference follow this link *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=5001&CalType=%20&CalendarID=116&Date=12/16/2009&View=Listview* and click on "free live webcast." To view the slides from that technical conference, click on "Staff Presentation" at the same webpage.

The topics to be discussed at this technical conference may include development of seasonal benchmark cases, completeness of SIL study support data files (monitor, contingency, and subsystem files), scaling methodologies, identification of energy transfer limits, transfer distribution factors, OASIS practices, methods to identify available uncommitted generation, application of net area interchange, and alternative methods to adjust net area interchange for a study area with two, non-contiguous first-tier areas.

The technical conference is open to all interested persons but will focus only on the Northwest region transmission owners and their pending updated market power analyses. Interested persons planning to participate in the technical conference are strongly encouraged to submit in writing any questions that they would like addressed at least three days before the technical conference, and preferably sooner.

Please contact Alfred Corbett or Rakesh Batra to receive the phone number and verification code to join the technical conference or to request further information. Requests for the call-in information should be submitted to *alfred.corbett@ferc.gov* and *rakesh.batra@ferc.gov* by Friday, April 9, 2010 and include "AD10–9–000 Request for call-in information" in the subject line.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8216 Filed 4–9–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See, e.g., Carolina Power & Light Company,* 128 FERC ¶ 61,039, *order on clarification* 129 FERC ¶ 61,152 (2009).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0424; FRL–9136–2; EPA ICR Number 1797.05; OMB Control Number 2060–0442]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (Renewal)

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 May 12, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0424, 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: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@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–2009–0424, 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: NSPS for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978 (Renewal)

ICR Numbers: EPA ICR Number 1797.05, OMB Control Number 2060–0442.

ICR Status: This ICR is scheduled to expire on May 31, 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 New Source Performance Standards (NSPS) for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978, were proposed on June 11, 1973, and promulgated on March 8, 1974.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and 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. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum liquid storage vessels.

Estimated Number of Respondents: 220.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 769.

Estimated Total Annual Cost: $72,750 in labor costs exclusively. There are neither capital/startup costs nor operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 6, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–8290 Filed 4–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9136–3; Docket ID No. EPA–HQ–ORD–2009–0934]

The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields and a Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 60-day public comment period for two related draft documents: (1) "The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields" (EPA/600/R–09/138A) and (2) "A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams" (EPA/600/R–10/023A). These reports were developed by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of a set of actions taken by EPA to further clarify and strengthen environmental permitting requirements for Appalachian mountaintop removal and other surface coal mining projects, in coordination with Federal and State regulatory agencies (*http://www.epa.gov/owow/wetlands/guidance/mining.html*).

Both documents will be reviewed by an independent review panel convened by EPA's Science Advisory Board (SAB). The SAB's peer review meeting, which the public will be able to attend as observers, will be scheduled at a later date, and announced in the **Federal Register.** The public comment period and the SAB meeting are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted, in accordance with this notice, to the SAB review panel prior to the meeting for their consideration. When finalizing the draft documents, EPA intends to consider any significant public comments that it receives in accordance with this notice.

EPA is releasing these draft documents for the purpose of pre-dissemination peer review under applicable information quality guidelines. The documents have not been formally disseminated by EPA. They do not represent and should not be construed to represent a final Agency policy or determination; however, the documents reflect EPA's best interpretation of the available science. The draft documents are available via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 60-day public comment period begins April 12, 2010, and ends June 11, 2010. Technical comments should be in writing and must be received by EPA by June 11, 2010.

ADDRESSES: The draft reports, "The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields" and "A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams" are available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available, contact the EPA; telephone: 703–347–8629; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document titles (1) "The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields" and (2) "A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams."

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on submitting comments to the docket, please contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.* For technical information, please leave a message at 703–347–8629 or send e-mail to *MTM-Cond@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the first draft report entitled "The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields," is to assess the state of the science on the ecological impacts of Mountaintop Mining and Valley Fill (MTM–VF) operations on streams in the Central Appalachian Coal Basin. This basin covers about 12 million acres in West Virginia, Kentucky, Virginia, and Tennessee. The draft report reviews literature relevant to evaluating five potential consequences of MTM–VF operations: (1) Impacts on headwater streams; (2) impacts on downstream water quality; (3) impacts on stream ecosystems; (4) the cumulative impacts of multiple mining operations; and (5) effectiveness of mining reclamation and mitigation. The impacts of MTM–VF operations on cultural and aesthetic resources are not included in the review. EPA used two primary sources of information for the evaluation: (1) The peer reviewed, published literature and (2) the Programmatic Environmental Impact Statement (PEIS) on Mountaintop Mining/Valley Fills in Appalachia and its associated appendices prepared in draft in 2003 and finalized in 2005.

The second draft report entitled, "A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams," uses field data to derive an aquatic life benchmark for conductivity. Conductivity is a measurement of the salt content of water. The saltier the water, the more it will conduct electricity. This benchmark value may be applied to waters in the Appalachian Region that are near neutral or mildly alkaline in their pH and are influenced by salts of sulfate and bicarbonate. This benchmark is intended to protect the biological integrity of waters in the region. It is derived by a method modeled on the U.S. EPA's standard methodology for deriving water quality criteria. In particular, the methodology was adapted for use of field data. Field data were used because sufficient and appropriate laboratory data were not available and because high quality field data were available to relate conductivity to effects on biotic communities. This draft report provides scientific evidence for a conductivity benchmark in a specific region rather than for the entire United States.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2009–0934, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753

• *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.

• *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0934. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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.*

Docket: 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 materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: April 2, 2010.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 2010–8302 Filed 4–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0315; FRL–9136–4]

Guidance on Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment on the issues addressed in two EPA guidance memoranda released on April 1, 2010, titled *Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order.* Effective immediately, these memoranda—one labeled "Summary Guidance" and one labeled "Detailed Guidance"—seek to clarify EPA's roles and expectations, in coordinating with its Federal and state partners, with regard to environmental review of Appalachian surface coal mining operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order (E.O. 12898).

DATES: Comments must be received on or before December 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0315, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for reviewing comments.

• E-mail: *OW–Docket@epa.gov.*

• Mail: U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• On Site: EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC 20460. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 Office of Water Docket/EPA/DC, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC 20460. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Timothy Landers, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–2231; *landers.timothy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA's draft guidance on *Improving EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order* clarifies how EPA is applying its existing legal authorities in its review of Appalachian surface coal mining operations. The guidance memoranda are available at *http://www.epa.gov/owow/wetlands/guidance/mining.html.* As such, these memoranda do not represent a regulation, and are not subject to the formal provisions of the Administrative Procedure Act. However, EPA recognizes the importance of this guidance to its Federal and state partners, to the regulated community, and to the public, and therefore seeks

public comment on the issues addressed in the two documents and on the guidance's implementation through this **Federal Register** notice. This public comment opportunity will be available until December 1, 2010.

EPA has committed to determining whether any changes are required to the interim guidance by April 1, 2011 and issuing revised final guidance if necessary. EPA's evaluation of comments on this guidance will also be informed by the result of the SAB reviews of EPA's draft science reports, as discussed further below.

EPA is committed to ensuring that its decisions are based on the best available science. To further this commitment, the guidance incorporates independently reviewed scientific information on the impacts of Appalachian surface coal mining on the aquatic environment. In addition to the existing peer-reviewed science outlined in the memoranda, EPA also references two draft reports produced by EPA's Office of Research and Development. The first draft report, *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields,* assesses the state of the science on the environmental impacts of mountaintop mines and valley fills on streams in the Central Appalachian Coalfields. The second draft report, *A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams,* adapts the standard U.S. EPA methodology for deriving ambient water quality criteria to field data, and derives benchmarks for dissolved salts as measured by conductivity in Central Appalachian streams using data from West Virginia and Kentucky. These scientific reports, publicly released on April 1 and described in a separate **Federal Register** notice also published today, are available for public comment for 60 days. The drafts can be accessed at *http://www.epa.gov/ncea* and are available for public comment through EPA Docket ID No. EPA–HQ–ORD–2009–0934. As outlined in that notice, comments provided on the two draft scientific reports will be forwarded to an expert panel convened by EPA's Science Advisory Board (SAB) in advance of the SAB's independent peer review of these reports during the summer of 2010.

For purposes of this **Federal Register** notice, EPA in particular seeks comment on the following elements of its guidance memoranda, as well as on the implementation of this guidance between now and December 1, 2010:

- Whether the guidance achieves its objective of providing further clarity and improved protection for the environment and human health through EPA's review of draft or proposed permits under Section 402 of the Clean Water Act and permit applications under Section 404 of the Clean Water Act for Appalachian surface coal mining operations.
- Whether additional scientific information is available to inform EPA's authorities under the Clean Water Act, National Environmental Policy Act, and Environmental Justice Executive Order (E.O. 12898).
- Whether EPA's implementation of its guidance in reviewing state Section 402 permits and permit applications under Section 404 of the Clean Water Act has been effective in achieving the goals of providing additional clarity and enhanced environmental and human health protection.
- Whether there are additional examples of best practices in terms of mine design, site and materials management, or water treatment systems, consistent with the objectives of improved environmental protection, greater clarity, and the best-available science, that should be considered.
- Whether additional relevant and appropriate data, studies, knowledge of studies, or informal observations should be considered as part of EPA's application of best-available science and its authorities under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order (E.O. 12898), to Appalachian surface coal mining.

The record will remain open for comment on the guidance until December 1, 2010. All public comments will be fully considered along with the results of the SAB review in reaching a decision on whether changes are required to the current guidance by April 1, 2011.

Dated: April 6, 2010.

Peter S. Silva,

Assistant Administrator for Water.

Dated: April 6, 2010.

Cynthia Giles,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 2010–8303 Filed 4–9–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, April 13, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Wednesday, April 14, 2010, at 11 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This hearing will be open to the public.

AUDIT HEARING: Biden for President, Inc.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–8185 Filed 4–9–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. American Community Bancorp Inc., to become a bank holding company by acquiring 100 percent of the voting shares of American Community Bank, both of Glen Cove, New York.

Board of Governors of the Federal Reserve System, April 7, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–8264 Filed 4–9–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day 10–0696]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National HIV Prevention Program Monitoring and Evaluation (NHM&E))—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting approval for a revision of a previously approved project and a change in project name. The initial PEMS OMB request was approved October 6, 2005, for one year and reinstated August 22, 2007, for three years.

The purpose of this revision is to collect standardized HIV prevention program evaluation data from health departments and community-based organizations (CBOs) who receive Federal funds for HIV prevention activities. Grantees have the option of using CDC's web-based PEMS software application or other approved software that the grantee may elect to utilize. Since the data collection approval in 2007, program evaluation data collection has proceeded in phases. The last phase, the collection and reporting of Partner Services data, is scheduled to begin in July 2010.

The evaluation and reporting process is necessary to ensure that CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed standardized NHM&E variables and an optional electronic reporting system (PEMS) through extensive consultation with representatives from health departments, CBOs, and national partners (*e.g.,* The National Alliance of State and Territorial AIDS Directors, Urban Coalition of HIV/AIDS Prevention Services, and National Minority AIDS Council).

CDC requires CBOs and health departments who receive federal funds for HIV prevention to report non-identifying, client-level, standardized evaluation data to: (1) Accurately determine the extent to which HIV prevention efforts are carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet these data needs; and (3) be accountable to stakeholders by informing them of HIV prevention activities and use of funds in HIV prevention nationwide.

CDC HIV prevention program grantees will collect, enter, and report general agency information, program model and budget data, and client demographics and behavioral risk characteristics. If using the PEMS, data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry into the web-based system.

The following changes have occurred since project 0920–0696 has been implemented: (1) The term "PEMS" currently refers only to CDC's web-based data collection and transmission software. In order to refer to data variables, the revised project uses the term "National HIV prevention program monitoring and evaluation" (NHM&E) data rather than "PEMS" data; and, (2) many data variables that were previously required are currently made optional in order to reduce data reporting burden on grantees. The revised collection anticipates a significant increase in the number of grantees and activities to be funded and provides additional optional variables for use by CBOs in outcome evaluation and special evaluation projects.

There are no additional costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NHM&E Data Variables and Values	Health jurisdictions	65	4	148	38,480

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
HIV Testing Form	Health jurisdictions (HV Testing-scan).	30	4	616	73,920
NHM&E Data Variables and Values	Health jurisdictions (HIV Testing non-scan).	35	4	439	61,460
NHM&E Data Variables and Values	Health jurisdictions (Training)	65	4	10	2,600
NHM&E Data Variables and Values	Community-Based Organizations	300	4	84	100,800
HIV Testing Form	Community-Based Organizations (HIV Testing).	100	4	30	12,000
NHM&E Data Variables and Values	Community-Based Organizations (Training).	300	4	10	12,000
Total					301,260

Dated: April 5, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–8261 Filed 4–9–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day 10–0650]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Prevention Research Centers Program National Evaluation Reporting System (OMB No. 0920–0650 exp. 8/31/2010)—Revision—Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Prevention Research Centers (PRC) Program was established by Congress through the Health Promotion and Disease Prevention Amendments of 1984. PRCs conduct outcomes-oriented health promotion and disease prevention research on a broad range of topics using a multi-disciplinary and community-based approach. CDC manages the PRC program and currently provides funding to PRC grantees that are housed within schools of public health, medicine, or osteopathy. Awards are made for five years and renewed through a competitive application process.

CDC is currently approved to collect progress and performance information about PRCs through the PRC Information System (IS), a Web-based application (OMB no. 0920–0650, exp. 8/31/2010). The performance information is used to track each PRC's progress toward, and achievement of, the objectives established by the PRC Program and the PRC's individual work plan, including indicators related to research projects, products resulting from those projects, trainings related to those projects, and partnerships. Information has been collected through the PRC IS twice per year.

In the next approval period, information collection will be restructured around a revised set of performance indicators and revised information collection methodology. The frequency of reporting will be reduced to once per year, however, reporting will be divided into two parts. The first information collection will be conducted electronically utilizing Survey Monkey, a more user-friendly Web-based survey system. This information collection will include the following: (1) PRC involvement with State and local health departments and other government agencies, (2) number and characteristics of research projects, (3) number of training programs delivered, (4) number of people trained, and (5) number of students trained. The second information collection will consist of a telephone interview with a key contact for each PRC grantee. The data will include the: (1) Number of new people hired, (2) number of contracts entered into and supported by PRC core funds, and (3) number of effective interventions. Although the number of respondents will increase from 33 to 37 PRCs, the proposed changes will result in a net decrease in the total estimated annualized burden to respondents, due primarily to a decrease in the burden per respondent.

OMB approval is being requested for a three-year period with a start date of June 1, 2010. There are no costs to respondents other than their time. The total estimated burden hours are 259.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PRC Program	Survey	37	1	6

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	Telephone Interview	37	1	1

Dated: April 6, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–8259 Filed 4–9–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2012.

For information, contact Larry Pickering, M.D., Executive Secretary, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E05, Atlanta, Georgia 30333, telephone 404/639–8767 or fax 404/639–8626.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 6, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–8254 Filed 4–9–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0166]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Marker Residue Depletion Studies to Establish Product Withdrawal Periods (VICH GL48); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#207) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Marker Residue Depletion Studies to Establish Product Withdrawal Periods," (VICH GL48). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide study design recommendations which will facilitate the universal acceptance of the generated residue depletion data to fulfill this recommendation.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 12, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Oriani, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8204, e-mail: *julia.oriani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#207) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Marker Residue Depletion Studies to Establish Product Withdrawal Periods," (VICH GL48). In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union (EU), Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal

products in the EU, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Study to Marker Residue Depletion Studies to Establish Product Withdrawal Periods

The VICH Steering Committee held a meeting on November 5, 2009, and agreed that the draft guidance document entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Marker Residue Depletion Studies to Establish Product Withdrawal Periods," VICH GL48 should be made available for public comment. This draft VICH guidance document is one of a series developed to facilitate the mutual acceptance of residue chemistry data for veterinary drugs used in food-producing animals. This guidance was prepared after consideration of the current requirements for evaluating veterinary drug residues in the EU, Japan, United States, Australia, New Zealand, and Canada.

As part of the approval process for veterinary medicinal products in food-producing animals, regulatory authorities recommend data from marker residue depletion studies in order to establish appropriate withdrawal periods in edible products including meat, milk, eggs, and honey. The objective of this guidance is to provide study design recommendations which will facilitate the universal acceptance of the generated residue depletion data to fulfill this recommendation.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 1–2 of the guidance have been approved under OMB control no. 0910–0032.

V. Comments

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

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/default.htm* or *http://www.regulations.gov*.

Dated: April 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8231 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0165]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Guidance for Industry on Guidances for the Validation of Analytical Methods Used in Residue Depletion Studies (VICH GL49); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#208) entitled "Draft Guidance for Industry on Guidances for the Validation of Analytical Methods Used in Residue Depletion Studies," (VICH GL49). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide a general description of the criteria that has been found to be acceptable to the European Union (EU), Japan, the United States, Australia, New Zealand, and Canada for the validation of analytical methods used in veterinary drug residue studies.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 12, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Oriani, Center for Veterinary Medicine, (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8204, e-mail: *julia.oriani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#208) entitled "Draft Guidance for Industry on Guidances for the Validation of Analytical Methods Used in Residue Depletion Studies," VICH GL49. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the EU, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the EU, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on the Validation of Analytical Methods Used in Residue Depletion Studies

The VICH Steering Committee held a meeting on November 5, 2009, and agreed that the draft guidance document entitled "Draft Guidances for the Validation of Analytical Methods Used in Residue Depletion Studies," (VICH GL49) should be made available for public comment. This draft VICH guidance document is one of a series developed to facilitate the mutual acceptance of residue chemistry data for veterinary drugs used in food-producing animals. This guidance was prepared after consideration of the current requirements for evaluating veterinary drug residues in the EU, Japan, the United States, Australia, New Zealand, and Canada.

During the veterinary drug development process, residue depletion studies are conducted to determine the concentration of the residue or residues present in the edible products (tissues, milk, eggs, or honey) of animals treated with veterinary drugs. This information is used in regulatory submissions around the world. Submission of regulatory methods (postapproval control methods) and the validation requirements of the regulatory methods are usually well defined by various regulatory agencies worldwide and may even be defined by law. Consequently, it has been difficult to harmonize the procedures used for validation of these methods. However, the residue studies are generally conducted before the regulatory methods have been completed. Often the in-house validated residue methods provide the framework for the methods submitted for regulatory monitoring. Harmonization of the validation requirements for methodology used during residue studies and submitted to the regulatory agencies in support of the maximum residue limits and withdrawal periods should be achievable. It is the intent of this document to describe a validation procedure that is acceptable to the regulatory bodies of the EU, Japan, the United States, Australia, New Zealand, and Canada for use in the residue depletion studies. This validated method may continue on to become the "regulatory method" but that phase of the process will not be addressed in any detail in these guidances.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 1–3 of this guidance have been approved under OMB control no. 0910–0032.

V. Comments

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

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/*

default.htm or *http://www.regulations.gov*.

Dated: April 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8230 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0164]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Comparative Metabolism Studies in Laboratory Animals (VICH GL47); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#206) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Comparative Metabolism Studies in Laboratory Animals," VICH GL47. This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide recommendations for internationally harmonized procedures to identify the metabolites of veterinary food animal drugs in laboratory animals used for toxicological testing for the purpose of comparison to the residues of the drugs in food animals.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 12, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Oriani, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8204, e-mail: *julia.oriani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#206) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Comparative Metabolism Studies in Laboratory Animals," VICH GL47. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union (EU), Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the EU, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals

The VICH Steering Committee held a meeting on November 5, 2009, and agreed that the draft guidance document entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Comparative Metabolism Studies in Laboratory Animals," VICH GL47 should be made available for public comment. This draft VICH guidance document is one of a series developed to facilitate the mutual acceptance of residue chemistry data for veterinary drugs used in food-producing animals. This guidance was prepared after consideration of the current requirements for evaluating veterinary drug residues in the EU, Japan, United States, Australia, New Zealand and Canada.

The objective of this guidance is to provide recommendations for internationally harmonized procedures to identify the metabolites of veterinary food animal drugs in laboratory animals used for toxicological testing for the purpose of comparison to the residues of the drugs in food animals. The purpose of comparative metabolism studies is to determine if laboratory animals used for toxicological testing have been exposed to the metabolites that humans will be exposed to as residues in products of food animal origin.

The human food safety evaluation of veterinary drug residues assures that food derived from treated animals is

safe for human consumption. As part of the data collection process, studies are conducted to characterize the metabolites to which laboratory animals are auto-exposed during the toxicological testing of the veterinary drug. The purpose of these studies is to determine whether the metabolites that people will consume from tissues of target food animals are also produced by metabolism in the laboratory animals used for the safety testing.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 1–3 of this guidance have been approved under OMB control no. 0910–0032.

V. Comments

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

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/default.htm or http://www.regulations.gov*.

Dated: April 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8229 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0163]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Metabolism Study to Determine the Quantity and Identify the Nature of Residues (VICH GL46); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#205) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Metabolism Study to Determine the Quantity and Identify the Nature of Residues (MRK)," VICH GL46. This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide recommendations for internationally harmonized test procedures to study the quantity and nature of residues of veterinary drugs in food-producing animals.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 12, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Oriani, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8204, e-mail: *julia.oriani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#205) entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Metabolism Study to Determine the Quantity and Identify the Nature of Residues (MRK)," VICH GL46. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Study to Determine the Quantity and Identify the Nature of Residues

The VICH Steering Committee held a meeting on November 5, 2009, and agreed that the draft guidance document entitled "Draft Guidance for Industry on Studies to Evaluate the Metabolism and Residue Kinetics of Veterinary Drugs in Food-Producing Animals: Metabolism Study to Determine the Quantity and Identify the Nature of Residues (MRK)," VICH GL46 should be made available for public comment. This draft VICH guidance document is one of a series developed to facilitate the mutual acceptance of residue chemistry data for veterinary drugs used in food-producing animals. This guidance was prepared after consideration of the current requirements for evaluating veterinary drug residues in the European Union, Japan, United States, Australia, New Zealand, and Canada.

Although this guidance recommends a framework for metabolism testing, it is important that the design of the studies remains flexible. It is recommended that studies be tailored to sufficiently characterize the components of the residue of toxicological concern.

The human food safety evaluation of veterinary drugs assures that food derived from treated animals is safe for human consumption. As part of the data collection process, studies are conducted to permit an assessment of the quantity and nature of residues in food derived from animals treated with a veterinary drug. These metabolism studies provide data on the following topics: (1) The depletion of residues of toxicological concern from edible tissues of treated animals at varying times after drug administration; (2) the individual components, or residues, that comprise the residue of toxicological concern in edible tissues; (3) the residue(s) that may serve as marker for analytical methods intended for compliance purposes (i.e., monitoring of appropriate drug use); and (4) the identification of a target tissue or tissues, as applicable to national or regional programs.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 1–4 of this guidance have been approved under OMB Control No. 0910–0032.

V. Comments

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

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/default.htm* or *http://www.regulations.gov*.

Dated: April 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8228 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0342]

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 10 on Polyacrylamide Gel Electrophoresis General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 10: Polyacrylamide Gel Electrophoresis General Chapter." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Polyacrylamide Gel Electrophoresis General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled "Q4B Evaluation and

Recommendation of Pharmacopoeial Texts for Use in the ICH Regions."

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 14, 2009 (74 FR 41143), FDA published a notice announcing the availability of a draft tripartite guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 10: Polyacrylamide Gel Electrophoresis General Chapter." The notice gave interested persons an opportunity to submit comments by October 13, 2009.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 10: Polyacrylamide Gel Electrophoresis General Chapter" was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in October 2009.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Polyacrylamide Gel Electrophoresis General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: April 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8227 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; "In Vitro Assessments for Antimicrobial Activity—Viruses".

Date: May 3, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/N IH/DHHS, Room 3246, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–443–8115, *gaol2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning (R34) Grants and Implementation (U01) Cooperative Agreements.

Date: May 5, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: B. Duane Price, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room 3139, Bethesda, MD 20892, 301–451–2592, *pricebd@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "In vitro Assessments for Antimicrobial Activity—Toxins".

Date: May 11, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–443–8115, *gaol2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8038 Filed 4–9–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council on Aging.

Date: May 25–26, 2010.

Closed: May 25, 2010, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: May 26, 2010, 8 a.m. to 1 p.m.

Agenda: Call to order and reports from the Task Force on Minority Aging Research, the Working Group on Program; Division of Geriatrics and Clinical Gerontology Review; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute On Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–9322. *barrr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8245 Filed 4–9–10; 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, Loan Repayment.

Date: May 3, 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. (Virtual Meeting).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@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: April 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8247 Filed 4–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to welcome new members of the IACC and to discuss committee activities including the 2009 Summary of Advances and the 2009 Portfolio Analysis. In addition, there will be several presentations on a variety of topics: the Autism Treatment Network, changes in the DSM–V related to autism, stem cell research, non-verbal autism and comparative effectiveness research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open meeting.

Date: April 30, 2010.

Time: 10 a.m. to 5 p.m.* Eastern Time—* Approximate end time.

Agenda: To welcome new members of the IACC and to discuss topics including the 2009 Summary of Advances, the 2009 Portfolio Analysis, the Autism Treatment Network, autism in the DSM–V, stem cell research, non-verbal autism and comparative effectiveness research.

Place: Ronald Reagan Building and International Trade Center, the Rotunda Room, 1300 Pennsylvania Ave., NW., Washington, DC 20004.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access: Dial: 1–888–577–8995; Access code: 1991506.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/4-30-10_IACC. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Deadlines: Notification of Intent to present Oral Comments: April 22nd by 5 pm. ET. Submission of written/electronic copy of oral presentation: April 23rd by 5 p.m. ET. Submission of written comments: April 26th by 5 p.m. ET.

Access: Metro accessible—Federal Triangle Metro (Orange/Blue Line).

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8200, Bethesda, MD 20892–9669, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5 p.m. ET on Thursday, April 22, 2010 with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented (where applicable) by 5 p.m. ET on Friday, April 23, 2010. Statements submitted will become a part of the public record. Only one representative of a given organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5 p.m. ET Monday, April 26, 2010. The comments should include the name and when applicable, the business or professional affiliation of the interested person. All written statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast live or conference call, please e-mail *IACCTechSupport@acclaroresearch.com.*

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Online pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered. **Please note:** Online pre-registration will close by 5 p.m. the day before the meeting. After that time, registration will have to be done onsite the day of the meeting.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: April 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8256 Filed 4–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, LRP's.

Date: May 3, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Virtual Meeting.)

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Meniere's Clinical Trial.

Date: May 7, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of

Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03—Chemical Senses.

Date: May 25, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03—VSL.

Date: May 26, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03—Hearing and Balance.

Date: May 27, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Communication Disorders Consortium.

Date: June 17, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8255 Filed 4–9–10; 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, April 20, 2010, 12 p.m. to April 21, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 6, 2010, 75 FR 17416.

The meeting will be one day only April 20, 2010, from 8 a.m. to 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8253 Filed 4–9–10; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging Program Project Review.

Date: May 5, 2010.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and Mobility.

Date: May 10, 2010.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Early Alzheimer's Disease.

Date: May 19, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:*Alicja L Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Behavioral Economics, Health, and Aging.

Date: July 16, 2010.

Time: 12 p.m. to 3:30 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.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8252 Filed 4–9–10; 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: AARR.

Date: April 23–24, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050. *freundr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8246 Filed 4–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0168]

Developing Guidance on Naming, Labeling, and Packaging Practices to Reduce Medication Errors; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Developing Guidance on Naming, Labeling, and Packaging Practices to Reduce Medication Errors." The purpose of the public workshop is to initiate constructive dialogue and information sharing among regulators, researchers, the pharmaceutical industry, health care organizations, health care professionals, and others from the general public about the design of drug and therapeutic biologic container labels, carton labeling, and product packaging, and practices to develop proprietary names to reduce medication errors. The input from this workshop will be used to develop draft guidance for industry on practices for naming, labeling, and packaging of drugs and biologics to reduce the potential for medication errors. FDA is also opening a public docket to receive comments on this topic to assist in the development of draft guidance.

DATES AND TIME: The public workshop will be held on Thursday and Friday, June 24 and 25, 2010, from 8:30 a.m. to 5 p.m. each day. Register to make a presentation at the workshop by May 25, 2010. See section IV of this document for information on how to attend or present at the meeting. Submit written or electronic comments to the docket by July 23, 2010, to receive consideration.

ADDRESSES: The public workshop will be held at the Marriott Residence Inn at 7335 Wisconsin Ave., Bethesda, MD 20814. Submit electronic requests to register and make a presentation to *GNLP.meeting@fda.hhs.gov*. Submit written requests to register and make a presentation to Colleen O'Malley (see **FOR FURTHER INFORMATION CONTACT**).

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Colleen O'Malley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4305, Silver Spring, MD 20993, 301–796–1786, FAX: 301–796–9832, email: *colleen.omalley@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), Congress reauthorized and expanded the Prescription Drug User Fee Act program for fiscal years (FYs) 2008 through 2012 (PDUFA IV). As part of the performance goals and procedures set forth in an enclosure to the letter from the Secretary of the Health and Human Services referred to in section 101(c) of FDAAA, FDA committed to certain performance goals and procedures. (See *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm*). In that letter, FDA stated that it would use fees collected under PDUFA to implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Among these measures, FDA agreed that by the end of FY 2010, after public consultation with academia, industry, and others from the general public, the agency would publish a draft guidance describing practices for naming, labeling, and packaging drugs and biologics to reduce medication errors.

II. Workshop Objectives and Issues for Discussion

This workshop represents the first step in meeting the PDUFA goal described previously and is intended to provide valuable information to assist the agency in developing draft guidance for industry on practices to reduce medication errors. The workshop will not discuss the ongoing FDA pilot program to evaluate proposed proprietary name submissions. Persons seeking more information on the pilot program should refer to the FDA concept paper entitled "PDUFA Pilot Project Proprietary Name Review" at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidance/ucm072229.pdf* and the **Federal Register** notice entitled "Pilot Program to Evaluate Proposed Proprietary Name Submissions; Procedures to Register for Participation and Submit Data" (74 FR 50806, October 1, 2009) announcing procedures for participation in the voluntary pilot program.

The workshop objectives are as follows: (1) Initiate constructive dialogue and information sharing among regulators, researchers, the pharmaceutical industry, health care organizations, health care professionals, and others from the general public about the design of drug and therapeutic biologic container labels, carton labeling, and product packaging, and practices in developing proprietary

names to reduce medication errors; (2) share current FDA experience regarding the evaluation of labels, packaging, and proprietary names; and (3) obtain input on developing consistent review criteria for FDA to use in evaluating container labels, carton labeling, and product packaging submitted to the agency. FDA will use information from the workshop to help develop a draft guidance for manufacturers and distributors for creating product names and designing product labels and packaging to reduce medication errors.

Four panel discussions will focus on areas in which the agency requests input.

Panel 1 will focus on characteristics of container label and carton labeling design as they relate to reducing the risk of medication errors. Topics with respect to container label and carton labeling design include content, format, type of label, layout, use of color, use of graphics, and costs associated with designing labels.

Panel 1 will address the following questions:

1. What does FDA need to consider to ensure that the container labels and carton labeling designs are safe and reduce the risk of medication errors?

2. What are the challenges in designing container label and carton labeling to reduce the risk of medication errors?

3. What are some strategies for addressing these design challenges without compromising safety?

Panel 2 will focus on characteristics related to study design, conduct and interpretation of human factors analysis, Failure Mode and Effects Analysis (FMEA), usability studies, and other studies specifically focused on evaluating the safety of container label and carton labeling designs to reduce the risk of medication errors. Topics include methodology, selection of participants and subjects, collection of data, analysis of data, costs and time to conduct such studies, and interpretation of study findings.

Panel 2 will address the following questions:

1. What are the strengths and limitations of performing such studies?

2. Are there other types of studies and analyses that provide useful information about the medication error risks associated with the container label or carton labeling design?

3. How can FDA ensure that the study design accurately captures and assesses potential medication error risks that should be considered in our evaluation of the container labels and carton labeling?

Panel 3 will focus on characteristics of the manufacturers' packaging used for medications as they relate to the safe use of the medicine from a medication errors perspective. Topics include medication error considerations when designing a container-closure system for a medication, drug-device combination packaging, studies and analyses to evaluate the safety of product packaging design, and costs associated with designing product packaging.

Panel 3 will address the following questions:

1. What information does FDA need to consider to ensure that the manufacturers' packaging design is safe and reduces the risk for medication errors?

2. What are the challenges in designing manufacturers' packaging to reduce the risk of medication errors?

3. What are some strategies for addressing these challenges without compromising safety?

4. How can FDA ensure that the study design accurately captures and assesses potential medication error risks that should be considered in our evaluation of a proposed manufacturers' packaging design for a particular medication?

5. Are there other types of studies and analyses that provide useful information about the medication error risks associated with the manufacturers' packaging design?

Panel 4 will focus on recommended practices in developing proprietary names as they relate to reducing medication errors. Topics include choosing a nomenclature strategy for new products containing the same active ingredient as marketed products; selection and application of modifiers to proprietary names; and medication error potential from use of the same proprietary name as a component of the proprietary names for multiple products containing different active ingredients; U.S. Adopted Names (USAN) Council Stems; medical abbreviations; encoding dosage forms or dosing intervals; and including the established name or ingredients within the proprietary name.

Panel 4 will address the following questions:

1. What are the challenges in developing a proprietary name from a safety perspective to prevent medication errors?

2. What are some strategies for addressing these challenges without compromising safety?

3. When products are developed containing the same ingredient as a marketed product, how can risks associated with a given nomenclature strategy for the proposed product be evaluated, minimized, and mitigated (e.g., use of a modifier "Proprietary XL" versus the use of an alternate proprietary name)?

III. Comments

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

IV. Attendance and Registration

There is no fee to attend the workshop, and attendees who do not wish to make a formal presentation do not need to register. Seating will be on a first-come, first-served basis.

If you would like to make an oral presentation to the panelists during the meeting, you must register by mail or email (see **ADDRESSES**) and provide an abstract of your presentation by 5 p.m. on May 25, 2010. You must also provide your name, title, business affiliation (if applicable), address, telephone and fax numbers, and e-mail address. Identify the panel number and question number(s) you will address in your presentation.

FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. Persons registered to make a formal presentation should check in before the workshop. Ample time will be allowed during the scheduled agenda for attendees who have not registered to ask questions of the panelists. In addition, we strongly encourage written comments to the docket.

If you need special accommodations because of disability, please contact Colleen O'Malley (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

V. Transcripts

Please be advised that as soon as a transcript of the workshop is available, it will accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management

(see **ADDRESSES**). A transcript will also be made available in either hard copy or on a CD–ROM upon submission of a Freedom of Information request. Written requests are to be sent to Freedom of Information (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 31, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8233 Filed 4–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0020]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; notice of closed Federal Advisory Committee meeting

SUMMARY: The Homeland Security Science and Technology Advisory Committee will meet April 20–22, 2010 at the National Biodefense Analysis and Countermeasures Center, 110 Thomas Johnson Drive, Suite 400, Frederick, MD. This meeting will be closed to the public.

DATES: The Homeland Security Science and Technology Advisory Committee will meet April 20, 2010 from 8:30 a.m. to 5 p.m., April 21, 2010 from 9 a.m. to 5 p.m. and on April 22, 2010 from 9:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the National Biodefense Analysis and Countermeasures Center, 110 Thomas Johnson Drive, Suite 400, Frederick, MD 21702. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by Friday, April 16, 2010. Send written material to Ms. Tiwanda Burse, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528. Comments must be identified by DHS–2010–0020 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: HSSTAC@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–254–6173.
- *Mail:* Ms. Tiwanda Burse, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Ms. Tiwanda Burse, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202–254–6877.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

At this meeting, the Committee will receive sensitive and classified (Secret-level) briefings and presentations regarding relationships between Science & Technology and selected National Biodefense Analysis and Countermeasures related topics, which are matters relevant to homeland security.

Basis for Closure: In accordance with Section 10(d) of the Federal Advisory Committee Act, it has been determined that the Homeland Security Science and Technology Advisory Committee meeting concerns sensitive Homeland Security information and classified matters within the meaning of 5 U.S.C. 552b(c)(1) and (c)(9)(B) which, if prematurely disclosed, would significantly jeopardize national security and frustrate implementation of proposed agency actions and that, accordingly, this meeting will be closed to the public.

Dated: April 2, 2010.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2010–8203 Filed 4–9–10; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3311–EM; Docket ID FEMA–2010–0002]

Rhode Island; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3311–EM), dated March 30, 2010, and related determinations.

DATES: *Effective Date:* March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 30, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Rhode Island resulting from severe storms and flooding beginning on March 12, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of Rhode Island.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Rhode Island have been designated as adversely affected by this declared emergency:

Bristol, Kent, Newport, Providence, and Washington Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8279 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3311–EM; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3311–EM), dated March 30, 2010, and related determinations.

DATES: *Effective Date:* April 3, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8263 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1893–DR; Docket ID FEMA–2010–0002]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1893–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, mudslides, and landslides beginning on March 12, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Fayette, Greenbrier, Kanawha, Mercer, and Raleigh Counties for Individual Assistance.

Fayette, Mercer, Raleigh, and Summers Counties for Public Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8270 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1896–DR; Docket ID FEMA–2010–0002]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1896–DR), dated March 31, 2010, and related determinations.

DATES: *Effective Date:* March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 31, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Delaware resulting from severe winter storms and snowstorms during the period of February 5–11, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Delaware have been designated as adversely affected by this major disaster:

Kent, New Castle, and Sussex Counties for Public Assistance.

Kent, New Castle, and Sussex Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Delaware are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8275 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1895–DR; Docket ID FEMA–2010–0002]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–1895–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from severe storms and flooding beginning on March 12, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties for Individual Assistance.

All counties within the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8281 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1891–DR; Docket ID FEMA–2010–0002]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1891–DR), dated March 25, 2010, and related determinations.

DATES: *Effective Date:* March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from severe winter storms and flooding during the period of February 23 to March 2, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Cumberland, Knox, Lincoln, Sagadahoc, and York Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8288 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1890–DR; Docket ID FEMA–2010–0002]

District of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA–1890–DR), dated March 24, 2010, and related determinations.

DATES: *Effective Date:* March 24, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 24, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in the District of Columbia resulting from severe winter storms and snowstorms during the period of February 5–11, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated area. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the District of Columbia have been designated as adversely affected by this major disaster.

The District of Columbia for Public Assistance.

The District of Columbia for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The District of Columbia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8287 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1892–DR; Docket ID FEMA–2010–0002]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1892–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe winter storm during the period of February 23 to March 3, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8285 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1897–DR; Docket ID FEMA–2010–0002]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1897–DR), dated April 2, 2010, and related determinations.

DATES: *Effective Date:* April 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from severe storms and flooding beginning on March 12, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance,

Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Atlantic, Bergen, Cape May, Essex, Gloucester, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties for Individual Assistance.

Atlantic, Bergen, Cape May, Essex, Mercer, Middlesex, Monmouth, Morris, Passaic, and Somerset Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8284 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1889–DR; Docket ID FEMA–2010–0002]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1889–DR), dated March 23, 2010, and related determinations.

DATES: *Effective Date:* March 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 23, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe winter storm and snowstorm during the period of February 5–6, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

The counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem for Public Assistance.

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties for emergency protective measures, (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8272 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 29, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Rhode Island resulting from severe storms and flooding beginning on March 12, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Rhode Island have been designated as adversely affected by this major disaster:

Kent, Newport, Providence, and Washington Counties for Individual Assistance.

All counties within the State of Rhode Island are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8271 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* April 3, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8262 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* April 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Rhode Island is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2010.

Bristol County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8260 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1886–DR; Docket ID FEMA–2010–0002]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1886–DR), dated March 9, 2010, and related determinations.

DATES: *Effective Date:* April 6, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 9, 2010.

Brule County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8266 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1880–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1880–DR), dated March 2, 2010, and related determinations.

DATES: *Effective Date:* March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 2, 2010.

Adams, Boone, Buena Vista, Cherokee, Clay, Dallas, Emmet, Greene, Hardin, Ida, Monona, Palo Alto, Pocahontas, Story, and Union Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8293 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1874–DR; Docket ID FEMA–2010–0002]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1874–DR), dated February 16, 2010, and related determinations.

DATES: *Effective Date:* March 22, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Donald L. Keldsen as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8291 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1878–DR; Docket ID FEMA–2010–0002]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1878–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* March 26, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 25, 2010.

Boone, Boyd, Cedar, Colfax, Cuming, Dixon, Fillmore, Frontier, Furnas, Gosper, Greeley, Harlan, Holt, Howard, Knox, Loup, Merrick, Nuckolls, Pierce, Platte, Polk, Richardson, Sarpy, and Wayne Counties for Public Assistance.

Platte and Sarpy Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–8289 Filed 4–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) will meet in Philadelphia, PA to discuss and approve DRBOSAC's report on oil spill prevention and response strategies for the Delaware River and Bay. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, April 28, 2010, from 10 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material, requests to make oral presentations, and requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 20, 2010.

ADDRESSES: The Committee will meet at John Heinz Wildlife Refuge (Multi-purpose room), 8601 Lindbergh Boulevard, Philadelphia, PA 19153. Send written material and requests to make oral presentations to Gerald Conrad, Liaison to the Designated Federal Officer (DFO) of the DRBOSAC, at the address above. This notice and any documents identified in the Supplementary Information section as being available in the docket may be viewed online, at *http://www.regulations.gov,* using docket number USCG–2008–0333.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, Liaison to the DFO of the DRBOSAC, telephone 215–271–4824.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

The agenda for the April 28 meeting is as follows:

(1) Opening comments.
(2) Administrative announcements.
(3) Introductions.
(4) Pre-approved presentations from the public.
(5) Debriefs from each DRBOSAC Sub-committee.
(6) Public comments.
(7) Committee recommendation(s) discussion.
(8) Future Committee business.
(9) Closing.

More information and detail on the meeting will be available at the committee Web site, located at *https://homeport.uscg.mil/drbosac.* Additional detail may be added to the agenda up to April 26, 2010.

Procedural

This meeting is open to the public. All persons entering the building will have to present identification and may be subject to screening. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. Members of the public may seek pre-approval for their oral presentations by contacting the Coast Guard no later than April 20, 2010. The public may file written statements with the committee; written material should reach the Coast Guard no later than April 20, 2010. If you would like a copy of your material distributed to each member of the committee, please submit 35 copies to the Liaison to the DFO no later than April 20, 2010, and indicate that the material is to be distributed to committee members at the April 28, 2010 meeting.

Please register your attendance with the Liaison to the DFO no later than April 20, 2010.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: April 7, 2010.

Joseph M. Re,

Captain, U.S. Coast Guard, Office of Performance Management (CG–0954).

[FR Doc. 2010–8371 Filed 4–8–10; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet on April 28–29, 2010.

DATES: The meeting will take place Wednesday, April 28, 2010, from 8:30 a.m. to 5 p.m., e.s.t.; and Thursday, April 29, 2010, from 8:30 a.m. to 1 p.m., e.s.t. Comments must be submitted by April 27, 2010.

ADDRESSES: Members of the public who wish to obtain information for the public meeting or who plan to participate in the meeting should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by April 27, 2010. Members of the public may participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by April 27, 2010. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* (866) 466–5370.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be holding a meeting for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Applicant Outreach Committee Report, the Emergency Medical Services Committee Report, the Training Resources and Data Exchange Review Committee Report, the Fire and Emergency Services Higher Education Committee Report, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in her judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: March 30, 2010.

Denis G. Onieal,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2010–8238 Filed 4–9–10; 8:45 am]

BILLING CODE 9110–45–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0031]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We consolidated this information collection request (ICR) and ICR 1010–0090, Stripper Royalty Rate Reduction Notification, in order to allow program-wide review of Federal oil and gas valuation. The new title of this ICR is "30 CFR parts 202, 204, 206, and 210, Federal Oil and Gas Valuation."

DATES: Submit written comments on or before *June 11, 2010.*

ADDRESSES: You may submit comments on this ICR by any of the following methods. Please use "ICR 1010–0136" as an identifier in your comment.

- Electronically go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter MMS–2008–MRM–0031, and then click search. Follow the instructions to submit public comments. The MMS will post all comments.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 61013B, Denver, Colorado 80225. Please reference ICR 1010–0136 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0136 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or e-mail *hyla.hurst@mms.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR parts 202, 204, 206, and 210, Federal Oil and Gas Valuation.

OMB Control Number: 1010–0136.

Bureau Form Number: Forms MMS–4377 and MMS–4393.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. Public laws pertaining to mineral leases on Federal and Indian lands are posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available

within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals.

We use the information collected in this ICR to ensure that royalty is accurately valued and appropriately paid on oil and gas produced from Federal onshore and offshore leases. Please refer to the Respondents' Estimated Annual Burden Hours table for all reporting requirements and associated burden hours. All data submitted is subject to subsequent audit and adjustment.

Federal Oil and Gas Valuation Regulations

The valuation regulations at 30 CFR part 206, subparts C and D, mandate that companies collect and/or submit information used to value their Federal oil and gas, including (1) transportation and processing allowances; and (2) regulatory allowance limitation information. Companies report certain data on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0139). The information requested is the minimum necessary to carry out our mission and places the least possible burden on respondents. If MMS does not collect this information, both Federal and State governments may incur a loss of royalties.

Transportation and Processing Regulatory Allowance Limits

Lessees may deduct the reasonable, actual costs of transportation and processing from Federal royalties. Lessees who request approval to exceed the regulatory allowance limits are required to provide information in order to obtain these benefits.

Request To Exceed Regulatory Allowance Limitation, Form MMS–4393

Lessees may request to exceed regulatory limitations. Upon proper application from the lessee, we may approve an oil or gas transportation allowance in excess of 50 percent or a gas processing allowance in excess of 66⅔ percent on Federal leases. Form MMS–4393 is used for both Federal and Indian leases to request to exceed allowance limitations. This ICR includes only Federal leases; therefore burden hours for Form MMS–4393 for Indian leases are not included in this ICR. Burden hours for Form MMS–4393 for Indian leases are included in OMB Control Number 1010–0103.

Accounting and Auditing Relief for Marginal Properties

In 2004, we amended our regulations to comply with section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The regulations provide guidance for lessees and designees seeking accounting and auditing relief for qualifying Federal marginal properties. Under the regulations, both MMS and the state concerned must approve any relief granted for a marginal property.

Stripper Oil Royalty Rate Reduction Program

Under 43 CFR 3103.4–2, the Stripper Oil Royalty Rate Reduction Program (Stripper Oil Program) was established by the Bureau of Land Management (BLM), the surface management agency for Federal onshore leases. As a benefit under this program, MMS, who administered the Stripper Oil Program for BLM, approved royalty rate reductions for operators of stripper oil properties for applicable sales periods from October 1, 1992, through January 31, 2006. Effective February 1, 2006, the benefits of reduced royalty rates under this program were terminated. This change is not currently reflected in the CFR; however, BLM is processing a final rule to remove this citation from the regulations.

For production through January 31, 2006, reporters used Form MMS–4377, Stripper Royalty Rate Reduction Notification, to notify MMS of royalty rate changes. Although the benefits were terminated, MMS continues to verify previously submitted notifications and may require the operator to submit an amended Form MMS–4377.

OMB Approval

We are requesting OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are included in this information collection.

For information collections relating to valuation requirements, responses are mandatory. For the remaining information collections in this ICR, responses are required to obtain benefits.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 120 Federal lessees/designees and 7 states for Federal oil and gas valuation; and 150 lessees/lessors for the Stripper Oil Program.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 9,378 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 202—ROYALTIES Subpart C—Federal and Indian Oil				
202.101	202.101 Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. * * *	Burden covered under OMB Control Number 1010–0139.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Subpart D—Federal Gas			
202.152(a) and (b)	202.152(a)(1) If you are responsible for reporting production or royalties you must: (i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation; (ii) Report gas volumes in units of 1,000 cubic feet (mcf); and (iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F. * * * (b) Residue gas and gas plant product volumes shall be reported as specified in this paragraph. * * *	Burden covered under OMB Control Number 1010–0139.		
	PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES **Subpart C—Accounting and Auditing Relief**			
204.202(b)(1)	204.202(b) To use the cumulative royalty reports and payments relief option, you must do all of the following: (1) Notify MMS in writing by January 31 of the calendar year for which you begin taking your relief. * * *	40	1	40
204.202(b)(2) and (b)(3)	204.202(b)(2) Submit your royalty report and payment * * * by the end of February of the year following the calendar year for which you reported annually. * * * If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually; (3) Use the sales month prior to the month that you submit your annual report and payment * * * for the entire previous calendar year's production for which you are paying annually. * * *	Burden covered under OMB Control Number 1010–0139.		
204.202(b)(4), (b)(5), (c), (d)(1), (d)(2), (e)(1), and (e)(2).	204.202(b) To use the cumulative royalty reports and payments relief option, you must * * * (4) Report one line of cumulative royalty information on Form MMS–2014 for the calendar year * * * and (5) Report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property production. (c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest * * * from the date your payment was due under this section until the date MMS receives it. * * * (d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must: (1) Pay MMS late payment interest determined under 30 CFR 218.54 * * * (2) Amend your Form MMS–2014 * * * (e) If you dispose of your ownership interest in a marginal property for which you have taken relief * * * you must: (1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and (2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest * * * from the date the payment was due. * * *	Burden covered under OMB Control Number 1010–0139.		
204.203(b), 204.205(a) and (b), and 204.206(a)(3)(i) and (b)(1).	204.203(b) You must request approval from MMS * * * before taking relief under this option.	200	1	200

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
204.209(b)	204.209(b) If a property is no longer eligible for relief * * * the relief for the property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for the property has terminated * * *.	6	1	6
204.210(c) and (d)	204.210(c) * * * the volumes on which you report and pay royalty * * * must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM. * * * Report and pay royalties for your production using the procedures in § 204.202(b). (d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 204.202(b), you will owe late payment interest determined under 30 CFR 218.54 from the date your payment was due under § 204.202(b)(2) until the date MMS receives it.	Burden covered under OMB Control Number 1010–0139.		
204.214(b)(1) and (b)(2)	204.214(b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and: (1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or (2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.	Burden covered under OMB Control Number 1010–0139.		
Accounting and Auditing Relief Subtotal			10	526
	PART 206—PRODUCT VALUATION **Subpart C—Federal Oil**			
206.102(e)(1)	206.102(e) If you value oil under paragraph (a) of this section: (1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.	AUDIT PROCESS. See note.		
206.103(a)(1), (a)(2), and (a)(3)	206.103 This section explains how to value oil that you may not value under § 206.102 or that you elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval. (a) Production from leases in California or Alaska. Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month. * * *. (1) To calculate the daily mean spot price * * * (2) Use only the days * * * (3) You must adjust the value * * *	45	5	225
206.103(a)(4)	206.103(a)(4) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, * * *.	8	2	16
206.103(b)(1)	206.103(b) Production from leases in the Rocky Mountain Region. * * * (1) If you have an MMS-approved tendering program, you must value oil * * *.	400	2	800

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.103(b)(1)(ii)	206.103(b)(1)(ii) If you do not have an MMS-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section. * * *.	400	2	800
206.103(b)(4)	206.103(b)(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.	400	2	800
206.103(c)(1)	206.103(c) Production from leases not located in California, Alaska or the Rocky Mountain Region. (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 206.112.	50	10	500
206.103(e)(1) and (e)(2)	206.103(e) Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value. (1) * * * you may apply to the MMS Director to establish a value representing the market at the refinery if: * * * (2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. * * *	330	2	660
206.105	206.105 If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value. * * *.	Burden covered under OMB Control Number 1010–0139.		
206.107(a)	206.107(a) You may request a value determination from MMS * * *.	40	10	400
206.109(c)(2)	206.109(c) Limits on transportation allowances. (2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. * * *. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination * * *.	8	2	16
206.110(a)	206.110(a) * * * You must be able to demonstrate that your or your affiliate's contract is at arm's length. * * *.	AUDIT PROCESS. See note.		
206.110(d)(3)	206.110(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined * * *. (3) You may propose to MMS a cost allocation method * * *	20	2	40
206.110(e)	206.110(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.	20	1	20
206.110(e)(1) and (e)(2)	206.110(e)(1) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2014 * * *. (2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	Burden covered under OMB Control Number 1010–0139.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.110(g)(2)	206.110(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, * * *. (2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	5	1	5
206.111(g)	206.111(g) To compute depreciation, you may elect to use either * * *. After you make an election, you may not change methods without MMS approval. * * *.	30	1	30
206.111(k)(2)	206.111(k)(2) You may propose to MMS a cost allocation method on the basis of the values * * *.	30	1	30
206.111(l)(1) and (l)(3)	206.111(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. * * *. (3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	20	1	20
206.111(l)(2)	206.111(l)(2) * * * If MMS rejects your cost allocation, you must amend your Form MMS–2104 for the months that you used the rejected method and pay any additional royalty and interest due.	Burden covered under OMB Control Number 1010–0139.		
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * under an exchange agreement that is not at arm's length, you must obtain approval from MMS for a location and quality differential * * *	80	1	80
206.112(a)(1)(ii)	206.112(a)(1)(ii) * * * If MMS prescribes a different differential, you must apply * * *. You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.	20	2	40
206.112(a)(3) and (a)(4)	206.112(a)(3) If you transport or exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows: * * *. (4) If you transport or exchange (or both transport and exchange) less than 20 percent of your crude oil produced from the lease between the lease and a market center, you must propose to MMS an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. * * * If MMS prescribes a different adjustment * * *. You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.	80	4	320
206.112(b)(3)	206.112(b)(3) * * * you may propose an alternative differential to MMS. * * * If MMS prescribes a different differential * * *. You must pay any additional royalties owed * * * plus the late payment interest from the original royalty due date, or you may report a credit * * *.	80	4	320

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.112(c)(2)	206.112(c)(2) * * * If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content, unless MMS approves a higher adjustment.	80	2	160
206.114	206.114 You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1010–0139.		
	MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. * * *	AUDIT PROCESS. See note.		
206.115(a)	206.115(a) You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1010–0139.		
206.115(c)	206.115(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction. * * *	AUDIT PROCESS. See note.		
	Subpart D—Federal Gas			
206.152(b)(1)(i) and (b)(1)(iii)	206.152(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * * (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
206.152(b)(2)	206.152(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; * * *	80	1	80
206.152(b)(3)	206.152(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.	AUDIT PROCESS. See note.		
206.152(e)(1)	206.152(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. * * *	Burden covered under OMB Control Number 1010–0139.		
206.152(e)(2)	206.152(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	AUDIT PROCESS. See note.		
206.152(e)(3)	206.152(e)(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section. * * *	10	10	100
206.152(g)	206.152(g) The lessee may request a value determination from MMS. * * * The lessee shall submit all available data relevant to its proposal. * * *	40	5	200

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.153(b)(1)(i) and (b)(1)(iii)	206.153(b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * * (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
206.153(b)(2)	206.153(b)(2) * * * The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; * * *	80	1	80
206.153(b)(3)	206.153(b)(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.	AUDIT PROCESS. See note.		
206.153(e)(1)	206.153(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. * * *.	Burden covered under OMB Control Number 1010–0139.		
206.153(e)(2)	206.153(e)(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.	AUDIT PROCESS. See note.		
206.153(e)(3)	206.153(e)(2) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section. * * *	10	2	20
206.153(g)	206.153(g) The lessee may request a value determination from MMS. * * * The lessee shall submit all available data relevant to its proposal. * * *	80	15	1,200
206.154(c)(4)	206.154(c)(4) * * * A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. * * *	40	1	40
206.156(c)(3)	206.156(c)(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraphs (c)(1) and (c)(2) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. * * *	40	3	120
206.157(a)(1)(i)	206.157(a) Arm's-length transportation contracts. (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * *	AUDIT PROCESS. See note.		
	The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0139.		
206.157(a)(1)(iii)	206.157(a)(1)(iii) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.157(a)(2)(ii)	206.157(a)(2)(ii) * * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *	40	1	40
206.157(a)(3)	206.157(a)(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal. * * *	40	1	40
206.157(a)(5)	206.157(a)(5) * * * The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.	10	3	30
206.157(b)(1)	206.157(b) Non-arm's-length or no contract. (1) The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014. * * *	Burden covered under OMB Control Number 1010–0139.		
206.157(b)(2)(iv) and (b)(2)(iv) (A)	206.157(b)(2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS. (A) * * * After an election is made, the lessee may not change methods without MMS approval. * * *	100	1	100
206.157(b)(3)(i)	206.157(b)(3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.	100	1	100
206.157(b)(3)(ii)	206.157(b)(3)(ii) * * * the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported. * * *	100	1	100
206.157(b)(4)	206.157(b)(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal. * * *	100	1	100
206.157(b)(5)	206.157(b)(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.	100	1	100
206.157(c)(1)(i)	206.157(c) Reporting Requirements. (1) Arm's-length contracts. (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	Burden covered under OMB Control Number 1010–0139.		
206.157(c)(1)(ii)	206.157(c)(1)(ii) The MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. * * *	AUDIT PROCESS. See note.		
206.157(c)(2)(i)	206.157(c)(2) Non-arm's-length or no contract. (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.	Burden covered under OMB Control Number 1010–0139.		
206.157(c)(2)(iii)	206.157(c)(2)(iii) The MMS may require you to submit all data used to calculate the allowance deduction. * * *	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.157(e)(2), (e)(3), and (f)(1)	206.157(e) Adjustments. (2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS. (3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payments, in accordance with instructions provided by MMS. * * * (f) Allowable costs in determining transportation allowances. * * * (1) Firm demand charges paid to pipelines. * * * if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify Form MMS–2014 by the amount received or credited for the affected reporting period and pay any resulting royalty and late payment interest due;	Burden covered under OMB Control Number 1010–0139.		
206.158(c)(3)	206.158(c)(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination. * * *	80	8	640
206.158(d)(2)(i)	206.158(d)(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs * * *.	80	1	80
206.158(d)(2)(ii)	206.158(d)(2)(ii) * * * to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.	Burden covered under OMB Control Number 1010–0139.		
206.159(a)(1)(i)	206.159(a) Arm's-length processing contracts. (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * *	AUDIT PROCESS. See note.		
	The lessee must claim a processing allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0139.		
206.159(a)(1)(iii)	206.159(a)(1)(iii) * * * When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.	AUDIT PROCESS. See note.		
206.159(a)(3)	206.159(a)(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all relevant data to support its proposal. * * *	20	1	20
206.159(b)(1)	206.159(b) Non-arm's-length or no contract ..... (1)* * * The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form MMS–2014. * * *	Burden covered under OMB Control Number 1010–0139.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 202, 204, 206, and 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
206.159(b)(2)(iv) and (b)(2)(iv) (A)	206.159(b)(2)(iv) * * * When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the alternative without approval of the MMS. (A) * * * After an election is made, the lessee may not change methods without MMS approval * * *.	100	1	100
206.159(b)(4)	206.159(b)(4) A lessee may apply to MMS for an exception from the requirements that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. * * *	100	1	100
206.159(c)(1)(i)	206.159(c) Reporting requirements—(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0139.		
206.159(c)(1)(ii)	206.159(c)(1)(ii) The MMS may require that a lessee submit arm's-length processing contracts and related documents. * * *	AUDIT PROCESS. See note.		
206.159(c)(2)(i)	206.159(c)(2) Non-arm's-length or no contract. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1010–0139.		
206.159(c)(2)(iii)	206.159(c)(2)(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. * * *	AUDIT PROCESS. See note.		
206.159(e)(2) and (e)(3)	206.159(e) Adjustments (2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS. (3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS * * *.	Burden covered under OMB Control Number 1010–0139.		
Oil and Gas Valuation Subtotal			117	8,672
PART 210—FORMS AND REPORTS **Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal**				
210.155(a)	210.155(a) General. Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) * * * must submit Form MMS–4377, Stripper Royalty Rate Reduction Notification, under 43 CFR * * *. NOTE: BLM terminated the benefits of this program and is processing a final rule to remove this program from the regulations.	1.2	150	180
Total			277	9,378

Note: Audit Process—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-Hour cost" burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to "* * * provide 60-day notice in the **Federal Register**

* * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public view your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 6, 2010.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. 2010–8198 Filed 4–9–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2010–MRM–0004]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0120).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The title of this information collection request (ICR) is "30 CFR Parts 202, 206, 210, 212, 217, and 218, Solid Minerals and Geothermal Collections."

DATES: Submit written comments on or before *June 11, 2010.*

ADDRESSES: You may submit comments on this ICR to MMS by any of the following methods. Please use "ICR 1010–0120" as an identifier in your comment.

- Electronically go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter MMS–2010–MRM–0004, and then click search. Follow the instructions to submit public comments. The MMS will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 61013B, Denver, Colorado 80225. Please reference ICR 1010–0120 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave., and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0120 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Glenn W. Kepler, Sr., Solid Minerals and Geothermal (SM&G), Minerals Revenue Management (MRM), MMS, telephone (303) 231–3346, or e-mail *glenn.kepler@mms.gov.* For other comments or questions, contact Armand Southall, Regulatory Specialist, Project Management Office—Regulations, MRM, MMS, telephone (303) 231–3221, or e-mail *armand.southall@mms.gov.* You may contact Mr. Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject information collection.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 202, 206, 210, 212, 217, and 218, Solid Minerals and Geothermal Collections.

OMB Control Number: 1010–0120.

Bureau Form Numbers: Forms MMS–4430, MMS–4292, and MMS–4293.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

Public laws pertaining to mineral leases on Federal and Indian lands are posted at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. The information collected includes data necessary to assure that royalties are accurately valued and appropriately paid.

The MMS, acting for the Secretary, uses all of the collected information to support the Minerals Revenue

Management Audit and Compliance Management (ACM) and Financial Management (FM) processes, and to assure that royalties reported and paid are based upon correct product valuation and allocated to the proper leases. The MMS also uses the collected information, as do other Federal Government, State, and tribal entities, for audit purposes and to evaluate the reasonableness of product valuation, production and sales allocation, or coal washing and/or transportation allowance claim(s) that lessees submit. Specifically, MMS provides the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) access to this information, which they use to conduct production verification, ensure lease diligence, and monitor plant efficiencies and inventories for maximum recovery, and secondary products. The MMS's determination of the appropriate product value, production and sales allocations, and coal washing and/or transportation allowance(s) taken directly affects the royalties due. Failure to collect such data would prevent the Secretary from accomplishing statutory and trust responsibilities.

• Form MMS–4430, Solid Minerals Production and Royalty Report—Producers of coal and other solid minerals from Federal and Indian leases electronically file this form monthly. The SM&G uses this report as the primary accounts receivable document for all solid minerals royalties. The producers report the data, on a mine-level basis, which contains basic lease-level production volume, valuation, and sales information. The SM&G analyzes this production and royalty information to assure compliance of all payments with lease terms, regulations, and MMS policies including but not limited to product valuation, production and sales allocation, and coal washing and/or transportation allowance(s) calculation.

• Contracts and Contract Amendments—Coal and metal producers submit sales contracts, agreements, and contract amendments semi-annually. Sodium, potassium, phosphate, and other solid mineral producers, with leases containing ad valorem royalty terms, submit the required documents only if specifically requested by MMS.

• Sales Summaries—The SM&G compares sales summary information from purchasers to production, and royalty information submitted on Form MMS–4430 and facility data submissions.

• Facility Data—Operators of wash plants and of refining, ore concentration, or other processing facilities for any coal, sodium, potassium, metals, or other solid minerals submit facility data information for months in which they process or carry an inventory. The SM&G uses this facility information in its compliance process.

• Additional Documents or Evidence—The MMS requests detailed statements, documents, or other evidence, i.e. spot sale invoices, weigh tickets, laboratory quality reports, transportation contracts, and service contracts, supporting our ACM responsibilities under Federal and Indian lease terms. The information might further define a cost or verify a claim made by the producer.

Form MMS–4292—Coal Washing Allowance Report and Form MMS–4293—Coal Transportation Allowance Report—This ICR also provides for the collection of coal washing and transportation allowance information for Indian leases. The information collected is essential for the royalty valuation process.

The MMS developed Forms MMS–4292, Coal Washing Allowance Report, and MMS–4293, Coal Transportation Allowance Report, for industry to complete when reporting or requesting a washing or transportation allowance.

Geothermal Resources—This ICR also provides for the collection of information on the current royalty valuation methods for geothermal resources, which are grouped by usage (electrical generation, direct use, and by-product recovery), and by disposition of the resources (arm's-length [unaffiliated] contract sales, non-arm's-length contract sales, and no contract sales) within each usage group. The MMS relies on data that payors report on Form MMS–2014 (ICR 1010–0139) for the majority of our business processes including geothermal information.

OMB Approval

The information we collect under this ICR is essential for the royalty valuation process. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value.

Proprietary information submitted to MMS under this collection is protected. No items of a sensitive nature are collected. Responses are mandatory for Form MMS–4430. A response is required to obtain benefits for Forms MMS–4292 and MMS–4293.

Frequency of Response: On occasion, annually, monthly.

Estimated Number and Description of Respondents: 144 reporters.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 3,670 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
Part 202—Royalties Subpart H—Geothermal Resources				
202.351(b)(3)	Pay royalties on used, sold, or otherwise finally disposed of byproducts.	Hour burden covered under OMB Control Number 1010–0139.		
202.353(a), (b), (c), and (d)	Report on Form MMS–2014, royalties or direct use fee due for geothermal resources, byproduct quantity, and commercially demineralized water quantity.	Hour burden covered under OMB Control Number 1010–0139. See § 210.52.		
202.353(e)	Maintain quality measurements for audits	AUDIT PROCESS. See Note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
	Part 206—Product Valuation Subpart F—Federal Coal			
206.253(c); 206.254; 206.257(d)(1) ...	Maintain accurate records for Federal lease coal and all data relevant to the royalty value determination. Report the coal quantity information on appropriate forms under 30 CFR part 210.	.4166	816	340
206.257(b)(1), (b)(3), (b)(4), (d)(2)	Demonstrate and certify your arm's-length contract provisions including all consideration paid by buyer, directly or indirectly, for coal production. Provide written information of reported arm's-length coal sales value and quantity data.	AUDIT PROCESS. See Note.		
206.257(d)(3)	Submit a one-time notification when first reporting royalties on Form MMS–4430 and for a change in method.	2	1	2
206.257(f)	Submit all available data relevant to the value determination proposal.	5	1	5
206.257(i)	Write and sign contract revisions or amendments by all parties to an arm's-length contract, and retroactively apply revisions or amendments to royalty value for a period not to exceed two years.	2	1	2
206.259(a)(1), (a)(3)	Demonstrate that your contract is arm's-length. Provide written information justifying the lessee's washing costs.	AUDIT PROCESS. See Note.		
206.259(a)(1)	Report actual washing allowance on Form MMS–4430 for arm's-length sales.	.34	12	4
206.259(b)(1)	Report actual washing allowance on Form MMS–4430 for non-arm's-length or no contract sales.	.75	48	36
206.259(b)(2)(iv)	Report washing allowance on Form MMS–4430 after lessee elects either method for a wash plant.	1	1	1
206.259(b)(2)(iv)(A)	Report washing allowance on Form MMS–4430 for depreciation—use either straight-line, or a unit of production method.	1	1	1
206.259(c)(1), (c)(2)	Submit arm's-length and non-arm's-length washing contracts and related documents to MMS.	AUDIT PROCESS. See Note.		
206.262(a)(1)	Report transportation allowance on Form MMS–4430	.33	240	80
206.262(a)(1), (a)(3)	Demonstrate that your contract is arm's-length. Provide written information justifying your transportation costs when MMS determines the costs unreasonable.	AUDIT PROCESS. See Note.		
206.262(b)(1)	Report actual transportation allowance on Form MMS–4430 for non-arm's-length or no contract sales.	.75	24	18
206.262(b)(2)(iv)	Report transportation allowance on Form MMS–4430 after lessee elects either method for a transportation system.	1	1	1
206.262(b)(2)(iv)(A)	Report transportation allowance on Form MMS–4430 for depreciation—use either straight-line, or a unit of production method.	1	1	1
206.262(b)(3)	Apply to MMS for exception from the requirement of computing actual costs.	1	1	1
206.262(c)(1), (c)(2), (e)	Submit all arm's-length transportation contracts, production agreements, operating agreements, and related documents to MMS.	AUDIT PROCESS. See Note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
206.264	Propose the value of coal for royalty purposes to MMS for an ad valorem Federal coal lease.	1	1	1
206.265	Notify MMS if, prior to use, sale, or other disposition, you enhanced the value of coal.	1	1	1
	Subpart H—Geothermal Resources			
206.301(b)	Certify values reported for royalty purposes as bona fide sales not involving considerations other than the sale of the mineral, and required to supply supporting information.	AUDIT PROCESS. See Note.		
206.352(b)(1)(ii)	Determine the royalty on produced geothermal resources, used in your power plant for generation and sale of electricity, for Class I leases, as approved by MMS.	1	1	1
206.353(c)(2)(i)(A), (d)(9), (e)(4)	Include a return on capital you invested when the purchase of real estate for transmission facilities is necessary. Allowable operating and maintenance expenses include other directly allocable and attributable operating and maintenance expenses that you can document.	AUDIT PROCESS. See Note.		
206.353(g)	Request change to other depreciation alternative method with MMS approval.	1	1	1
206.353(h)(1)	Use a straight-line depreciation method, but not below salvage value, for equipment.	1	1	1
206.353(m)(2)	Amend your prior estimated Form MMS–2014 reports to reflect actual transmission cost deductions, and pay any additional royalties due plus interest.	Hour burden covered under OMB Control Number 1010–0139.		
206.353(n)	Submit all arm's-length transmission contracts, production and operating agreements and related documents, and other data for calculating the deduction.	AUDIT PROCESS. See Note.		
206.354(b)(1)(ii)	Redetermine your generating cost rate annually and request MMS approval to use a different deduction period.	1	1	1
206.354(c)(2)(i)(A), (d)(9), (e)(4)	Include a return on capital you invested when the purchase of real estate for a power plant site is necessary. Allowable operating and maintenance expenses include other directly allocable and attributable operating and maintenance expenses that you can document.	AUDIT PROCESS. See Note.		
206.354(g)	Request change to other depreciation alternative method with MMS approval.	1	1	1
206.354(h)	Use a straight-line depreciation method, but not below the salvage value, for equipment.	1	1	1
206.354(m)(2)	Amend your prior estimated Form MMS–2014 reports to reflect actual generating cost deductions and pay any additional royalties due plus interest.	Hour burden covered under OMB Control Number 1010–0139.		
206.354(n)	Submit all arm's-length power plant contracts, production and operating agreements and related documents, and other data for calculating the deduction.	AUDIT PROCESS. See Note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
206.356(a)(1)	Determine the royalty on produced significant geothermal resource quantities, for Class I leases, with the weighted average of the arm's-length gross proceeds used to operate the same direct-use facility.	1	1	1
206.356(a)(2)	For Class I leases, the efficiency factor of the alternative energy source will be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved MMS.	48	2	96
206.356(a)(3)	For Class I leases, a royalty determined by any other reasonable method approved by MMS.	1	1	1
206.356(b)(3)	Provide MMS data showing the geothermal production amount, in pounds or gallons of geothermal fluid, to input into the fee schedule for Class III leases.	1	1	1
206.356(c)	The MMS will determine fees on a case-by-case basis for geothermal resources other than hot water.	1	1	1
206.357(b)(3)	Determine the royalty due on byproducts by any other reasonable valuation method approved by MMS.	1	1	1
206.358(d)	Use a discrete field on Form MMS–2014 to notify MMS of a transportation allowance.	Hour burden covered under OMB Control Number 1010–0139.		
206.358(d)(2)	Submit arm's-length transportation contracts for reviews and audits, if MMS require.	AUDIT PROCESS. See Note.		
206.358(e)	Pay any additional royalties due plus interest, if you have improperly determined a byproduct transportation allowance.	AUDIT PROCESS. See Note.		
206.359(a)(1), (a)(2), (c)(2)(i)(A), (d)(9), (e)(4).	Provide written information justifying your transportation costs if MMS require you to determine the byproduct transportation allowance. Include a return on capital if the purchase was necessary. Allowable operating and maintenance expenses include any other directly allocable and attributable operating and maintenance expenses that you can document.	AUDIT PROCESS. See Note.		
206.359(g)	The lessee may not later elect to change to the other alternative without MMS approval to compute costs associated with capital investment.	1	1	1
206.359(h)(1)	You must use a straight-line depreciation method based on the life of either equipment, or geothermal project.	1	1	1
206.359(l)(2)	You must amend your prior Form MMS–2014 reports to reflect actual byproduct transportation cost deductions and pay any additional royalties due plus interest.	Hour burden covered under OMB Control Number 1010–0139.		
206.360(a)(1), (a)(2), (b)	Retain all data relevant to the royalty value, or fee you paid. Show how you calculated, then submit all data to MMS upon request.	AUDIT PROCESS. See Note.		
206.361(a)(1)	The MMS may review and audit your data and will direct you to use a different measure, if royalty value, gross proceeds, or fee is inconsistent with subpart.	AUDIT PROCESS. See Note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
206.361(a)(2)	Pay either royalties or fees due plus interest if MMS directs you to use a different royalty value, measure of gross proceeds, or fee.	Hour burden covered under OMB Control Number 1010–0139.		
206.361(b), (c), (d)	The MMS may require you to: Increase the gross proceeds to reflect any additional consideration; use another valuation method; provide written information justifying your gross proceeds; demonstrate that your contract is arm's length; and certify that the provisions in your sales contract include all of the consideration the buyer paid you.	AUDIT PROCESS. See Note.		
206.361(f)(2)	Write and sign contract revisions or amendments by all parties to the contract.	1	1	1
206.364(a)(1)	Request a value determination from MMS in writing	3	20	60
206.364(c)(2)	Make any adjustments in royalty payments, if you owe additional royalties, and pay the royalties owed plus interest after the Assistant Secretary issues a determination.	Hour burden covered under OMB Control Number 1010–0139.		
206.364(d)(2)	You may appeal an order requiring you to pay royalty under the determination.	Hour burden covered under OMB Control Number 1010–0122.		
206.366	State, tribal, or local government lessee must pay a nominal fee, if uses a geothermal resource.	Hour burden covered under OMB Control Number 1010–0139.		
	Subpart J—Indian Coal			
206.456(b)(1), (b)(3), (b)(4)	Demonstrate that your contract is arm's-length. Provide written information justifying the reported coal value. And certify that your arm's-length contract provisions include all direct or indirect consideration paid by buyer for the coal production.	AUDIT PROCESS. See Note.		
206.456(d)(1); 206.452 (c); 206.453	Retain all data relevant to the determination of royalty value to which individual Indian lease coal should be allocated. Report coal quantity information on Form MMS–4430, Solid Minerals Production and Royalty Report, as required under 30 CFR part 210.	.42	48	20
206.456(d)(2)	An Indian lessee will make available arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained from the area when requested by an authorized MMS or Indian representative, or the Inspector General of the Department of the Interior or other persons authorized to receive such information.	AUDIT PROCESS. See Note.		
206.456(d)(3)	Notify MMS by letter identifying the valuation method used and procedure followed.	1	1	1
206.456(f)	Propose a value determination method to MMS; submit all available data relevant to method; and use that method until MMS decides.	1	1	1
206.456(i)	Write and sign contract revisions or amendments by all parties to an arm's-length contract.	1	1	1

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
206.458(a)(1), (b)(1), (c)(1)(i), (c)(1)(iii), (c)(2)(i), (c)(2)(iii).	Deduct the reasonable actual coal washing allowance costs incurred under an arm's-length contract, and allowance based upon their reasonable actual costs under a non-arm's-length or no contract, after submitting a completed page one of Form MMS–4292, Coal Washing Allowance Report, containing the actual costs for the previous reporting period, within 3 months after the end of the calendar year after the initial and for succeeding reporting periods, and report deduction on Form MMS–4430 for an arm's-length, or a non-arm's-length, or no contract.	2	1	2
206.458(a)(3)	Provide written information justifying your washing costs when MMS determines your washing value unreasonable.	AUDIT PROCESS. See Note.		
206.458(b)(2)(iv)	The lessee may not later elect to change to the other alternative without MMS approval.	1	1	1
206.458(b)(2)(iv)(A)	Elect either a straight-line depreciation method based on the life of equipment or reserves, or a unit of production method.	1	1	1
206.458(c)(1)(iv), (c)(2)(vi)	Submit arm's-length washing contracts and all related data used on Form MMS–4292.	AUDIT PROCESS. See Note.		
206.461(a)(1), (b)(1), (c)(1)(i), (c)(1)(iii), (c)(2)(i), (c)(2)(iii).	Submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, of reasonable, actual transportation allowance costs incurred by the lessee for transporting the coal under an arm's-length contract, in which you may claim a transportation allowance retroactively for a period of not more than 3 months prior to the first day of the month that you filed the form with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Submit also a completed Form MMS–4293 based upon the lessee's reasonable actual costs under a non-arm's-length or no contract. (Emphasis added.).	2	1	2
206.461(a)(3)	Provide written information justifying your transportation costs when MMS determines your transportation value unreasonable.	AUDIT PROCESS. See Note.		
206.461(b)(2)(iv)	Submit completed Form MMS–4293 after a lessee has elected to use either method for a transportation system.	1	1	1
206.461(b)(2)(iv)(A)	Submit completed Form MMS–4293 to compute depreciation for election to use either a straight-line depreciation, or unit-of-production method.	1	1	1
206.461(b)(3)	Submit completed Form MMS–4293 for exception from the requirement of computing actual costs.	1	1	1
206.461(c)(1)(iv), (c)(2)(vi)	Submit arm's-length transportation contracts, production and operating agreements, and related documents used on Form MMS–4293.	AUDIT PROCESS. See Note.		
206.463	Propose the value of coal for royalty purposes to MMS for an ad valorem Federal coal lease.	1	1	1
206.464	Notify MMS if, prior to use, sale, or other disposition, you enhance the value of coal.	1	1	1

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
Part 210—Forms and Reports Subpart E—Solid Minerals, General				
210.201(a)(1); 206.259(c)(1)(i), (c)(2), (e)(2); 206.262(c)(1), (c)(2)(i), (e)(2); 206.458(c)(4), (e)(2); 206.461(c)(4), (e)(2).	Submit a completed Form MMS–4430. Report washing and transportation allowances as a separate line on Form MMS–4430 for arm's-length, non-arm's-length, or no contract sales, unless MMS approves a different reporting procedure. Submit also a corrected Form MMS–4430 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.	.75	1,668	1,251
210.202(a)(1), (c)(1)	Submit sales summaries via electronic mail where possible for all coal and other solid minerals produced from Federal and Indian leases and for any remote storage site.	.50	1,140	570
210.203(a)	Submit sales contracts, agreements, and contract amendments for sale of all coal and other solid minerals produced from Federal and Indian leases with ad valorem royalty terms.	1	30	30
210.204(a)(1)	Submit facility data if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms.	.25	360	90
210.205(a), (b)	Submit detailed statements, documents, or other evidence necessary to verify compliance, as requested.	AUDIT PROCESS. See Note.		
Subpart H—Geothermal Resources				
210.351	Maintain geothermal records on microfilm, microfiche, or other recorded media.	Hour burden covered under OMB Control Number 1010–0139.		
210.352	Submit additional geothermal information on special forms or reports.	1	1	1
210.353	Submit completed Form MMS–2014 monthly once sales or utilization of geothermal production occur.	Hour burden covered under OMB Control Number 1010–0139.		
Part 212—Records and Forms Maintenance Subpart E—Solid Minerals—General				
212.200(a)	Maintain all records pertaining to Federal and Indian solid minerals leases for 6 years after records are generated unless the record holder is notified, in writing.	.25	4,064	1,016
Subpart H—Geothermal Resources				
212.351(a)	Retain accurate and complete records for payments of royalties, rentals, and other amounts due of Federal geothermal leases.	Hour burden covered under OMB Control Numbers 1010–0139 (for Forms MMS–2014 and MMS–4054).		
212.351(b)	Maintain all records pertaining to Federal geothermal leases by a lessee, operator, revenue payor, or other person for 6 years.	Hour burden covered under OMB Control Numbers 1010–0139 (for Forms MMS–2014 and MMS–4054).		
Part 217—Audits and Inspections Subpart E—Coal				
217.200	Furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance with Federal lease terms.	AUDIT PROCESS. See Note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
Subpart F—Other Solid Minerals				
217.250	Furnish, free of charge, duplicate copies of annual or other audits of your books.	AUDIT PROCESS. See Note.		
Subpart G—Geothermal Resources				
217.300	The Secretary or his/her authorized representative, will initiate and conduct audits or reviews that relate to compliance with applicable regulations.	AUDIT PROCESS. See Note.		
Part 218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government and Credits and Incentives Due Lessees Subpart B—Oil and Gas, General				
218.57(a)(2), (b)(3)(i)	Person ("informant") should submit any information he or she believes would be valuable to MMS in writing, in the form of a letter and notify the MMS Director that he/she is claiming a reward.	1	1	1
Subpart E—Solid Minerals—General				
218.201(b); 206.457(b); 206.460(d)	You must tender all payments under § 218.51 except for Form MMS–4430 payments, include both your customer identification and your customer document identification numbers on your payment document, and you shall be liable for any additional royalties, plus interest, if improperly determined a washing or transportation allowance.	.0055	1,368	8
218.203(a), (b)	Recoup an overpayment on Indian mineral leases through a recoupment on Form MMS–4430 against the current month's royalties and submit the tribe's written permission to MMS.	1	1	1
Subpart F—Geothermal Resources				
218.300	Submit all rental and deferred bonus payments when due and pay in value all royalties due determined by MMS.	Hour burden covered under OMB Control Number 1010–0139.		
218.301	The payor shall tender all payments	Hour burden covered under OMB Control Number 1010–0139.		
218.304	Pay the direct use fees in addition to the annual rental due.	Hour burden covered under OMB Control Number 1010–0139.		
218.305(a)	Pay advanced royalties, under 43 CFR 3212.15(a)(1) to retain your lease, that equal to the average monthly royalty you paid under 30 CFR part 206, subpart H.	Hour burden covered under OMB Control Number 1010–0139.		
218.306(a)(2)	You may receive a credit against royalties if MMS approves in advance your contract.	4	1	4
218.306(b)	Pay in money any royalty amount that is not offset by the credit allowed under this section.	Hour burden covered under OMB Control Number 1010–0139.		
Total Burden			9,880	3,670

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to "* * * provide 60-day notice in the **Federal Register**

* * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public view your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated April 2, 2010.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. 2010–8196 Filed 4–9–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2010–OMM–0018]

MMS Information Collection Activity: 1010–0067, Oil and Gas Well-Completion Operations, Extension of a Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart E, "Oil and Gas Well-Completion Operations."

DATES: Submit written comments by June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

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

- Electronically: go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0018 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0067 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.,* and 43 U.S.C. 1801 *et seq.* requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This ICR addresses 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations and the associated supplementary Notices to Lessees and Operators (NTL) intended to provide clarification, description, or explanation of these regulations.

Regulations at 30 CFR part 250 implement these statutory requirements. The MMS District Managers analyze and evaluate the information and data collected under Subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular

preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, weekly, monthly, annually, and varies by section.

Description of Respondents: Federal OCS oil, gas, or sulphur lessees and operators.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 18,756 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart E & LTL/NTL	Reporting requirement	Hour burden
	Requests	
502	Request approval not to shut-in well during equipment movement	1
512	Request field well-completion rules be established, amended or canceled (on occasion; however, there have been no requests in many years).	1
500–517	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	2
	Submittals	
505; 513; 515(a)	Submit forms MMS–123, MMS–124, MMS–125 for various approvals, including remediation procedure for SCP [burden included in 1010–0141].	0
514(c); 515(a)	Calculate well-control fluid volume and post near operator's station; submit well-control procedure.	1
517(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	9
	Document/Record/Retain	
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per completion = 4).	20 minutes
511	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per completion = 2).	30 minutes
LTL*	Record diagnostic test results	30 minutes
516 tests; 516(i),(j)	Record BOP test results; retain records 2 years following completion of well (when installed; minimum every 7 days; as stated for component); request alternative methods.	30 minutes
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests—biweekly; note: part of BOP test when conducted).	30 minutes
516(e)	Record reason for postponing BOP system tests (on occasion)	10 minutes
516(f)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per completion = 4).	30 minutes
LTL	Retain complete record of well's casing pressure for 2 years and retain diagnostic test records permanently.	1
	Notify	
502	Notify MMS of well-completion rig movement on or off platform or from well to well on same platform (Form MMS–144) (cross ref. §250.403) [burden included in 1010–0150].	0
517(c); LTL/NTL	Notify MMS if sustained casing pressure is observed on a well	1
LTL/NTL	Report failure of casing pressure to bleed to zero including plan to remediate	6
NTL	Notify MMS when remediation procedure is complete.	1

*LTL dated 13 January 1994.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d)

minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 6, 2010.

William S. Hauser,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–8195 Filed 4–9–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC06900.L17100000.DR0000]

Notice of Availability of the Record of Decision for the Carrizo Plain National Monument Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Carrizo Plain National Monument (CPNM), located in San Luis Obispo and Kern counties in Central California. The California State Director signed the ROD on April 10, 2010, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Field Manager, Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308 or via the Internet at *http://www.ca.blm.gov/bakersfield.* Copies of the ROD/Approved RMP are available for public inspection at the above location and at the BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: For further information contact Johna Hurl, CPNM Manager, telephone (661) 391–6093; address Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308; e-mail *johna_hurl@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The CPNM encompasses 206,635 acres of BLM-administered public lands. This Approved RMP provides for the protection of the significant natural and cultural resources identified in the Presidential Proclamation establishing the CPNM. The decisions promulgated in the RMP only apply to the BLM-administered public lands and mineral estate within the Approved RMP's planning area. The RMP was developed in cooperation with the BLM's managing partners (The Nature Conservancy and California Department of Fish and Game), the CPNM Advisory Committee, and the public. The RMP process considered four alternatives including a no-action alternative. The primary issues addressed include but are not limited to recreation, protection of sensitive natural and cultural resources, livestock grazing, energy and mineral development, and motorized vehicle routes.

The Preferred Alternative in the Draft RMP/Draft Environmental Impact Statement (EIS), published January 23, 2009, was revised to address comments received during the 90-day public comment period. The resultant alternative became the Proposed Plan in the Proposed RMP/Final EIS, published on November 13, 2009, and has been carried forward as the Approved RMP. Changes made from the Draft RMP to the Final RMP in response to public comments include: An additional 13,181 acres to be managed for wilderness characteristics, in addition to the 54,464 acres proposed in the Draft RMP preferred alternative; a requirement that only street-legal vehicles, no off-highway vehicles, be allowed on designated routes; and provisions to provide access for vehicles operated by people with physical handicaps. Finally, language was clarified regarding grazing and mineral rights.

Three protests were received during the 30-day protest period following the release of the Proposed RMP/Final EIS, each of which was dismissed or denied by the BLM Director. Minor clarifications and changes to the text were made between the Proposed RMP/Final EIS and the ROD/Approved RMP, including clarifications to the protection of the CPNM's vernal pool and sag pond habitats, and the application of the mitigation measures listed in Appendices O and P, as appropriate (to be performed in subsequent site-specific NEPA processes).

The California Governor's Office did not identify any inconsistencies between the Proposed RMP/Final EIS and State or local plans, policies, and programs following the 60-day Governor's Consistency Review (initiated November 13, 2009) in accordance with planning regulations at 43 CFR, Part 1610.3–2(e).

The BLM has determined that this ROD/Approved RMP provides for long-term protection of the CPNM's values, while allowing for authorized uses, recreation activities, scientific studies, and interpretive facilities.

The ROD/Approved RMP contains decisions that identify initial management treatments in particular habitats and vegetative communities, identify wildland fire objectives and appropriate response levels, limit use on routes located in areas managed for wilderness characteristics, require permits for aerial sports (*e.g.,* hang gliding, skydiving, hobby aircraft), provide for guided tours at Painted Rock, and define the priority,

framework, and evaluation/approval process for research projects within the CPNM. These decisions, which are contained in Attachment C of the ROD/Approved RMP, are implementation decisions and are appealable under 43 CFR part 4.

Any party adversely affected by an implementation decision may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal must be filed with the Bakersfield Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

Authority: 40 CFR 1506.6.

[FR Doc. 2010–8434 Filed 4–8–10; 4:15 pm]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–568]

In the Matter of Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin;

Notice of Commission Decision to Grant Amgen Inc.'s Motion for Partial Termination; Notice of Request for Written Submissions Relating to Summary Determination and to Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant Amgen Inc.'s motion for partial termination of the above-referenced investigation and that the Commission is requesting briefing on issues relating to summary determination and to remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michelle Walters Klancnik, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 12, 2006, the Commission instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) based on a complaint filed by Amgen, Inc. ("Amgen") of Thousand Oaks, California. 71 FR 27742 (May 12, 2006). The complaint asserted a violation of section 337 in the importation into the United States, sale for importation, or sale within the United States after importation of certain products and pharmaceutical compositions containing recombinant human erythropoietin by reason of infringement of claims 1 and 2 of U.S. Patent No. 5,441,868 ("the '868 patent"), claims 3, 4, 5, and 11 of U.S. Patent No. 5,547,933 ("the '933 patent"), claims 4–9 of U.S. Patent No. 5,618,698 ("the '698 patent"), claims 4 and 6 of U.S. Patent No. 5,621,080 ("the '080 patent"), claim 7 of U.S. Patent No. 5,756,349 ("the '349 patent"), and claim 1 of U.S. Patent No. 5,955,422 ("the '422 patent"). The notice of investigation named Roche Holding Ltd. of Basel, Switzerland; F. Hoffman-La Roche, Ltd. of Basel, Switzerland; Roche Diagnostics GmbH of Mannheim, Germany; and Hoffman La Roche, Inc. of Nutley, New Jersey (collectively, "Roche") as respondents.

On August 31, 2009, after a remand of the original investigation from the United States Court of Appeals for the Federal Circuit, Amgen moved for summary determination that Roche violated section 337 by importing and using a pegylated erythropoietin product, which according to Amgen infringes claims 1 and 2 of the '868 patent, claim 3 of the '933 patent, claims 6–9 of the '698 patent, and claim 1 of the '422 patent. Amgen also requested a limited exclusion order that would preclude importation of Roche's product regardless of the party seeking to import such product. Roche does not oppose Amgen's motion for purposes of this investigation. The Commission investigative attorney ("IA") also does not oppose Amgen's motion, but indicated that the motion does not resolve asserted claim 7 of the '349 patent or asserted claims 4, 5, and 11 of the '933 patent.

On December 22, 2009, Amgen moved to terminate the investigation with respect to claims 4, 5, and 11 of the '933 patent, claims 4 and 6 of the '080 patent, and claims 4 and 5 of the '698 patent. In addition, on December 31, 2009, Amgen filed a supplemental motion for summary determination with respect to claim 7 of the '349 patent. Roche does not oppose these motions. The IA also does not oppose Amgen's motion to terminate the investigation in part, but does oppose Amgen's supplemental motion for summary determination.

The Commission has determined to grant Amgen's motion to terminate the investigation with respect to claims 4, 5, and 11 of the '933 patent, claims 4 and 6 of the '080 patent, and claims 4 and 5 of the '698 patent. The Commission has determined that further briefing is necessary to decide the motion for summary determination.

The parties are requested to brief their positions on the following issues with reference to the applicable law and evidence:

1. How does the United States Court of Appeals for the Federal Circuit's decision in *Amgen Inc.* v. *F. Hoffman-La Roche Ltd,* 580 F.3d 1340 (Fed. Cir. 2009), vacating certain aspects of the decision by the United States District Court of Massachusetts in *Amgen Inc.* v. *F. Hoffman-La Roche, Ltd.,* No. 05–12237–WGY (D. Mass. Oct. 2, 2008), affect Amgen's original motion for summary determination filed on August 31, 2009, for each asserted claim? Please address the Commission's February 3, 2009 opinion in *Certain Semiconductor Integrated Circuits Using Tungsten Metallization and Products Containing Same,* Inv. No. 337–TA–648.

2. If the Commission can proceed with respect to any claim(s), please explain whether the Commission should apply the principles of claim or issue preclusion to the district court case and what standard the Commission should apply.

3. Can the Commission apply claim or issue preclusion to the permanent injunction order issued by the district court on December 22, 2009, and if so, to what effect? Does the stipulation, which is signed by the parties and which appears before the permanent injunction, form part of the district court's judgment? If so, does Amgen rely on the stipulation for claim or issue preclusion? Please provide case law supporting your positions.

4. If the Commission denies Amgen's motions for summary determination with respect to any claims, how should the Commission proceed with respect to those claims?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on May 7, 2010. Reply submissions must be filed no later than the close of business on May 21, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR *210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.18, 210.21, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR *210.18, 210.21, and 210.50).

By order of the Commission.

Issued: April 6, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–8205 Filed 4–9–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–668]

In the Matter of Certain Non-Shellfish Derived Glucosamine and Products Containing Same; Notice of Commission Determination To Affirm an Initial Determination Granting a Joint Motion To Terminate The Investigation as to Respondent Ethical Naturals, Inc. From the Investigation Based Upon a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination ("ID") (Order No. 26) granting a joint motion to terminate the investigation as to respondent Ethical Naturals, Inc. from the investigation based upon a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 4, 2009, based upon a complaint filed on behalf of Cargill, Inc. of Wayzata, Minnesota ("Cargill") on January 28, 2009, and supplemented on February 13, 2009. 74 FR 9428 (March 4, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain non-shellfish derived glucosamine and

products containing same that infringe certain claims of United States Patent No. 7,049,433. The notice of investigation named six firms as respondents.

On May 27, 2009, Cargill and ENI filed a motion to terminate the investigation based upon a settlement agreement and license agreement. The ALJ denied this motion. Order No. 23 (June 29, 2009).

On June 1, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to respondents Hygieia Health Co., Ltd. and TSI Health Sciences, Inc. based on a settlement agreement. On July 28, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to Nantong Foreign Medicines & Health Products Co., Ltd. and Tiancheng International, Inc. on the basis of withdrawal of the complaint as to these two respondents. On July 30, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to DNP International, Inc. on the basis of a consent order.

On July 13, 2009, Cargill and respondent ENI filed a second joint motion pursuant to Commission Rule 210.21(b) to terminate the investigation based upon a settlement agreement and license agreement. On July 23, 2009, the Commission investigative attorney filed a response in support of the motion. On July 24, 2009, the ALJ issued Order No. 26, granting the motion. No petitions for review were filed.

On August 24, 2009, the Commission issued notice of its determination to review the subject ID, and requested briefing. On September 8, 2009, Cargill filed a submission. On September 9, 2009, Cargill filed a corrected submission, and the Commission investigative attorney filed a submission with a motion for leave to file out of time. The Commission has determined to grant the motion for leave to file out of time. Having reviewed the record and the submissions on review, the Commission has determined to affirm the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.45, 210.50).

Issued: April 5, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–8206 Filed 4–9–10; 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 hereby given that on April 2, 2010, a proposed Consent Decree ("Consent Decree") in *United States* v. *Union Pacific Railroad Company,* Civil Action No. 5:10cv251–FB was lodged with the United States District Court for the Western District of Texas.

In this action, the United States sought recovery, under 42 U.S.C. 9707(a)(4)(A), of past response costs incurred by the United States Environmental Protection Agency associated with a train derailment that occurred on June 28, 2004, near Macdona, Texas. A chlorine gas tanker ruptured, resulting in the release of chlorine gas into the environment. The Consent Decree resolves the claim between the United States and the Union Pacific Railroad Company for the amount of $480,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company,* D.J. Ref. 90–11–3–09267.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Texas, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216, (210) 384–7300, and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, (800) 887–6063. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–8242 Filed 4–9–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 31, 2010, a proposed Consent Decree ("Decree") in *United States* v. *Honeywell International Inc.,* Civil Action No. 1:10CV203, was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), sought cost recovery and injunctive relief against Honeywell International Inc. relating to the third operable unit ("OU3") of the Allied Chemical and Ironton Coke Superfund Site ("Site") in Ironton, Ohio, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Under the Decree, which resolves these claims, Defendant Honeywell will pay all interim and future response costs not inconsistent with the National Contingency Plan relating to OU3 and will perform the remedy for OU3 at the Site. The remedy for OU3, which is the final remedy for the Site, pertains to the former Tar Plant area of the Site, and calls for covering contaminated soil at OU3 with a cap that complies with Ohio solid waste regulations; controls to ensure the cap remains intact and thereby protects people from remaining contaminated soil and soil vapor; and a combination of dredging, off-site disposal and/or capping of contaminated sediment in the Ohio River adjacent to the Tar Plant's loading dock.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural

Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, 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. *Honeywell International Inc.,* D.J. Ref. 90–11–3–07044/1. The Decree may be examined at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the 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 Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $72.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–8243 Filed 4–9–10; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection.

DATES: Written comments on this notice must be received by June 11, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpton@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Antarctic emergency response plan and environmental protection information.

OMB Approval Number: 3145–0180.

Expiration Date of Approval: August 31, 2010.

Abstract: The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (“ACA”) regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

Expected Respondents. Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number twelve.

Burden on the Public. The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of $500 to $1,400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: April 7, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–8299 Filed 4–9–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 20, 2010, 8 a.m. to 5 p.m. May 21, 2010, 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room II–555.

Type of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; discussion of Committee of Visitors meetings; transformative research; and strategic planning.

Dated: April 7, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–8241 Filed 4–9–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0149]

Establishment of the U.S. Department of Energy as the Long-Term Custodian of the Maybell West Uranium Mill Tailings Site in Moffatt County, CO. and Notice of Termination of the Umetco Minerals Corporation Colorado Radioactive Materials License Number 660–01 for the Maybell West Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of establishment of the U.S. Department of Energy as the long-term custodian of the Maybell West uranium mill tailings site in Moffatt County, Colorado, under the general license provisions of 10 CFR 40.28, and

termination of the Umetco Minerals Corporation Colorado Radioactive Materials License Number 660–01 for the Maybell West site.

FOR FURTHER INFORMATION CONTACT: Richard Chang, Project Manager, Special Projects Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington DC, 20555. *Telephone:* (301) 415–7188*; fax number:* (301) 415–5369; *e-mail: richard.chang@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Approval

On June 14, 2007, U.S. Nuclear Regulatory Commission (NRC) staff concurred with the State of Colorado's determination that all applicable standards and requirements for the protection of public health, safety and the environment had been met for the Umetco Minerals Corporation (Umetco) Maybell West uranium mill tailings disposal site. On February 5, 2010, Umetco transferred ownership of its 20-acre parcel of the 180-acre Maybell West uranium mill tailings disposal site to the U.S. Department of Energy (DOE) for long-term custody, as required by 10 CFR Part 40, Appendix A, Criterion 11, prior to termination of Umetco's Radioactive Materials License by the State of Colorado. The 160-acre balance of the disposal site is on public land, which was transferred by the Bureau of Land Management to the DOE in April 2008. By letter dated February 16, 2010, the DOE submitted the final Long-Term Surveillance Plan (LTSP) for the Maybell West disposal site for review and acceptance by the NRC. The NRC staff has completed its review of the LTSP and determined that the LTSP satisfies the long-term surveillance requirements in 10 CFR Part 40, Appendix A, Criterion 12, and § 40.28, for the Maybell West tailings disposal site.

Accordingly, notice is hereby given that the NRC has accepted the LTSP for the Maybell West site. As documented in NRC's letter dated March 11, 2010, acceptance of this LTSP establishes the DOE as the long-term custodian and caretaker of the Maybell West site under the general license specified in § 40.28. In a concurrent action, the State of Colorado terminated Umetco's Radioactive Materials License Number 660–01 for the Maybell West site. These actions complete all requirements for closure of the Maybell West site under the Uranium Mill Tailings Radiation Control Act of 1978, as amended. These actions do not require an environmental assessment as they are administrative in nature and categorically excluded under 10 CFR 51.22(c) (11). Accepting this LTSP and establishing this site in the custody and long-term care of the DOE involved no significant: (i) Change in the types or increase in the amounts of any effluents that may be released offsite; (ii) increase in individual or cumulative occupational radiation exposure; (iii) construction impact; and (iv) increase in the potential for, or consequences from radiological accidents.

II. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," copies of the Maybell West LTSP submitted by DOE in a letter dated February 16, 2010, and the letter dated March 11, 2010, from the State of Colorado to Umetco terminating their Radioactive Materials License, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are listed below. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Documents Related to this Notice:

1. Letter dated June 14, 2007, from J. Schlueter, NRC, to J. Vranka, Colorado Department of Public Health and Environment, regarding NRC concurrence of meeting all applicable standards for the Umetco Minerals Corporation Maybell West Uranium Mill Tailings Disposal Site. ML071490193.

2. Letter dated February 16, 2010, from T. Pauling, DOE, to W. VonTill, NRC, submitting the final Long-Term Surveillance Plan for the Maybell West Disposal Site, Moffatt County, Colorado. ML100550721.

3. Letter dated March 11, 2010, from K. McConnell, NRC, to R. Plieness, DOE, regarding acceptance of the Long-Term Surveillance Plan for the Umetco Minerals Corporation Maybell West Uranium Mill Tailings Disposal Site. ML100570213.

4. Letter dated March 11, 2010, from J. Opila, Colorado Department of Public Health and Environment, to T. Gieck, Umetco, regarding termination of Umetco's Radiation Materials License. ML100700643.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 5th day of April 2010.

For The Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–8236 Filed 4–9–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 29, 2010,
Thursday, May 27, 2010,
Thursday, June 17, 2010,
Thursday, July 15, 2010,
Thursday, August 12, 2010,
Thursday, September 16, 2010,
Thursday, October 21, 2010,
Thursday, November 18, 2010,
Thursday, December 16, 2010.

The meetings will start at 10 a.m. and will be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the U.S. Office of Personnel Management.

These scheduled meetings are open to the public with both labor and

management representatives attending. During the meetings either the labor members or the management members may caucus separately to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the U.S. Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5H27, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee, Office of Personnel Management.

[FR Doc. 2010–8335 Filed 4–12–10; 8:45 am]

BILLING CODE 6325–49–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12107 and # 12108]

New Jersey Disaster # NJ–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1897–DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing.

Effective Date: 04/02/2010.

Physical Loan Application Deadline Date: 06/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/02/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Atlantic, Bergen, Cape May, Essex, Gloucester, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Union.

Contiguous Counties (Economic Injury Loans Only):

New Jersey: Burlington, Camden, Cumberland, Hudson, Hunterdon, Ocean, Salem, Sussex, Warren.

Delaware: New Castle.

New York: Bronx, New York, Orange, Rockland, Westchester.

Pennsylvania: Bucks, Delaware, Philadelphia.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.250
Homeowners without Credit Available Elsewhere	2.625
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121076 and for economic injury is 121080.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–8189 Filed 4–9–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12109 and # 12110]

New Jersey Disaster # NJ–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA—1897—DR), dated 04/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing.

Effective Date: 04/02/2010.

Physical Loan Application Deadline Date: 06/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/02/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atlantic, Bergen, Cape May, Essex, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121096 and for economic injury is 121106.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–8190 Filed 4–9–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12098 and # 12099]

Rhode Island Disaster Number RI–00006

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–1894–DR), dated 03/29/2010.

Incident: Severe storms and flooding.

Incident Period: 03/12/2010 and continuing.

Effective Date: 04/02/2010.

Physical Loan Application Deadline Date: 05/28/2010.

EIDL Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Rhode Island, dated 03/29/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bristol.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–8191 Filed 4–9–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61842; File No. SR–NYSEArca–2010–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing of Mars Hill Global Relative Value ETF (f/k/a HTE Global Relative Value ETF)

April 5, 2010.

I. Introduction

On Februrary 25, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Mars Hill Global Relative Value ETF (f/k/a HTE Global Relative Value ETF) (the "Fund") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the **Federal Register** on March 18, 2010.[3] The Commission received no comments on the proposal. On March 29, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] AdvisorShares Investments, LLC is the Fund's investment advisor (the "Advisor") and Mars Hill Partners, LLC ("Mars Hill") is the Fund's sub-advisor. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's shares, and the Bank of New York Mellon is the administrator, transfer agent, and custodian for the Fund.

The investment goal of the Fund is average annual returns in excess of the total return of the MSCI World Index (the "Index"), with comparable volatility and little to no correlation with the Index. The Fund is considered a "fund-of-funds" that seeks to achieve its investment objective by primarily investing in both long and short positions in other exchange-traded funds (the "Underlying ETFs") that offer diversified exposure to global regions, countries, styles (market capitalization, value, growth, *etc.*) or sectors, and other exchange-traded products, including but not limited to exchange-traded notes ("ETNs"), exchange-traded currency trusts and closed-end funds. In addition, the Fund may use liquid futures contracts tied to broad market indices (*e.g.,* futures contracts based on the S&P 500 Index, the MSCI EAFE Index and/or the MSCI Emerging Markets Index) when establishing net long or net short exposure on top of the core long/short portfolio.[6] The Underlying ETFs in which the Fund will invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index and will be traded on a U.S. national securities exchange. Except for Underlying ETFs that may hold non-US issues, the Fund will not otherwise invest in non-US issues.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares [7] and that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61683 (March 10, 2010), 75 FR 13194 ("Notice").

[4] Amendment No. 1 reflects that all references in the filing to "HTE Global Relative Value ETF" are replaced with "Mars Hill Global Relative Value ETF" and that all references in the filing to "HTE Asset Management LLC" are replaced with "Mars Hill Partners, LLC." In addition, Amendment No. 1 reflects that all other representations in the filing remain as stated therein, except that representations referring to "HTE Global Relative Value ETF" and "HTE Asset Management LLC" are understood to mean and apply to "Mars Hill Global Relative Value ETF" and "Mars Hill Partners, LLC," respectively.

[5] The Exchange states that the Trust is registered under the Investment Company Act of 1940 ("1940 Act") and that on December 29, 2009, the Trust filed with the Commission Post-Effective Amendment No. 2 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund. (File Nos. 333–157876 and 811–22110) ("Registration Statement").

[6] The Fund may use futures contracts and related options for *bona fide* hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes.

[7] The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the

Shares will comply with Rule 10A–3 under the Act,[8] as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[9]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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–2010–10 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–2010–10. 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 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–2010–10 and should be submitted on or before May 3, 2010.

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day, before the commencement of trading in Shares in the Core Trading Session, the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined at the end of the business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV and data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[15] Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[16] Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[17] The Exchange represents

Disclosed Portfolio will be made available to all market participants at the same time. *See* Notice, *supra* note 3.

[8] 17 CFR 240.10A–3.

[9] *See supra* notes 3 and 5.

[10] 15 U.S.C. 78f.

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by each ETF and its service providers.

[15] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[17] *Id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in

Continued

that the Advisor is not affiliated with a broker-dealer and that any additional Fund sub-advisors that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[18]

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.

(5) The Underlying ETFs will be traded on a U.S. national securities exchange and, except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Funds.[20] The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that the changes in Amendment No. 1 to the name of the Fund and the Sub-Adviser do not raise any novel regulatory concerns, particularly because Amendment No. 1 makes clear that all other representations in the Notice remain as stated therein, except that representations in the Notice to HTE Global Relative Value ETF and HTE Asset Management LLC are understood to mean and to apply to Mars Hill Global Relative Value ETF and Mars Hill Partners, LLC, respectively. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

VI. Conclusion

It is therfore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2010–10), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8221 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[18] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[19] 15 U.S.C. 78s(b)(2).

[20] *See, e.g.,* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61849; File No. SR–NYSEAmex–2010–30]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

April 6, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 31, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Amex filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. 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 revise the manner in which marketing charges are made available to Specialists for Non-Directed orders. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to introduce a quantitative, performance based measure to be used in the allocation of the pool of monies created from the collection of marketing charges on electronic Non-Directed orders.

Presently, marketing charges are collected by the Exchange on all electronically executed customer orders where a market maker is on the contra side. The Exchange pools the marketing fees and then distributes it to payment accepting firms (order flow providers) at the direction of the Specialist, e-Specialist, or Directed Market Maker.[6]

For those orders that are directed to a specific Specialist, e-Specialist, or market maker (Directed orders), the Exchange pools the marketing fees and then distributes it to payment accepting firms designated by the ATP holder that the order was directed to. Electronically executed customer orders that are not directed to a specific ATP holder (Non-Directed orders) that result in the collection of marketing charges, create a pool of monies made available to the Specialist in that particular option.

The Exchange recently introduced an e-Specialist program,[7] and seeks to ensure that those ATP holders are recognized for providing competitive quotes and attracting order flow to the Exchange. To do so the Exchange proposes that the pool of monies resulting from the collection of marketing charges on electronic Non-Directed orders be controlled by the Specialist or the e-Specialist with superior volume performance over a trailing quarterly review period for distribution by the Exchange at the direction of such Specialist or e-Specialist to eligible payment accepting firms. In making this determination the Exchange will, on a class by class basis, evaluate Specialist and e-Specialist performance based on the number of electronic contracts executed at NYSE Amex per class. The Specialist/e-Specialist with the most electronic contracts executed on NYSE Amex per class will control the pool of marketing charges collected on the issue for the ensuing quarter. The Exchange may determine in the future to include additional metrics in the performance calculus subject to the submission of a subsequent filing to the Commission and upon notice via Regulatory Bulletin to the participants prior to the next quarterly evaluation period. The calculation used at the beginning of a calendar quarter will remain in effect for the duration of that calendar quarter. Each quarter the calculation will be performed to determine if control of that pool of monies belongs to either the Specialist or e-Specialist. In the event that the better performing party no longer quotes in that issue, control of the pool will default to whoever the assigned Specialist is in the subsequent quarter. If there is no Specialist assigned, but there is an e-Specialist assigned, the e-Specialist shall have control of these monies.

The Exchange believes that this is an appropriate means of allocating control of the pool of monies created by the collection of marketing charges as it rewards those ATP holders who are providing competitive quotes and attracting order flow to the Exchange. The Exchange further believes that this change benefits customers by incentivizing greater competition amongst specialists and e-specialists to provide tighter spreads and attract greater order flow.

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"),[8] in general, and Section 6(b)(4) of the Act,[9] 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.

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)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[6] *See* Securities Exchange Act Release No. 59478 (February 27, 2009) 74 FR 9857 (March 6, 2009) (SR–NYSEALTR–2009–19).

[7] *See* NYSE Amex Rule 927.4NY (e-Specialists).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–30 and should be submitted on or before May 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8223 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61843; File No. SR–NYSEArca–2010–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing of the One Fund Under NYSE Arca Equities Rule 8.600

April 5, 2010.

On March 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of One Fund (the "Fund"), a series of the U.S. One Trust (the "Trust") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change was published in the **Federal Register** on March 18, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the Investment Company Act of 1940 ("1940 Act") ("Underlying ETFs").[4] U.S. One, Inc. (the "Adviser") is the adviser for the Fund. The Adviser is not affiliated with a broker-dealer. If the Adviser becomes affiliated with a broker-dealer, the Adviser would be required to comply with the "fire wall" provisions contained in Commentary .07 to NYSE Arca Equities Rule 8.600.[5] PNC Global Investment Servicing, Inc. serves as the custodian, transfer agent and administrator for the Fund.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A–3 under the Act,[6] as provided by NYSE Arca Equities Rule 5.3. The Fund's investment objective is to seek long-term capital appreciation. In pursuing its investment objective, the Adviser will normally invest at least 80% of its total assets in Underlying ETFs. The Adviser invests in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets.

Additional information regarding the Fund, the Shares, the Fund's investment objective, investment strategies, policies, restrictions, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[7]

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Fund will make available on its Web site on each business day before commencement of trading of the Core Trading Session the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2)[11] that will form the basis for its calculation of

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61689 (March 11, 2010), 75 FR 13181 ("Notice").

[4] The Trust is registered under the 1940 Act. On February 5, 2010, the Trust filed with the Commission Amendment No. 2 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–160877 and 811–22320) ("Registration Statement").

[5] Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .07 requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer, Commentary .07 reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.

[6] 17 CFR 240.10A–3.

[7] *See supra* notes 3 and 4.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 U.S.C. 78f(b)(5).

[11] The Exchange represents that the Fund will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

the net asset value ("NAV"), which will be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern Time) on each business day. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and trading volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[12] Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[13] Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[14]

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities and will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.[15]

(5) Underlying ETFs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETFs may hold non-U.S. equity securities, the Fund will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[17] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.[18] The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that proposed rule change does not raise any novel regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2010–12) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8222 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[13] *See* NYSE Arca Equities Rule 8.600(d)(2)(D). The Exchange states that trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[14] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[15] *See supra* note 6.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] *See, e.g.,* Securities Exchange Act Release No. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (approving the listing and trading of shares of the Dent Tactical ETF).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61841; File No. SR–NYSEAmex–2010–33]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot, Rule 107B—NYSE Amex Equities Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or September 30, 2010

April 5, 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 March 30, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (See Rule 107B—NYSE Amex Equities) until the earlier of the Securities and Exchange Commission's approval to make such Pilot permanent or September 30, 2010. The text of the proposed rule change is available on NYSE Amex's Web site at *http://www.nyse.com,* 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.

[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 Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot [3] approved by the Securities and Exchange Commission ("SEC" or "Commission") to operate until March 30, 2010, until the earlier of the SEC's approval to make such Pilot permanent or through September 30, 2010.

Background

In October 2008, the New York Stock Exchange LLC ("NYSE") implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[4] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (see NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or "DMM." [5] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[6]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot was extended several times in the last 12 months, and most recently; the NYSE SLP Pilot was extended to March 30, 2010.[7] The NYSE is in the process of requesting an extension of their SLP Pilot until September 30, 2010 or until the Commission approves the pilot as permanent. The extension of the NYSE SLP Pilot until September 30, 2010 runs parallel with the extension of the NMM pilot: September 30, 2010, or until the Commission approves the NMM Pilot as permanent.

Proposal To Extend the Operation of the NYSE Amex Equities SLP Pilot

NYSE Amex Equities established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. Rule 107B—NYSE Amex Equities is based on NYSE Rule 107B. NYSE Amex Rule 107B was filed with the Commission on December 30, 2009, as a "me too" filing for immediate effectiveness as a pilot program.[8] The NYSE Amex Equities SLP Pilot is scheduled to end operation on March 30, 2010 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot and the NYSE SLP Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent.

Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until September 30, 2010, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the NYSE Amex Equities SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before March 30, 2010.[9]

[3] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009). *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009). *See also* Securities Exchange Act Release No. 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010).

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[5] *See* NYSE Rule 103.

[6] *See* NYSE and NYSE Amex Equities Rules 107B.

[7] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP pilot program until November 30, 2009) *and* SR–NYSE–2009–119 (extending SLP pilot program until March 30, 2010).

[8] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98).

[9] The NMM Pilot was scheduled to expire on March 30, 2010 as well. On March 12, 2010 the Exchange filed to extend the NMM Pilot until September 30, 2010 (*See* Securities Exchange Act

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) [10] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on March 30, 2010, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–33 and should be submitted on or before May 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8220 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

Release No. 61724 (March 17, 2010) (SR–NYSE–2010–25) (extending the operation of the New Market Model Pilot to September 30, 2010).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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 Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61850; File No. SR–NSX–2010–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Order To Amend the NSX Fee and Rebate Schedule and Rule 16.4

April 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 March 31, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX® " or "Exchange") is proposing a rule change, operative at commencement of trading on April 1, 2010, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") and Rule 16.4 with respect to the liquidity taking fee in the Automatic Execution mode of order interaction and the rebates payable in the Order Delivery mode of order interaction.

The text of the proposed rule change is available on the Exchange's website at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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

With this rule change, the Exchange is proposing to modify the Fee Schedule to lower the volume threshold necessary to obtain a lower take fee for securities priced one dollar and higher in the Automatic Execution mode of order interaction ("AutoEx") [3]. In addition, the Exchange is proposing to modify the text of Rule 16.4 and the Fee Schedule with respect to displayed orders in securities priced one dollar and above that add liquidity in Order Delivery mode of order interaction ("Order Delivery") [4] so as to introduce an additional intermediate rebate tier and raise the eligibility threshold for the highest rebate tier. Finally, in Order Delivery, the proposed rule change modifies the definition used to calculate volume eligibility, and also introduces a rebate for displayed liquidity adding sub-dollar orders.

AutoEx Take Fee for Securities Priced One Dollar and Higher

For orders in securities priced one dollar and above that take liquidity in AutoEx, the proposed rule change lowers the volume threshold necessary to obtain a lower take fee. Prior to the effective date of the proposed rule change, the Fee Schedule provides that an ETP Holder pays a $0.0028 per share liquidity take fee if such ETP Holder's liquidity adding average daily volume (as fully defined in Endnote 3 of the Fee Schedule, "Liquidity Adding ADV") is at least five million shares. If an ETP Holder's Liquidity Adding ADV is less than five million shares, the ETP Holder pays a liquidity take fee of $0.0030 per share. The proposed rule change lowers this volume threshold from five million to 50,000 shares, thereby enabling ETP Holders to more easily achieve the lower take fee of $0.0028 per share.

Order Delivery Rebates

For displayed orders in securities priced one dollar and above that add liquidity in Order Delivery, the proposed rule change creates an additional intermediate rebate tier and raises the eligibility threshold for the highest rebate tier. Prior to the effective date of the proposed rule change, the Fee Schedule provides a rebate of $0.0008 per share if Liquidity Adding ADV is at least 1 million and less than 5 million ("Tier 1"), and a rebate of $0.0024 per share plus 50% of attributable market data revenue if Liquidity Adding ADV is at least 5 million shares ("Tier 2"). The proposed rule change modifies Tier 2 such that an ETP Holder achieving a Liquidity Adding ADV of at least 5 million shares, but less than 30 million shares, receives a rebate of $0.0024 per share plus 35% of attributable market data revenue. Further, a third tier ("Tier 3") is introduced such that ETP Holders with at least 30 million Liquidity Adding ADV receive a rebate of $0.0024 per share plus 50% of attributable market data revenue. The proposed rule change also excludes securities priced under one dollar from the definition of Liquidity Adding ADV in the context of Order Delivery rebates.

Finally, the proposed rule change introduces a rebate for orders of securities priced under one dollar that add liquidity in Order Delivery in an amount equal to 0.20 percent of the trade value. Like the equivalent rebate for liquidity adding sub-dollar securities in AutoEx, Zero Display Reserve Orders of sub-dollar securities in Order Delivery are not eligible to receive the liquidity adding rebate.

Rationale

The Exchange has determined that these changes are necessary to create further incentive for ETP Holders to submit increased order volumes in AutoEx and Order Delivery and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the proposed fee adjustments are necessary for competitive reasons. The Exchange believes that these rebate changes will not impair the Exchange's ability to fulfill its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to submit orders in AutoEx and Order Delivery, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. The proposed modifications continue to incentivize ETP Holders to submit displayed orders over Zero Display Reserve Orders in Order Delivery. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] *Id.*

effective on filing of this proposed rule, operative for trading on April 1, 2010. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx and Order Delivery in all tapes, as either displayed or undisplayed and as liquidity adding or liquidity taking, and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2010–03 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–NSX–2010–03. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–NSX–2010–03 and should be submitted on or before May 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8225 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61840; File No. SR–NYSE–2010–28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot, NYSE Rule 107B Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or September 30, 2010

April 5, 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 March 30, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (see Rule 107B), until the earlier of the Securities and Exchange Commission's approval to make such pilot permanent or September 30, 2010. The text of the proposed rule change is available on NYSE's Web site at *http://www.nyse.com,* 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

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot [3] approved by the Securities and Exchange Commission ("SEC" or "Commission") to operate until March 30, 2010, until the earlier of the SEC's approval to make such pilot permanent or through September 30, 2010.

Background [4]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[5] The SLP Pilot was launched in coordination with the NMM Pilot (*see* Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[6] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[7]

The SLP Pilot is scheduled to end operation on March 30, 2010 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before March 30, 2010.[8]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until September 30, 2010, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rule to a permanent rule.[9]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) [10] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that

[3] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009). *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009). *See also* Securities Exchange Act Release No. 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010).

[4] The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots see supra notes 1 and 2 [sic].

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] *See* NYSE Rule 103.

[7] *See* NYSE Rules 107B.

[8] The NMM Pilot was scheduled to expire on March 30, 2010. On March 12, 2010 the Exchange filed to extend the NMM Pilot until September 30, 2010 (*See* Securities Exchange Act Release No. 61724 (March 17, 2010) (SR–NYSE–2010–25) (extending the operation of the New Market Model Pilot to September 30, 2010); *See also* Securities Exchange Act Release No. 61031 (November 19, 2009) (SR–NYSE–2009–113) (extending the operation of the New Market Model Pilot to March 30, 2010).

[9] The NYSE Amex SLP Pilot (NYSE Amex Equities Rule 107B) is also being extended until September 30, 2010 or until the Commission approves it as permanent (*See* SR–NYSEAmex–2010–33).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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 Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on March 30, 2010, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[15]

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–NYSE–2010–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–28 and should be submitted on or before May 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8219 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61851; File No. SR–ISE–2010–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

April 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 March 31, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend an incentive plan for market makers in four foreign currency options ("FX Options"). The text of the proposed rule change is available on the Exchange's Web site *(http://www.ise.com),* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend an incentive plan for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA") and the Brazilian real ("BRB").[3] On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,[4] and on January 19, 2010, added BRB to the incentive plan.[5] The Exchange subsequently extended the date by which market makers may join the incentive plan.[6] The Exchange proposes to again extend the date by which

[3] The Commission previously approved the trading of options on NZD, PZO, SKA and BRB. *See* Exchange Act Release No. 34–55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] *See* Exchange Act Release No. 34–60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

[5] *See* Exchange Act Release No. 34–61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR–ISE–2010–07).

[6] *See* Exchange Act Release Nos. 34–60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR–ISE–2009–80); 34–61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR–ISE–2009–115).

market makers may join the incentive plan.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter [7] FXPMM [8] and all Early Adopter FXCMMs [9] that make a market in NZD, PZO SKA and BRB for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO SKA and BRB and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers are required to enter into the incentive plan no later than March 31, 2010. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to June 30, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2010–27 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 No. SR–ISE–2010–27. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2010–27 and should be submitted on or before May 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8224 Filed 4–9–10; 8:45 am]

BILLING CODE 8011–01–P

[7] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

[8] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[9] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0014]

Future Systems Technology Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Seventh Panel Meeting.

DATES: May 4, 2010, 9 a.m.–5 p.m.

Location: Hotel Palomar, Bumham Ballroom.

ADDRESSES: 117 South 17th Street, Philadelphia, PA 19103.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting is open to the public.

Purpose: The Panel, under the Federal Advisory Committee Act of 1972, as amended, (hereinafter referred to as "the FACA") shall report to and provide the Commissioner of Social Security independent advice and recommendations on the future of systems technology and electronic services at the agency five to ten years into the future. The Panel will recommend a road map to aid SSA in determining what future systems technologies may be developed to assist in carrying out its statutory mission.

Advice and recommendations can relate to SSA's systems in the area of internet application, customer service, or any other arena that would improve SSA's ability to serve the American people.

Agenda: The Panel will meet on Tuesday, May 4, 2010 from 9 a.m. until 5 p.m. The agenda will be available on the Internet at *http://www.ssa.gov/fstap/index.htm* or available by e-mail or fax on request, one week prior to the starting date.

During the seventh meeting, the Panel may have experts address items of interest and other relevant topics to the Panel. This additional information will further the Panel's deliberations and the effort of the Panel subcommittees.

Public comments will be heard on Tuesday, May 4, 2010, from 4:30 p.m. until 5 p.m. Those interested in providing comments in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each person providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify. Those providing public comment are limited to a maximum five-minute, verbal presentation. In lieu of public comments provided in person, written comments may be provided to the panel for their review and consideration. Comments in written or oral form are for informational purposes only for the Panel. Public comments will not be specifically addressed or receive a written response by the Panel.

For hearing impaired persons in need of sign language services please contact the Panel staff as outlined below at least 10 business days prior to the meeting so that timely arrangements can be made to provide this service.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to SSA, Future Systems Technology Advisory Panel, Room 800, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–0001; Telephone at 410–965–9951; Fax at 410–965–0201; or E-mail to *FSTAP@ssa.gov.*

Dated: April 1, 2010.

Dianne L. Rose,

Designated Federal Officer, Future Systems Technology Advisory Panel.

[FR Doc. 2010–8239 Filed 4–9–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Omnibus Household Survey Program

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for an extension of a currently approved information collection related to the use of and satisfaction with the nation's transportation system. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 2, 2010 (75 FR 5370) and the comment period ended on April 5, 2010. The 60-day notice produced no comments.

DATES: Written comments should be submitted by May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Pheny Weidman, OHS Program Manager, BTS, RITA, Department of Transportation, 1200 New Jersey Ave. SE., Room E32–318, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Telephone (202) 366–2817, Fax (202) 493–0568 or e-mail *pheny.weidman@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Omnibus Household Survey (OHS) Program.

Type of Request: Approval of an extension of a currently approved information collection.

OMB Control Number: 2139–0012.

Affected Public: The target population for the OHS Program is the non-institutionalized population, aged 18 and older, who live in the United States. A national probability sample of households generated using list-assisted random digit dialing (RDD) methodology will be employed by the survey. Individual survey respondents within selected households will be chosen at random.

Number of Respondents: 1,500.

Number of Responses: 1,500.

Total Annual Burden: 625 hours (Based on previous data collections, we estimate the average time to complete the survey is 25 minutes. 25 minutes × 1,500 respondents = 37,500 minutes/60 minutes = 625 hours). The estimated average time to complete the survey has increased from the 10 minutes stated for previous data collections to 25 minutes. The increase is largely due to the increase in the length of questionnaire. The survey sample size also will increase from the 1,000 respondents used by previous data collections to 1,500. The increase in sample size is due to the inclusion of questions regarding the safety of public transit. In order to ensure that there will be enough samples to produce reliable estimates for those questions, a total of 500 individuals will be oversampled from selected Metropolitan Statistical Areas that provide public transit services.

Abstract: In 2005, Congress passed, and the President signed, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59). SAFETEA–LU contained a number of legislative mandates including providing data, statistics and analyses to transportation decision-makers. The Research and Innovative Technology Administration, Bureau of Transportation Statistics (RITA/BTS) was tasked to accomplish this legislative mandate under 49 U.S.C. 111(c)(1). RITA/BTS plans to use the Omnibus Household Survey (OHS) to:

- Assess the public's evaluation of the nation's transportation system in light of the DOT's strategic goals (safety, reduced congestion, global connectivity, environmental stewardship and security, preparedness and response),
- Provide a vehicle for the operating administrations within the DOT, as well as other governmental agencies, to survey the public about current transportation issues, and
- Provide national estimates of transportation mode usage.

Each version of the OHS will focus on some subset of topics taken from the list below. Topics may vary from survey to survey since covering all topics in one questionnaire would make the respondent burden unacceptable.

Choices and frequency of mode use in the month and the week prior to the survey data collection

- Commercial air
- Privately owned vehicle
- Taxi
- Rail transit (subway, streetcar, or light rail)
- Commuter rail
- Transit (local) and intercity (long distance) bus
- Intercity Rail (Amtrak)
- Other modes such as biking and walking

Confidence in the safety of the following modes of transportation
- Commercial air
- Privately owned vehicle
- Taxi
- Rail transit (subway, streetcar, or light rail)
- Commuter rail
- Water transportation (taxis, ferries, ships)
- Transit (local) and intercity (long distance) bus
- Intercity Rail (Amtrak)
- Other modes such as biking/walking/ferries

Confidence in the security procedures for the following modes of transportation
- Commercial air
- Charter/general aviation
- Privately owned vehicle
- Rail transit (subway, streetcar, or light rail)
- Commuter rail
- Water transportation (taxis, ferries, ships)
- Transit (local) and intercity (long distance) bus
- Intercity Rail (Amtrak)

Assessment of/satisfaction with security procedures for the following modes of transportation
- Commercial air
- Charter/general aviation
- Rail transit (subway, streetcar, or light rail)
- Commuter rail
- Water transportation (taxis, ferries, ships)
- Transit (local) and intercity (long distance) bus
- Intercity Rail (Amtrak)

Processing through security at
- Commercial airports
- Train stations
- Waterway entry points for ferries, water taxis, cruises

Knowledge of current check-in procedures at
- Commercial airports
- Train stations
- Waterway entry points for ferries, water taxis, cruises

Knowledge of/confidence in the Alien Flight Student Program

Experiences with transit delays related to suspicious/unattended baggage

Willingness/tolerance of transportation security risk management procedures

Information on journey to work
- Transportation used (single mode/multiple mode)
- Time required for one-way trip
- Number of days traveled
- Assessment of congestion
- Methods for dealing with congestion
- Telecommuting information
- Commuting costs
- Availability of transportation subsidies

Impact of congestion on commute

Impact of on-line shopping on passenger and freight travel

Impact of accessibility of transportation on livability of communities

Assessment of/opinions regarding distracted driving behaviors

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* BTS Desk Officer.

Issued in Washington, DC, on this 5th day of April 2010.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2010–8235 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Supplemental Notice of Intent To Prepare an Environmental Assessment and Request for Public Scoping Comments for the Air Tour Management Plan Program at Mount Rainier National Park

AGENCY: Federal Aviation Administration (FAA).

ACTION: Supplemental Notice of Intent To Prepare an Environmental Assessment and to request public scoping comments.

SUMMARY: The FAA, with National Park Service (NPS) as a cooperating agency, has initiated development of an Air Tour Management Plan (ATMP) for Mount Rainier National Park (MORA), pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations (14 CFR Part 136, Subpart B, National Parks Air Tour Management). The objective of the ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural resources, cultural resources, and visitor experiences of a national park unit and any tribal lands within or abutting the park. It should be noted that the ATMP has no authorization over other non-air-tour operations such as military and general aviation operations. In compliance with the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, CHG 1, an Environmental Assessment is being prepared. This supplemental notice of intent extends the date by which scoping comments must be submitted (*see* **DATES**) because the original **Federal Register** notice published on April 2, 2010 (Vol. 75, No. 63, 16899–16900) referenced a link to the FAA Web site that had the wrong public scoping packet. The correct public scoping packet has now been posted.

In October 2009, the NPS and FAA held a two-day kickoff meeting at MORA; minutes may be found at: *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/park_specific_plans/mountrainier.cfm.*

The purpose of the kickoff meeting was for the FAA and NPS to have the opportunity to share information regarding environmental and other issues to consider in the development of an ATMP. Materials presented at the meeting included information on: park resources; the acoustical environment at MORA; current and historical air tour operations; and representative air tour flight paths. In addition, MORA staff provided information regarding sensitive park resources, tribal concerns, and tourism patterns. Based on input received at the meeting, the FAA and NPS have decided to proceed with developing the ATMP at MORA with an Environmental Assessment (EA).

The FAA and NPS are now inviting the public, agencies, tribes, and other interested parties to provide comments, suggestions, and input on the scope of issues to be addressed in the environmental process.

DATES: By this notice, the FAA is requesting comments on the scope of the environmental assessment for the ATMP at Mount Rainier National Park. Comments must be submitted by May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Keith Lusk—Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. *Telephone:* (310) 725–3808. *Street address:* 15000 Aviation Boulevard, Lawndale, California 90261. *E-mail: Keith.Lusk@faa.gov.* Written comments on the scope of the Environmental Assessment should be submitted electronically via the electronic public comment form on the NPS Planning, Environment and Public Comment System at: *http://parkplanning.nps.gov/projectHome.cfm?parkId=323&projectId=29122,* or sent to the mailing address or e-mail address above.

SUPPLEMENTARY INFORMATION: A public scoping packet that describes the project in greater detail is available at:

- *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/park_specific_plans/mountrainier.cfm.*
- Longmire Museum, Mount Rainier National Park.
- Henry M Jackson Memorial Visitor Center at Paradise, Mount Rainier National Park.
- Ohanapecosh Visitor Center, Mount Rainier National Park.
- Sunrise Visitor Center, Mount Rainier National Park.
- Eatonville Library.
- Puyallup Library.
- Enumclaw City Library.
- Buckley Library.
- Tacoma Public Library.
- Yakima Valley Regional Library.
- Environmental Ctr. Resource Library, Huxley College of Environmental Studies, Western Washington University.
- *http://parkplanning.nps.gov/projectHome.cfm?parkId=323&projectId=29122.*

Notice Regarding FOIA: Individuals may request that their name and/or address be withheld from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commentators using the Web site can make such a request by checking the box "keep my contact information private." Such requests will be honored to the extent allowable by law, but you should be aware that pursuant to the Freedom of Information Act, your name and address may be disclosed. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Issued in Hawthorne, CA, on April 5, 2010.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2010–8194 Filed 4–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Office of Financial Stability (OFS) is soliciting comments concerning the banks and thrifts, banks and thrifts exchange, and credit union applications for the Community Development Capital Initiative.

DATES: Written comments should be received on or before June 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Daniel Abramowitz, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; (202) 927–9645.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed as above.

SUPPLEMENTARY INFORMATION:

Title: Troubled Asset Relief Program (TARP)—Community Development Capital Initiative (CDCI).

OMB Control Number: 1505–0223.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury is implementing several aspects of the Troubled Asset Relief Program. The statute provides the Secretary broad authority to purchase and insure mortgage assets, and to purchase any other financial instrument that the Secretary, in consultation with the Federal Reserve Chairman, determines necessary to stabilize our financial markets—including equity securities. The TARP is comprised of several components including a voluntary Community Development Capital Initiative (CDCI) under which the Department may purchase qualifying assets from U.S. banking organizations that are certified Community Development Financial Institutions (CDFI). Treasury, through Federal banking and credit union agencies, is seeking applicant information for financial institutions that seek participation in the CDCI.

Eligible institutions include bank holding companies, financial holding companies, insured depository institutions, credit unions, and savings and loan holding companies that engage solely or predominately in activities that are permissible for financial holding companies under relevant law. To qualify, the applicant must be established and operating in the United States and may not be controlled by a foreign bank or company, and must be a certified CDFI. Additionally, CDFIs that have participated in and have outstanding obligations under the TARP Capital Purchase Program (CPP) may apply to request an exchange of securities purchased under CPP by Treasury, for securities to be issued to Treasury under the CDCI. Eligibility to participate in the CDCI solely for purposes of exchanging outstanding obligations under CPP shall occur without regard to whether the institution seeks to participate in the CDCI for purposes of receiving additional capital. Institutions seeking additional capital under the CDCI shall submit a separate application for that purpose.

The application information will be used to determine eligibility and participation in the CDCI.

Type of Review: Extension without change to a currently approved information collection.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden Hours: 400 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumption 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 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 information.

Dated: April 5, 2010.

Daniel Abramowitz,

Office of Financial Stability PRA Program Officer.

[FR Doc. 2010–8202 Filed 4–9–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Disclosure and Reporting of CRA-Related Agreements (12 CFR part 35)." The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by May 12, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0219, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to: OCC Desk Officer, [1557–0219], by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA-Related Agreements (12 CFR part 35).

OMB Control No.: 1557–0219.

Description: This submission covers an existing regulation and involves no change to the regulation, the information collection requirements, or the burden estimates. The OCC requests only that OMB extend its approval of the information collection.

National banks and their affiliates (hereinafter referred to collectively as national banks) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to national banks' responsibilities under the Community Reinvestment Act (CRA). Section 48 of the Federal Deposit Insurance Act (FDI Act) requires the disclosure of certain of these agreements, and imposes reporting requirements on national banks and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of Thrift Supervision issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the Paperwork Reduction Act (PRA). The regulation issued by the OCC is codified at 12 CFR part 35, the collections of information contained in that regulation are known as "CRA Sunshine."

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and an NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. 12 U.S.C. 1831y(a)–(c). The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8. 12 U.S.C. 1831y(h)(2)(A).

The information collections are found in 12 CFR 35.4(b); 35.6(b)(1); 35.6(c)(1); 35.6(d)(1)(i) and (ii); 35.6(d)(2); 35.7(b); and 35.7(f)(2)(ii).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; businesses or other for-profit.

Estimated Number of Respondents: 573.

Estimated Total Annual Responses: 1,161.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,206.

The OCC issued a 60-day **Federal Register** notice on January 22, 2009. 75 FR 3785. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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 information.

Dated: April 6, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2010–8186 Filed 4–9–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a new information collection titled, "Basel Comprehensive Quantitative Impact Study." The OCC has also given notice that it has sent this collection to OMB for review.

DATES: You should submit comments by May 12, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to: OCC Desk Officer, Attention: 1557–NEW, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting approval of the following new information collection:

Title: Basel Comprehensive Quantitative Impact Study.

OMB Control No.: 1557–NEW.

Description: The International Convergence of Capital Measurement and Capital Standards: A Revised Framework, also known as the Basel II Capital Accord, sets out a general international capital framework for banking institutions. The Basel II Capital Accord was adopted under the auspices of the Basel Committee on Banking Supervision [1] (Basel Committee), and was implemented into domestic regulations in the United States by the Federal banking agencies on December 7, 2007 (72 FR 69288). In an effort to refine the Basel II Capital Accord, the Basel Committee will conduct a quantitative impact study (QIS) to assess the impact of the proposed revisions that were published by the Basel Committee on December 17, 2009.[2] As part of this effort, the OCC, in coordination with the other Federal banking agencies, is proposing to collect data from national banks with respect to the following subjects:

■ Revisions to the Basel II market risk framework [3] and guidelines for computing capital for incremental risk in the trading book,[4] including the incremental risk capital charge; the comprehensive risk measure for correlation trading portfolios; the new rules for securitization exposures in the trading book; and the revised capital charges for certain equity exposures subject to the standardized measurement method for market risk.

■ Enhancements to the Basel II framework [5] including the revised risk weights for re-securitizations held in the banking book.

■ Enhancements to strengthen the resilience of the banking sector [6] including the proposed changes to the definition of capital; the proposed introduction of a leverage ratio; and the proposed changes to the treatment of counterparty credit risk.

■ Liquidity enhancements referring to the international framework for liquidity risk measurement, standards and monitoring.[7]

■ Operational risk and countercyclical tools.

The OCC intends to collect data for the QIS from banks subject to the Basel II Capital Framework [8] and those subject to the current risk-based capital guidelines (Basel I).[9] Unless otherwise noted, all data would be reported on a consolidated basis. Ideally, banks should include all their assets in this information collection. However, due to data limitations, inclusion of some assets (for example, the portfolio of a minor subsidiary) may not be feasible. Exclusion of such assets is acceptable, as long as the remaining assets are representative of the bank as a whole.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Average Burden Hours per Response: 234 hours.

Estimated Total Annual Burden: 4,680 hours.

Comments on this information collection were solicited for 60 days.[10] No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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,

[1] The Basel Committee on Banking Supervision is a committee of banking supervisory authorities, which was established by the central bank Governors of the Group of Ten countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. It usually meets at the Bank for International Settlements (BIS) in Basel, Switzerland, where its permanent Secretariat is located.

[2] Basel Committee on Banking Supervision, *Strengthening the resilience of the banking sector,* consultative document, December 17, 2009.

[3] Basel Committee on Banking Supervision, *Revisions to the Basel II market risk framework,* July 2009.

[4] Basel Committee on Banking Supervision, *Guidelines for computing capital for incremental risk in the trading book,* July 2009.

[5] Basel Committee on Banking Supervision, *Enhancements to the Basel II framework,* July 2009.

[6] *See* footnote 2.

[7] Basel Committee on Banking and Supervision, *International Framework for liquidity risk measurement, standards and monitoring,* consultative document, December 17, 2009.

[8] *See* 12 CFR part 3, Appendix C.

[9] *See* 12 CFR part 3, Appendix A.

[10] 75 FR 3966 (Jan. 25, 2010).

maintenance, and purchase of services to provide information.

Dated: April 6, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–8187 Filed 4–9–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Facility Control Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of planned use of Facility Control Numbers.

SUMMARY: The IRS has developed and is publishing in this issue of the **Federal Register**, Facility Control Numbers to communicate to the motor fuel industry, renewable fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code (Code) section 4081 or renewable fuel production facilities that meet the definitions of Code sections 40A and 6426 and the related regulations.

FOR FURTHER INFORMATION CONTACT: If you have any questions regarding the approved facilities or the listing, you may contact: Facility Control Number Coordinator Naomi Bancroft at (701) 772–9676 ext 234 or Michael Solomon at (302) 286–1557 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IRS intends to use the facility numbers in excise fuel information reporting systems and to coordinate dyed fuel compliance activities. The IRS encourages States to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Code section 6103(k)(7).

What is a Facility Control Number (FCN)?

A FCN is a number that identifies the physical location where the IRS has interest in transactions that may be reportable and that designate a location within the motor fuel distribution system, or the bulk transfer/terminal system or renewable fuel production. Facilities include refineries (RCN), approved terminals (TCN), biodiesel production facilities (BCN), or ethanol production facilities (ECN).

A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -S-) will be issued a TCN or RCN for each approved terminal or refinery physical location that a registrant in good standing operates. A renewable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -AB-, -NB- or -CB-) will be issued a BCN for each biodiesel production physical location that a registrant in good standing operates. A renewable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -AF-) will be issued a ECN for each ethanol production physical location that the that a registrant in good standing operates. A taxable fuel registrant in good standing having both an approved terminal and refinery operating at the same physical location will be issued both a TCN and either a RCN, BCN or ECN, depending on the fuel produced.

Each taxable fuel registrant issued a TCN, BCN or ECN will have a monthly ExSTARS filing requirement. The FCN list is available at *http://www.irs.gov/excise.*

What is an approved Terminal?

Approved motor fuel terminals, as defined by Code section 4081 and the related regulations, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a rack or other non-bulk delivery system and are operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayers, who are registered with the IRS on registration for Tax-Free Transactions—Form 637 (637 Registration) with a suffix code of "S" may operate an approved terminal. Each TCN identifies a unique physical location in the bulk transport/delivery system and is independent of the registered operator. The TCN for a physical location will not change even if the owner/operator changes.

What is an approved renewable fuel production facility?

Approved renewable fuel production facilities are facilities that produce methyl esters in the case of biodiesel and denatured alcohol in the case of ethanol and are operated by a 637 registrant in good standing. Renewable fuel registrants (those having Letter of Registration for Tax Free Transactions with a suffix code -AB-, -NB- or -CB-) will be issued a BCN for each biodiesel production physical location. A renewable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -AF-) will be issued an ECN for each ethanol production physical location that the registrant operates

When does a Facility Operator need to notify the IRS of Changes?

A facility operator must notify the IRS for any of the following changes:

- Facility ownership change of greater than 50 percent or operator changes; or
- New facility is opened; or
- Facility ceases operation.

How should notification be made?

Notify the IRS ExSTARS Help Desk of the change by faxing the IRS TCN Coordinator, Naomi Bancroft at (701) 772–9207 or calling (701) 772–9676 ext. 234.

Changes to the facility status or other information will be published by the Excise Program Office on the IRS Web site *http://www.irs.gov/businesses/small/article/0,,id=99517,00.html.* Notification is required in order to retain approved status of the facility and 637 Registration. Failure to notify IRS of changes may lead to suspension or revocation of the approved status of the facility or 637 Registration of the facility operator and impose penalties under IRC § 6719. Changes or suspensions of approved status will be published as needed.

John H. Imhoff, Jr.,

National Director, Specialty Taxes.

[FR Doc. 2010–8188 Filed 4–9–10; 8:45 am]

BILLING CODE 4830–01–P

TENNESSEE VALLEY AUTHORITY

Supplemental Environmental Impact Statement for Sequoyah Nuclear Plant Units 1 and 2 License Renewals

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent.

SUMMARY: This notice of intent is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and Tennessee Valley Authority's (TVA) procedures for implementing the National Environmental Policy Act. TVA will prepare a supplemental environmental impact statement (SEIS) to update information in the 1974 Final Environmental Statement for Sequoyah Nuclear Plant Units 1 and 2 (1974 FES) and other pertinent environmental reviews. This SEIS will address the potential environmental impacts associated with TVA's proposal to renew operating licenses for the Sequoyah Nuclear Plant (SQN) located in Hamilton County, Tennessee. These license renewals will allow the plant to continue to operate for an additional 20 years beyond the current operating

licenses, which will expire in 2020 (Unit 1) and 2021 (Unit 2). The regulations of the Nuclear Regulatory Commission (NRC) in 10 CFR Part 54 set forth the applicable license extension requirements. Continued operation of SQN Units 1 and 2, which are each capable of producing approximately 1,200 megawatts (MW) of electricity, would help supply baseload power to the TVA power service area through 2041; would support TVA's policy to reduce the carbon emissions of its generating system and take advantage of lower carbon dioxide-emitting energy sources; and would make beneficial use of existing assets at the SQN site.

TVA proposes to pursue renewal of the operating licenses for SQN Units 1 and 2 in accordance with NRC regulations. The No Action Alternative considered is a decision by TVA not to seek renewal of the operating licenses for the SQN units. Under the No Action Alternative, SQN Units 1 and 2 would cease operation in 2020 and 2021, respectively. The SEIS will include examination of a range of supply-side and demand-side management options for supplying power as an alternative to renewing SQN operating licenses. Public comment is invited concerning both the scope of alternatives and environmental issues that should be addressed as part of the SEIS.

DATES: Comments on the scope of the SEIS must be postmarked or e-mailed no later than May 10, 2010, to ensure consideration.

ADDRESSES: Written comments or e-mails on the scope of issues to be addressed in the SEIS should be sent to Amy Henry, NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 11D, Knoxville, Tennessee 37902 or e-mailed to *abhenry@tva.gov*. Comments may also be submitted through the TVA Web site at *http://www.tva.gov/environment/reports/sqn-renewal/*.

FOR FURTHER INFORMATION CONTACT: Information about the SEIS may be obtained by contacting Amy Henry, NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 11D, Knoxville, Tennessee 37902 (*e-mail: abhenry@tva.gov*), or by visiting the project Web site at *http://www.tva.gov/environment/reports/sqn-renewal*. For information about operation of and license renewals for SQN, contact Gary Adkins, Nuclear Generation Development and Construction, Tennessee Valley Authority, 1101 Market Street, Mail Stop LP 5A, Chattanooga, Tennessee 37402 (*e-mail: gmadkins@tva.gov*).

SUPPLEMENTARY INFORMATION:

TVA Power System

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. TVA operates the nation's largest public power system, producing 4 percent of all electricity in the nation. TVA provides electricity to most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. It serves about 9 million people in this seven-State region through 155 power distributors and 56 directly served large industries and Federal facilities. The TVA Act requires the TVA power system to be self-supporting and operated on a nonprofit basis, and the TVA Act directs TVA to sell power at rates as low as feasible.

Dependable capacity on the TVA power system is about 37,000 MW of electricity. TVA generates most of this power with three nuclear plants, 11 coal-fired plants, nine combustion-turbine plants, two combined-cycle plants, 29 hydroelectric dams, a pumped-storage facility, and several small renewable generating facilities. A portion of delivered power is obtained through long-term power purchase agreements. Over the past five years, about 60 percent of TVA's annual generation was from fossil fuels, predominantly coal; 30 percent was from nuclear; and the remainder was from hydro and other renewable energy resources. TVA transmits electricity from these facilities over about 16,000 miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding the Tennessee Valley region and purchases and sells power on an economic basis almost daily.

Sequoyah Nuclear Plant

Operation of Sequoyah Nuclear Plant (SQN) provides approximately 2,400 MW of electricity, which is typically used to supply baseload power to the TVA power service area. Baseload power, the minimum amount of power continuously needed in a power system, is usually supplied by generators with low operating costs and dependable availability, such as nuclear plants. SQN is a major component of TVA's generating assets. In fiscal year 2009, SQN met about 11 percent of TVA's total energy need. SQN supplies about one-third of the power generated by TVA's nuclear power plants.

SQN is located in Hamilton County in southeast Tennessee on about 630 acres adjacent to the Tennessee River at Mile 484.5, near the cities of Soddy Daisy, Cleveland, and Chattanooga. The site includes two Westinghouse Electric Corporation pressurized water reactors known as SQN Units 1 and 2, with a power output capacity of approximately 1,200 MW of electricity each. The former Atomic Energy Commission (now called the Nuclear Regulatory Commission or NRC) granted TVA a provisional construction permit in May 1970. Construction at the SQN site was completed in 1980, and operating licenses were approved for Unit 1 in 1980 and Unit 2 in 1981. Unit 1 received its full power license on September 17, 1980, and began commercial operation on July 1, 1981. Unit 2 received its full power license on September 15, 1981 and began commercial operation on June 1, 1982. Both units have performed well with consistently high levels of availability and generating capacity throughout the nearly 30 years of operation.

Proposed Action and Alternatives

TVA proposes to submit applications to the NRC requesting renewal of its SQN operating licenses. Renewal of the current operating licenses would permit operation for an additional 20 years past the current 40-year operating license terms, which expire in 2020 and 2021 for Units 1 and 2, respectively. The proposed action includes provision of an additional on-site storage facility by approximately 2026 to accommodate spent fuel throughout the license renewal term. These proposed license renewals are not anticipated to require other new major construction or modifications beyond normal maintenance and operations.

The SEIS will also consider a "No Action" Alternative under which TVA would not pursue renewal of the SQN operating licenses. Under the No Action Alternative, Units 1 and 2 would cease to produce power in 2020 and 2021, respectively. The SEIS will include an evaluation of a range of supply-side and demand-side management options for supplying power as an alternative to renewing SQN operating licenses. No changes to the existing power transmission system are proposed under any of the alternatives.

No decision to seek license renewals for SQN Units 1 and 2 has been made at this time. TVA is preparing this SEIS to supplement the original 1974 FES to inform decision makers, agencies, tribal

representatives, and the public about the potential for environmental impacts associated with a decision to continue operation of SQN Units 1 and 2. The draft SEIS will be made available for public comment. In making its final decision, TVA will consider the assessment in this SEIS, including input provided by reviewing agencies, tribes, and the public.

Preliminary Identification of Environmental Issues

This SEIS will discuss the need to continue to operate SQN and will update the analyses of potential environmental, cultural, recreational, and socioeconomic impacts resulting from plant operation and maintenance of existing facilities. The impact analyses will include, but not necessarily be limited to, the potential impacts on water quality and use; vegetation; wildlife; aquatic ecology; endangered and threatened species; floodplains; wetlands; land use; recreational and managed areas; visual, archaeological, and historic resources; noise; socioeconomics; environmental justice; solid and hazardous waste; geology and seismology; meteorology, air quality, and climate change; uranium fuels cycle effects and radiological impacts; nuclear plant safety and security including design-basis accidents; and severe accidents and intentional destructive acts. These and other important issues identified during the scoping process will be addressed as appropriate in the SEIS.

Additionally, TVA will review and tier from the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, in which the NRC considered the environmental effects of 20-year renewals of nuclear power plant operating licenses (results are codified in 10 CFR Part 51). The GEIS identifies 92 environmental issues and reaches generic conclusions on environmental impacts for 69 of those issues that apply to all nuclear plants or to plants with specific design or site characteristics. It is expected that the generic assessment in NRC's GEIS would be relevant to the assessment of impacts of the proposed action at SQN.

Information from NRC's GEIS that is related to the current assessment would be incorporated by reference following the procedures described in 40 CFR § 1502.21. Additional plant-specific review will be necessary for most remaining issues, which are encompassed by the above identified range of resources.

Public Participation

This SEIS is being prepared to provide the public an opportunity to comment on TVA's assessment of the potential environmental impacts of pursuing extended licenses to operate SQN Units 1 and 2. The SEIS will also serve to inform the public and the decision makers of the reasonable alternatives that would minimize adverse impacts.

The scoping process will include interagency, tribal, and public scoping. Other federal, state, and local agencies and governmental entities will be asked to comment.

The public is invited to submit comments on the scope of this SEIS no later than the date given under the Dates section of this notice. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection. Comments from the scoping process will be used by TVA to identify key Action Alternatives, and the significant environmental issues relating to these alternatives that should be addressed in the draft SEIS. After consideration of the comments received during this scoping period, TVA will identify the issues and alternatives to be addressed in the SEIS.

TVA will prepare a draft SEIS and will invite the review agencies and the public to submit written, verbal, e-mail, or online comments on the draft SEIS. TVA anticipates issuing the draft SEIS for public review later this year. Notice of availability of the draft SEIS will be published in the **Federal Register,** as well as announced in local news media. TVA expects to release the final SEIS in spring 2011.

Dated: April 2, 2010.

Anda A. Ray,

Environmental Executive and Senior Vice President, Environment and Technology, Tennessee Valley Authority.

[FR Doc. 2010–8234 Filed 4–9–10; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Monday,
April 12, 2010

Part II

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0926; FRL–9131–2]

RIN 2060–AP88

Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule to require reporting on carbon dioxide (CO_2) injection and geologic sequestration (GS). The proposed rulemaking does not require control of greenhouse gases (GHGs), rather it requires only monitoring and reporting of CO_2 injection and geologic sequestration. EPA first proposed that suppliers of CO_2 be subject to mandatory GHG reporting requirements in April 2009 and finalized the rule for suppliers of CO_2 on October 30, 2009.

DATES: *Comments.* Comments must be received on or before June 11, 2010.

Public hearings. There will be one public hearing. The hearing date and location is: April 19, 2010 from 9 a.m. to 1 p.m. at One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.

To obtain information about the public hearing or to register to speak at the hearing, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0926, by one of the following methods:

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

E-mail: GHGReportingRR@epa.gov.

Fax: (202) 566–1741.

Mail: EPA Docket Center, Attention Docket OAR–2009–0926, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand/Courier Delivery: EPA Docket Center Public Reading Room, Room 3334, EPA West Building, Attention Docket OAR–2009–0926, 1301 Constitution Ave., NW., Washington, DC 20004. 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–OAR–2009–0926. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information, e-mail the Greenhouse Gas Reporting Rule Hotline at *ghgmrr@epa.gov* with the name of this action in the e-mail subject line, or contact Barbora Master, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9899; *fax number:* (202) 343–2359. To obtain information about the public hearings or to register to speak at the hearings, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *e-mail address: GHGReportingRule@epa.gov.*

In drafting this proposed rulemaking, EPA reviewed and considered comments submitted on the proposed subpart PP. However, as this is a new proposal, EPA will not be responding to comments received on the April 2009 proposed subpart PP in this rulemaking. To ensure that their comments are considered, stakeholders should submit comments relevant to this rulemaking as instructed in this document.

Regulated Entities. The Administrator has 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 CAA section 307(d) apply to "such other actions as the Administrator may determine"). This is a proposed regulation. If finalized, these regulations would affect owners or operators of CO_2 injection wells. 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
CO_2 Enhanced Oil and Gas Recovery Projects	211	Oil and gas extraction projects using CO_2 enhanced oil and gas recovery.
GS Sites	N/A	CO_2 geologic sequestration projects.

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. 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 proposed 40 CFR part 98, subpart A or the relevant criteria in the sections related to the injection and GS of CO_2. 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.

Some facilities that are affected by today's proposed rule have GHG emissions from multiple source categories. Table 2 of this preamble has been developed as a guide to help potential CO_2 injection and GS reporters subject to the proposed rule identify the source categories (by subpart) that they may need to (1) consider in their facility applicability determination, and/or (2) include in their reporting. The table should only be seen as a guide. Additional subparts in 40 CFR part 98 may be relevant for a given reporter. Similarly, not all listed subparts are relevant for all reporters.

TABLE 2—SOURCE CATEGORIES AND RELEVANT SUBPARTS

Source category (and main applicable subpart)	Other subparts recommended for review to determine applicability
Injection and Geologic Sequestration of Carbon Dioxide	40 CFR part 98, subpart C. 40 CFR part 98, subpart W (proposed). 40 CFR part 98, subpart PP.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

3–D three-dimensional
CAA Clean Air Act
CBI confidential business information
CCS carbon dioxide capture and geologic sequestration
CDM Clean Development Mechanism
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
DOE Department of Energy
EC European Commission
ECBM enhanced coalbed methane
EIA Economic Impact Analysis
EPA Environmental Protection Agency
EO Executive Order
ER enhanced oil and gas recovery
GHG greenhouse gas
GPG Good Practice Guidance
GS geologic sequestration
HFC hydrofluorocarbon
HFE hydrofluoroether
ICR Information Collection Request
IMO International Maritime Organization
IPCC Intergovernmental Panel on Climate Change
IRS Internal Revenue Service
MRR Mandatory Reporting of Greenhouse Gases Rule
MRV monitoring, reporting, and verification
N_2O nitrous oxide
NAICS North American Industry Classification System
NTTAA National Technology Transfer and Advancement Act
O&GJ Oil and Gas Journal
OAR Office of Air and Radiation
OMB Office of Management and Budget
OW Office of Water
PFC perfluorocarbon
QA/QC quality assurance/quality control
R&D research and development
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SDWA Safe Drinking Water Act
SF_6 sulfur hexafluoride
TSD technical support document
UIC Underground Injection Control
UNFCCC United Nations Framework Convention on Climate Change
US United States
UMRA Unfunded Mandates Reform Act of 1995
USDA United States Department of Agriculture
USDW underground source of drinking water
VEF Vulnerability Evaluation Framework

Table of Contents

I. Background

A. Organization of This Preamble

This preamble is broken into several large sections, as detailed in the Table of Contents. The following paragraphs describe the layout of the preamble and provide a brief summary of each section.

Section I of this preamble contains the basic background information about the origin of this proposed rulemaking, including a discussion of how it relates to the finalized requirements for Suppliers of CO_2 (under 40 CFR, part 98, subpart PP) and to the Underground Injection Control (UIC) program. This section also discusses EPA's legal authority under the Clean Air Act (CAA) to collect the proposed data, and the benefits of collecting the data.

Section II of this preamble summarizes the general provisions of this proposed rulemaking for reporting CO_2 injection and GS. This section also provides a brief summary of, and rationale for, the selection of key design elements. Specifically, this section describes EPA's rationale for the proposed (i) definition of reporting facilities, (ii) applicability thresholds, (iii) data reporting requirements, (iv) monitoring, reporting and verification (MRV) plan requirements and process, (v) schedule and process for reporting, (vi) procedures for estimating missing data, and (vii) recordkeeping requirements. Thus, for example, there is a specific discussion regarding appropriate applicability thresholds, monitoring methodologies and reporting and recordkeeping requirements for all CO_2 injection facilities, and additional requirements for facilities that conduct GS. EPA describes the proposed options for each design element as well as the other options considered. Throughout this discussion, EPA highlights specific issues on which the Agency solicits comment.

Section III of this preamble provides the summary of the cost impacts, economic impacts, and benefits of this proposed rule from the Economic Impact Analysis (EIA). Finally, Section IV of this preamble discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on the Proposed Rule

On December 26, 2007, President Bush signed the fiscal year 2008 Consolidated Appropriations Act authorizing funding for EPA to issue a rule requiring the mandatory reporting of greenhouse gas (GHG) emissions (Consolidated Appropriations Act, 2008, Pub. L. 110–161, 121 Stat. 1844, 2128 (2008)). An accompanying joint explanatory statement directed EPA to "use its existing authority under the Clean Air Act" to develop a mandatory GHG reporting rule.

The proposed Mandatory Reporting of Greenhouse Gases Rule (MRR) was signed on March 10, 2009, by Administrator Lisa Jackson and was published a month later (74 FR 16448, April 10, 2009). After a 60-day comment period, two public hearings, and meeting with over 4,000 additional people in over 150 groups via Webinars, conferences, individual meetings, and other forms of outreach, EPA issued a final rule on October 30, 2009 (74 FR 56260). The MRR 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. The rule does not require the control of GHGs; rather the rule requires only that sources above certain threshold levels monitor and report those GHGs.

The final MRR covers the major GHGs that are directly emitted by anthropogenic activities. These include carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF_6), and other specified fluorinated compounds (*e.g.,* hydrofluoroethers (HFEs)) used in boutique applications such as electronics and anesthetics.[1]

The final rule contains 31 subparts, each requiring reporting from a defined source category. In order to meet the reporting time, quality assurance, and verification requirements of the rule, EPA is establishing a facility-to-EPA electronic reporting system to facilitate collection of data under this rule. All facilities that are covered under this rule as reporters will use this data system to submit required data.

Subpart PP requires the reporting of CO_2 supplied to the economy. Subpart PP applies to all facilities with CO_2 production wells, facilities with production process units that capture and supply CO_2 for commercial applications or that capture and maintain custody of a CO_2 stream to sequester or otherwise inject it underground, and to importers and exporters of bulk CO_2. During the public comment period on the rule, EPA received many comments on subpart PP that CO_2 injected underground should be considered when estimating emissions from the CO_2 supply industry. Some commenters specified that some of the CO_2 supplied for the purposes of enhanced oil and gas recovery (ER) is additionally sequestered rather than emitted and characterized ER operations as "closed systems" rather than emissive. Other commenters stated that including reporting requirements for geologically sequestered CO_2 would fill a critical gap in the reporting system. EPA agrees that ER is a potentially non-emissive end use and that GS data reporting from ER sites can assist EPA in quantifying the amount of CO_2 that is permanently and securely geologically sequestered. In addition, EPA agrees that GS reporting requirements would provide information and transparency on the amount of CO_2 injected and geologically sequestered in the United States.

Although CCS is occurring now on a relatively small scale, it could play a larger role in mitigating GHG emissions from a wide variety of stationary sources. According to the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007, stationary sources contributed 67 percent of the total CO_2 emissions from fossil fuel combustion in 2007.[2] These sources represent a wide variety of sectors amenable to CO_2 capture: electric power plants (existing and new), natural gas processing facilities, petroleum refineries, iron & steel foundries, ethylene plants, hydrogen production facilities, ammonia refineries, ethanol production facilities, ethylene oxide plants, and cement kilns. Furthermore, 95 percent of the 500 largest stationary sources are within 50 miles of a candidate GS reservoir.[3] Estimated GS capacity in the United States is over 3,500 Gigatons CO_2 ($GtCO_2$) (13,000 Gigatons CO_2 at the high end),[4] although the actual capacity may be lower once site-specific technical and economic considerations are addressed. Even if only a fraction of that geologic capacity is used, CCS is poised to play a sizeable role in mitigating U.S. GHG emissions.

Many of the injection and monitoring technologies that may be applicable for

[1] These gases influence the climate system by trapping in the atmosphere heat that would otherwise escape to space. Additional information about GHGs, climate change, climate science, and other related issues, can be found at EPA's climate change Web site at *http://www.epa.gov/climatechange/*.

[2] U.S. EPA Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2007, Draft Report, EPA 430–R–09–004. Available at: *http://epa.gov/climatechange/emissions/usinventoryreport.html.*

[3] Dooley, JJ, CL Davidson, RT Dahowski, MA Wise, N Gupta, SH Kim, EL Malone. 2006. "Carbon Dioxide Capture and Geologic Storage: A Key Component of a Global Energy Technology Strategy to Address Climate Change." Joint Global Change Research Institute, Battelle Pacific Northwest Division. PNWD–3602.

[4] DOE. 2008. Carbon Sequestration Atlas of the United States and Canada (Atlas II). Available at: *http://www.netl.doe.gov/technologies/carbon_seq/refshelf/atlasII/.*

GS are commercially available today and will be more widely demonstrated over the next 10 to 15 years.[5] The oil and natural gas industry in the United States has over 35 years of experience of injection and monitoring of CO_2 in the deep subsurface for the purposes of enhancing oil and natural gas production. This experience provides a strong foundation for the injection and monitoring technologies that will be needed for commercial-scale CCS. U.S. experience with ER combined with the experience of four end-to-end commercial CCS projects[6] and ongoing research, demonstration, and deployment programs throughout the world, are building confidence that geologic sequestration of large amounts of CO_2 can be achieved.

C. Overview of the Proposal

Today, EPA is proposing to amend the Mandatory Reporting of Greenhouse Gases Program at 40 CFR part 98 to add reporting requirements covering facilities that conduct injection and geologic sequestration of CO_2.

EPA is proposing a tiered approach for reporting requirements under this subpart. The first tier of proposed regulations would establish a set of reporting requirements that would cover all facilities that inject CO_2 underground. As described in Section II.C of this preamble, all facilities would be required to report CO_2 transferred onsite from offsite sources, the source of the CO_2 (if known), and CO_2 injected underground.

The second tier of reporting requirements would apply to GS facilities. As described in Section II.C of this preamble, GS facilities would be required to calculate CO_2 sequestered by subtracting total CO_2 emissions from the CO_2 injected in the reporting year. The emitted quantity would include the injected CO_2 that leaked from the subsurface to the surface (if any), CO_2 produced with oil or natural gas where ER operations are conducted at the GS facility, fugitive or vented CO_2 emissions from surface equipment, and emissions from combustion sources located within the facility boundary, such as compressors.

EPA considered several options for monitoring, reporting and verification (MRV) of potential CO_2 leakage[7] at GS sites: do not require a MRV plan, require a universal MRV plan that applies to all GS sites, or require a site-specific MRV plan. EPA is proposing to require monitoring according to a site-specific MRV plan, but is seeking comment on all of the options considered. While the risk of leakage at a well-selected and well-managed GS site is expected to be low, the Agency considers it important for all facilities conducting GS to demonstrate that they have met MRV standards. The options described above are discussed in more detail in Section II.D of this preamble.

Data on CO_2 injection and GS are critical to informing CAA GHG policies. This data would provide information and transparency on the amount of CO_2 injected and geologically sequestered in the United States and, in combination with other subparts of the MRR, would enable EPA to track the flow of CO_2 across a CCS system. In addition, this information would enable EPA to monitor the growth and efficacy of GS (and therefore CCS) as a GHG mitigation technology over time and to evaluate relevant policy options. For example, EPA would be able to track whether incentives or regulations are needed to encourage faster or further GS project development. EPA would also be able to track whether ER sites are reporting GS and consider whether incentives or regulations are needed. Where ER facilities are reporting GS, EPA would be able to evaluate ER as a potentially non-emissive end use. In combination with subpart PP, EPA would be able to reconcile this data with CO_2 supplied in order to better understand the quantity of CO_2 supplied to emissive and non-emissive end uses. Furthermore, this data would inform Agency policy decisions under CAA sections 111 and 112 related to the use of CCS for mitigating GHG emissions.

In developing this proposal, EPA considered overlap between this program and other programs. In July 2008, EPA proposed to amend its UIC program to establish a new class of injection well for GS projects (73 FR 43492 (July 25, 2008)). Today's proposal provides a pathway for CO_2 injection facilities to report to EPA as GS facilities under the CAA, regardless of their UIC permit classification. Under this proposal, any facility sequestering CO_2 underground can choose to qualify and report as a GS facility for purposes of this proposed rule.

Since subpart RR is an amendment to the MRR, the general provisions of the MRR (40 CFR part 98, subpart A) apply to today's proposed subpart RR unless a provision is superseded by this subpart that applies uniquely to facilities that inject CO_2 or that conduct GS. The general provisions address the following topics: The purpose and scope (40 CFR 98.1); who must report (40 CFR 98.2); the general monitoring, reporting, recordkeeping and verification requirement (40 CFR 98.3); the authorization and responsibilities of the designated authority (40 CFR 98.4); how a report is submitted (40 CFR 98.5); definitions (40 CFR 98.6); the standardized methods incorporated by reference (40 CFR 98.7); the compliance and enforcement provisions (40 CFR 98.8); and the mailing addresses (40 CFR 98.9).

Amendments to the General Provisions. In a separate rulemaking, package that was recently published (March 16, 2010), EPA issued minor harmonizing changes to the general provisions for the GHG reporting rule (40 CFR part 98, subpart A) to accommodate the addition of source categories not included in the 2009 final rule (*e.g.,* subparts proposed in April 2009 but not finalized in 2009, any new subparts that may be proposed in the future). The changes update 98.2(a) on rule applicability and 98.3 regarding the reporting schedule to accommodate any additional subparts and the schedule for their reporting obligations (*e.g.,* source categories finalized in 2010 would not begin data collection until 2011 and reporting in 2012).

In particular, we restructured 40 CFR 98.2(a) to move the lists of source categories from the text into tables. A table format improves clarity and facilitates the addition of source categories that were not included in calendar year 2010 reporting and would begin reporting in future years. A table, versus list, approach allows other sections of the rule to be updated automatically when the table is updated; a list approach requires separate updates to the various list references each time the list is changed. In addition to reformatting the 98.2(a)(1)–(2) lists into tables, other sections of subpart A were reworded to refer to the source category tables because the tables make it clear which source categories are to be considered for determining the applicability threshold and reporting requirements for calendar years 2010, 2011, and future years.

[5] Dooley, JJ, CL Davidson, RT Dahowski. 2009. "An Assessment of the Commercial Availability of Carbon Dioxide Capture and Storage Technologies as of June 2009." Joint Global Change Research Institute. Pacific Northwest National Laboratory. PNNL–18520.

[6] These projects are: Sleipner (Norwegian North Sea)—1 Mt CO_2/yr injected since 1996; Weyburn (Canada)—1 Mt CO_2/yr injected since 2000; In Salah (Algeria)—1.2 Mt CO_2/yr injected since 2004; and Snohvite (Norwegian Barents Sea)—0.7 Mt CO_2/yr injected since 2008.

[7] Leakage in this proposed rule is defined as the movement of CO_2 from the injection zone to the surface (for example to the atmosphere, indoor air, oceans or surface water).

As part of today's proposed rule, EPA is proposing changes to subpart A to accommodate subpart RR. Because all CO_2 injection and geologic sequestration facilities (as defined in proposed 40 CFR part 98, subpart RR) would be subject to proposed subpart RR, EPA is proposing that this source category be added to the table of "all-in" source categories referenced from 40 CFR 98.2(a)(1).[8] For facilities that become subject to the MRR due to CO_2 injection or geologic sequestration, the first annual GHG report would cover calendar year 2011 rather than 2010.

EPA is proposing to amend 40 CFR 98.2(a) so that the MRR applies to facilities located on or under the Outer Continental Shelf. These revisions are necessary to ensure that any CO_2 injection or GS facilities located on or under the Outer Continental Shelf of the United States would be required to report. In addition, EPA is proposing revisions to the definition of United States to clarify that the United States includes the territorial seas. Other facilities located offshore of the United States covered by the MRR program at 40 CFR part 98 would also be affected by this change in the definition of United States. For example, EPA is proposing in a separate rule to revise the MRR requirements to add a new subpart, subpart W, to address petroleum and natural gas systems. Any comments specific to that issue should be directed to the Agency in that rulemaking, not this one. Finally, in addition to the change to the definition of United States, EPA is adding a definition of "Outer Continental Shelf." This definition is drawn from the definition in the U.S. Code. Together, these changes make clear that the MRR applies to facilities on land, in the territorial seas, or on or under the Outer Continental Shelf of the United States, and that otherwise meet the applicability criteria of the MRR.

EPA also is proposing to amend 40 CFR 98.7 (incorporation by reference) to include standard methods used in proposed subpart RR.

D. Legal Authority

EPA is proposing subpart RR under the existing authority provided in CAA section 114. As noted in the MRR, CAA section 114 provides EPA with broad authority to require information mandated by this rule because such data will inform and are relevant to EPA's carrying out a wide variety of CAA provisions (74 FR 66264). Under CAA section 114(a)(1), the Administrator may require emissions sources, persons subject to the CAA, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information as the Administrator requests for the purposes of carrying out the provisions in the CAA (except for a provision of title II with respect to motor vehicles).

As discussed in greater detail in the response to comments for the final MRR, the CAA provides EPA with broad authority to require the comprehensive and accurate information mandated in this rule because such data will inform, and are relevant to, EPA's analyses of various CAA provisions (Mandatory Reporting of Greenhouse Gases, EPA's Response to Public Comment's Section 3–Legal Issues). EPA may gather information for a variety of purposes, including for the purpose of assisting in the development of implementation plans or 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. In addition, CAA section 103 authorizes EPA to establish a national research and development program, including non-regulatory approaches and technologies for the prevention and control of air pollution as it relates to GHGs and climate change.

The information from CO_2 injection and GS facilities will allow EPA to make well-informed decisions about whether and how to use the CAA to regulate these facilities and encourage voluntary reductions.

E. Relationship to the Proposed UIC Class VI Rulemaking Under the Safe Water Drinking Act

The Agency maintains a high-level of coordination across EPA offices and regions on GS activities and regulatory development. EPA's Office of Air and Radiation (OAR) and Office of Water (OW) work closely to promote safe and effective implementation of GS technologies while ensuring protection of human health and the environment. All Agency efforts related to GS, including the UIC Class VI proposal which is discussed in more detail below, and this MRR proposal, are closely coordinated.

EPA's UIC program was established in the 1970s to prevent endangerment of underground sources of drinking water (USDWs) from injection of various fluids, including CO_2 for ER, oil field fluids, water stored for drinking water supplies, and municipal and industrial waste. The UIC program, which is authorized by Part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300h *et seq.*), is designed to prevent the movement of such fluid into USDWs by addressing the potential pathways through which injected fluids can migrate and potentially endanger USDWs.

When EPA initially promulgated its UIC program regulations, the Agency defined five classes of injection wells at 40 CFR 144.6, based on similarities in the fluids injected, construction, injection depth, design, and operating techniques. Wells injecting industrial non-hazardous liquids, municipal wastewaters or hazardous wastes beneath the lowermost USDW are categorized as Class I. Those injecting fluids in connection with conventional oil or natural gas production, enhanced oil and gas production, and the storage of hydrocarbons which are liquid at standard temperature and pressure are categorized as Class II. Class III wells inject fluids associated with the extraction of minerals, and those categorized as Class IV inject hazardous or radioactive wastes into or above USDWs. Class IV injection wells are banned unless authorized under an approved Federal or State ground water remediation project. Class V includes all injection wells that are not included in Classes I–IV. This well class provides for Class V experimental technology wells including those permitted as GS pilot projects.[9]

In 2008, EPA proposed to amend the UIC program to establish a new class of injection well—Class VI—to cover the underground injection of CO_2 for the purpose of GS, or long-term storage of CO_2 (73 FR 43492, July 25, 2008). The proposed requirements would tailor existing components of the UIC program to address the unique nature of GS projects so as to ensure that the injection of large volumes of CO_2 in a variety of geologic formations for the purposes of long term storage would not endanger USDWs. The UIC Class VI proposal does not require any facilities to capture and/or sequester CO_2; rather the proposed requirements, if finalized, would protect USDWs under the SDWA. The SDWA does not provide authority to develop regulations for all areas related to GS such as capture or transport. As outlined in the UIC Class VI proposal, injection wells used for injecting CO_2 for the purposes of ER would continue to be regulated and permitted as Class II as long as any

[8] Since we changed the list of covered subcategories to tables, we are not providing regulatory text in this proposal because the preamble is clear.

[9] *See* EPA UIC Guidance #83. Available at: *http://www.epa.gov/safewater/uic/wells_sequestration.html.*

production is occurring. EPA received significant comments on this proposed approach and is currently evaluating these comments for the final rulemaking.

Facilities regulated under the UIC program are required to collect and report data, with minimum requirements for the collection and reporting of data established at the Federal level. Where States are given primacy over the UIC program, the data collected under the UIC program varies. Data currently collected under a State-issued UIC permit is submitted to States while, under today's subpart RR proposal, reporters will be submitting data directly to EPA. The Agency believes that State, local, and tribal input is valuable in ensuring that the subpart RR reporting requirements appropriately build on the UIC program requirements. EPA is seeking comment on a number of topics and will look for opportunities to conduct outreach with State, local and tribal organizations between proposal and finalization.

Today's proposal builds on the UIC program requirements for monitoring with the additional goals of verifying the amount of CO_2 sequestered and collecting data on CO_2 surface emissions from GS facilities. As described in Section II.D of this preamble, EPA is proposing that a facility's UIC permit may be used to demonstrate that certain MRV plan requirements have been fulfilled.

In the Agency's August 2009 Notice of Data Availability supplementing the UIC Class VI proposal, EPA noted that it was evaluating the need for a more comprehensive regulatory framework for GS. The Agency acknowledges that regulatory clarity is essential for enabling GS to move forward in a manner that protects human health and the environment. It is EPA's intention to coordinate GS requirements across relevant statutory or other programs in order to minimize any redundancies and increase clarity for stakeholders. The Agency seeks comment on whether this is appropriate.

The proposed UIC Class VI rule is a separate rulemaking action; the comment period for that rulemaking closed on December 24, 2008. EPA will not be accepting or responding to comments on the proposed UIC Class VI rule through today's proposal unless related to a specific issue raised by this action.

F. Relationship to Other CO_2 Injection Information Collection and Reporting Efforts

In considering how to design this proposal, EPA reviewed and took into account other domestic and international reporting and monitoring programs. Key programs are summarized in this section.

The Department of Energy (DOE) Energy Information Administration implements a voluntary GHG reporting program under section 1605(b) of the Energy Policy Act of 1992, which directed DOE to issue guidelines establishing a voluntary greenhouse gas reporting program (42 U.S.C. 13385(b)). Under the Energy Information Administration's "1605(b) program," reporters can choose to prepare an entity-wide GHG inventory and identify specific GHG reductions made by the entity.[10] Reporting tools were revised and published in 2009 to assist entities in preparing a preliminary estimate of emissions. The 2007 updated 1605(b) guidance outlines a voluntary process to report data on CO_2 sequestration. Currently, no CO_2 injection or sequestration entity has reported under the 1605(b) program per the 2007 guidelines. According to the Energy Information Administration Web site, the first reporting cycle under the revised Voluntary Reporting of Greenhouse Gases Program has not been completed as of January 15, 2010. The Energy Information Administration anticipates issuing an annual report and public use database for data reported through 2008 by early 2010.[11] The 1605(b) guidance requires the implementation of a site-specific monitoring plan, but this plan is not evaluated by DOE to determine whether the plan will provide for appropriate monitoring. Four prescriptive monitoring scenarios are offered with grades ranging from "A" to "C", any of which would be acceptable for compliance with the 1605(b) program. Furthermore, although the 1605(b) guidance cites the importance of reporting CO_2 leakage should it occur, the guidance does not include a discussion of, procedures for, or methodologies for using monitoring technologies and techniques to quantify the leakage. As a result of this, and the fact that reporting is voluntary, the 1605(b) program would not meet the data needs of this proposed rule.

The Internal Revenue Service (IRS) made public IRS Notice 2009–83 Credit for Carbon Dioxide Sequestration under section 45Q on its Web site on October 8, 2009.[12] The notice provides procedures for the allocation of credits for CO_2 sequestration under section 45Q of the Internal Revenue Code. Section 45Q was enacted by section 115 of the Energy Improvement and Extension Act of 2008, (October 3, 2008) and was amended by section 1131 of the American Recovery and Reinvestment Act of 2009 (February 17, 2009). To claim this credit, a taxpayer must follow general monitoring and verification principles, calculate CO_2 sequestered in the fiscal year using a mass-balance equation, and report to IRS the amount of qualified CO_2 sequestered in the fiscal year. Seventy-five million metric tons of qualified CO_2 can be taken into account for this credit. The IRS included a provision in the notice to supersede its monitoring and verification procedures and requirements with procedures and requirements finalized by EPA in future GS rulemaking such as the UIC Class VI proposal and this proposed rule.

EPA has concluded for a number of reasons that the IRS data would not meet the needs outlined in this proposed rule. First, the IRS reporting requirement will expire after 75 million metric tons of CO_2 is reported as sequestered to IRS, at which point the data collection will end. Second, the level of reporting and transparency would not meet the verification needs of this proposed rule. GS facilities only report the quantity of CO_2 sequestered to IRS. The data used to calculate sequestration and the specific monitoring procedures followed will only be reviewed by IRS staff in the case of an audit. Given the variability in geology and other conditions at GS facilities, EPA believes that the monitoring approach at each GS facility must be reviewed on a case-by-case basis to ensure that it is appropriate for the site-specific geologic and operational conditions. Third, the IRS does not outline procedures or provide a mechanism for quantifying and reporting any CO_2 leakage that may occur as is necessary for this proposed rule.

EPA notes that the United States submits an inventory of GHG emissions that accounts for CCS to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) each year. The UNFCCC, ratified by the United States in 1992, establishes an overall framework for intergovernmental efforts to tackle the

[10] Under the 1605(b) program an "entity" is defined as "the whole or part of any business, institution, organization or household that is recognized as an entity under any U.S. Federal, State or local law that applies to it; is located, at least in part, in the U.S.; and whose operations affect U.S. greenhouse gas emissions." Available at: *http://www.pi.energy.gov/enhancingGHGregistry.*

[11] Available at: *http://www.eia.doe.gov/oiaf/1605/data_reports.html.*

[12] Available at: *http://www.irs.gov/irb/2009-44_IRB/ar11.html.*

challenge posed by climate change. The United States has submitted the Inventory of U.S. Greenhouse Gas Emissions and Sinks (Inventory) to the United Nations every year since 1993. The annual Inventory is consistent with national inventory data submitted by other UNFCCC parties, and uses internationally accepted methods for its emission estimates. For more information about the Inventory, please refer to the following Web site: *http://www.epa.gov/climatechange/emissions/usinventoryreport.htm.*

The United States currently follows the 1996 [13] Intergovernmental Panel of Climate Change (IPCC) guidelines in preparing its Inventory, as supplemented by IPCC Good Practice Guidance (GPG) from 2000 [14] and 2003 [15]. Since these guidelines do not provide information on the accounting of GS, EPA addressed CO_2 usage in the 2007 Inventory by accepting some general, top-down assumptions about the end-use of supplied CO_2. First, EPA collected CO_2 production data for natural CO_2 domes and estimated for each dome the amount of CO_2 used for ER operations and the amount of CO_2 used for non-ER operations. EPA assumed that the percentage of naturally produced CO_2 used for non-ER operations (*e.g.*, food processing, chemical production) was all emitted to the atmosphere. The percentage used for ER operations was assumed to be sequestered. Second, EPA collected data from industry on anthropogenic CO_2 emitted from natural gas processing and ammonia plants and accounted it as emitted, regardless of whether the CO_2 was captured or not.

The IPCC published new inventory guidelines in 2006 [16], which directly address accounting for GS and include methodologies for the estimation of emissions from capture, transport, injection, and GS of CO_2. The guidelines are based on the principle that the CCS system should be accounted for in a complete and consistent manner across the entire Inventory. The approach accounts for CO_2 produced from natural CO_2 domes and captured at industrial facilities as well as emissions from capture, transport, and use. For GS specifically, the IPCC guidelines outline a Tier 3 methodology [17] for estimating and reporting emissions based on site-specific evaluations of each storage site. EPA believes that the GS monitoring, reporting, and verification requirements of this proposed rule are consistent with the 2006 IPCC guidelines.

In considering how to design this proposal, EPA also took into account the monitoring requirements adopted in other countries, in particular other UNFCCC member countries that have already taken steps towards collecting information for CCS to meet the 2006 IPCC guidelines. The Directive of the European Parliament and of the Council on the geological storage of carbon dioxide (Commission decision 2007/589/EC) establishes a legal framework for the environmentally safe geological storage of CO_2. It requires European Council (EC) member States to ensure that each GS site operator will carry out monitoring of the injection facilities, the storage complex (including the CO_2 plume), and, where appropriate, the surrounding environment for detection of any significant migration or leakage of CO_2 or any significant adverse effect on the surrounding environment.

The directive requires that monitoring frequency be determined by the competent authority, and should be at least once a year. A monitoring report should be developed that describes the quantities and properties of the CO_2 streams delivered and injected, including concentration of the CO_2 streams, in the reporting period. The parameters to be monitored include:

- Fugitive emissions of CO_2 at the injection facility;
- CO_2 volumetric flow at injection wellheads;
- CO_2 pressure and temperature at injection wellheads (to determine mass flow);
- Chemical analysis of the injected material; and
- Reservoir temperature and pressure (to determine CO_2 phase behavior and state).

Per the directive, each GS site should choose monitoring technology based on best practices available at the time the monitoring plan is designed. The following options should be considered and used when appropriate:

- Technologies that can detect the presence, location, and migration paths of CO_2 in the subsurface and at the surface;
- Technologies that provide information about pressure-volume behavior and aerial/vertical distribution of CO_2-plume to refine numerical 3–D-simulation to the 3–D-geological models of the storage formation; and
- Technologies that can provide a wide aerial spread in order to capture information on any previously undetected potential leakage pathways across the aerial dimensions of the complete storage complex and beyond, in the event of significant irregularities or migration of CO_2 out of the storage complex.

In Australia, the Proposed Greenhouse Gas Geological Sequestration Regulations 2009 were proposed to support the implementation and administration of the Greenhouse Gas Geological Sequestration Act 2008 and to address several CCS related issues, including monitoring requirements for GS. These regulations require that each GS site develop a monitoring and verification plan which includes the following:

- Characteristics of the geological formation into which the GHG substance is to be injected and any geological or other conditions that may influence containment of a stored GHG;
- A description of the existing environment above, on and below the surface of the ground; and any resource above, on and below the surface of the ground that a person is entitled to extract or use under a resource authority;
- Details of the equipment proposed to be used to monitor the behavior of stored greenhouse gas substances, and where it is to be located;
- Details of the techniques to be used to monitor, the length of time that each technique is to be used, and how often each monitoring technique is to be carried out; and
- The regulation also specifies that a report on the outcome of all monitoring and verification activities carried out should be completed quarterly.

Other international efforts have also been useful to EPA in developing the requirements of this proposed rule. The International Maritime Organization (IMO) has published under the London Protocol [18] two documents to provide guidelines to parties for the assessment of and implementation of disposal of CO_2 in sub-seabed geologic formations:

[13] IPCC, 1996. "Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories." National Greenhouse Gas Inventories Programme. Available: *http://www.ipcc-nggip.iges.or.jp/public/gl/invs1.html.*

[14] IPCC. 2000. "Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories." National Greehouse Gas Inventories Programme. Available at: *http://www.ipcc-nggip.iges.or.jp/public/gp/english/.*

[15] IPCC. 2003. "Good Practice Guidance for Land Use, Land-Use Change, and Forestry." National Greenhouse Gas Inventories Programme. Available at: *http://www.ipcc-nggip.iges.or.jp/public/gpglulucf/gpglulucf.html.*

[16] 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Volume 2—Energy. Chapter 5 Carbon Dioxide Transport, Injection, and Geological Storage. Available at: *http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.htm.*

[17] Tier 3 methods include either detailed emission models or measurements and data at individual plant level where appropriate.

[18] Available at: *http://www.imo.org/includes/blastData.asp/doc_id=10531/9%20%20CO2%20Sequestration%20English.pdf.*

Specific Guidelines for Assessment of Carbon Dioxide Streams for Disposal into Sub-Seabed Geological Formations (2009) and Risk Assessment and Management Framework for CO_2 Sequestration in Sub-Seabed Geological Structures (2007). These guidelines focus on several aspects of CCS including:

- CO_2 stream characterization (chemical and physical properties);
- Waste prevention audit;
- Consideration of waste management options;
- Action lists;
- Identification and characterization of sub-seabed geological formation;
- Assessment of potential impacts;
- Monitoring and risk management; and
- Permitting and permit condition.

Under the Kyoto Protocol, the Clean Development Mechanism (CDM) is a market-based mechanism that aids countries in meeting their emission limitation and reduction goals through emission reduction (or removal) projects in developing nations. These projects allow companies in industrialized countries to receive credits that can either be put towards their emission limitation or reduction, traded, or sold. Two new proposed CDM methodologies (NM0167 and NM0168) address CCS activities.[19] These new baseline and monitoring methodologies have not yet been approved by the CDM Executive Board, but EPA continues to follow their progress and to monitor for other GS methodology proposals.

II. Rationale for Reporting, Recordkeeping, and Verification Requirements

A. Definition of Reporting Facilities

1. CO_2 Injection Facility

EPA is proposing that the CO_2 injection facility be defined broadly to cover wells or a group of wells that inject CO_2 into the subsurface or sub-seabed geologic formations. This definition would encompass both onshore and offshore facilities.

EPA is proposing a broad definition of CO_2 injection facility to ensure complete reporting of basic information regarding the CO_2 transferred onsite, the source of the CO_2 if known, and the CO_2 injected. The broad definition also provides reporters with flexibility either to report this basic information on a well by well basis or to group wells in an area for reporting purposes. Given the proposed threshold and applicability for CO_2 injection facilities, a more specific definition addressing the aggregation of groups of wells in an area is not necessary. As discussed in more detail in Section II.B of this preamble, however, EPA is soliciting comment on the question of how to define the source category if a more precise definition is necessary.

2. GS Facility

EPA is proposing facilities injecting CO_2 for the long-term containment in subsurface geologic formations would meet the definition of GS in this proposed rule and would report additional information. EPA is proposing that facilities that inject CO_2 for ER would not be GS facilities unless they inject CO_2 for the long-term containment in subsurface geologic formations and submit and gain EPA approval of an MRV plan.

To comply with the specific reporting requirements discussed in Section II.C of this preamble, the reporter would need to identify the sources and surface equipment making up the GS facility. However, EPA recognizes that defining the extent of a GS facility source may be difficult. For example, there may be a number of injection wells in an oilfield under common ownership or common control of which only a subset would be considered GS facilities. In that example, the question of whether and how to aggregate various wells arises. In addition, the CO_2 plume and pressure front associated with a GS facility may extend for a distance beyond the injection point, and widely separated wells may be injecting into the same pore space. Because EPA is seeking data on the amount of CO_2 sequestered by these facilities and because EPA is proposing an all-in threshold for these facilities, EPA is proposing a narrow definition of GS source to simplify the reporting requirements associated with emissions from combustion and surface equipment. For purposes of this reporting rule, EPA is proposing to define a GS facility to include all structures associated with the injection of CO_2 located between the points of CO_2 transfer onsite from offsite and the injection well (or wells). A GS facility that injects CO_2 to enhance the recovery of oil or natural gas will also include all structures associated with production located between the production wells and the separators.

Although EPA is proposing a narrow definition of GS facility, the proposed rule would require GS facilities to monitor over a spatial area that will almost certainly extend beyond the boundaries of the facility, as defined here. Given that a main focus of this proposal is to obtain information regarding the efficacy of GS, EPA anticipates that the MRV plans for GS facilities will need to require monitoring over a broad area. This is discussed in Section II.D of this preamble.

EPA seeks comment on its approach to defining the boundary of the GS facility. In particular, EPA seeks comment on the question of whether EPA should require the aggregation of wells located in an area, and if so, what rules should be applied for determining what equipment comprises the source. EPA seeks comment on whether the GS facility should be defined to include the spatial area of monitoring proposed in Section II.D of this preamble. EPA also seeks comment on whether it should follow the approach for onshore facilities in the proposed subpart W regulations, which requires the aggregation of equipment to the geographic boundary of a single hydrocarbon basin as defined by the American Association of Petroleum Geologists.

EPA is proposing to exempt research and development (R&D) as defined at 40 CFR Part 98.6 from subpart RR, consistent with the approach taken in subparts C through QQ of the MRR. EPA is also proposing that, for the purposes of GS facility requirements under subpart RR, research and development means those projects receiving Federal funding to research practices and monitoring techniques that will enable safe and effective long-term containment of a gaseous, liquid, or supercritical CO_2 stream in subsurface geologic formations. R&D projects would not be required to submit an MRV plan under subpart RR. EPA seeks comment on how R&D projects are defined and treated in this proposal.

3. Other CO_2 End-Users

In developing this proposed rule, EPA considered requiring reporting from various other end-users of the CO_2 that is produced and supplied to the economy, including both emissive and potentially non-emissive applications. EPA considered but is not proposing requiring reporting from these other end-users; EPA has concluded that collecting information pursuant to subpart PP on CO_2 supplied to the economy will provide EPA with the necessary data on emissive volumes while minimizing the number of facilities impacted by this rule. EPA seeks comment on this conclusion. The Agency also seeks comment on whether applications, such as precipitated calcium carbonate and some cement production, permanently sequester CO_2 and if so, which industries this would include; how many facilities operate in

[19] Available at: *http://cdm.unfccc.int/about/ccs/index.html.*

each of these industries; how much of the CO_2 consumed in each industry would be sequestered; whether a sequestration factor would be reasonable in any case; and what methodologies could be used to verify this sequestration.

B. Selection of Reporting Thresholds

To determine the appropriate threshold for reporting under subpart RR, EPA considered both a threshold based on the amount of CO_2 emitted and a threshold based on the amount of CO_2 injected underground. EPA concluded that an emissions-based threshold would be problematic because of the lack of data on the incidence and scale of surface emissions and leakage from injection and GS of facilities. EPA seeks comment on how the Agency could determine an emissions-based threshold and detailed data underlying such an approach. EPA accordingly analyzed injection facilities based on the quantity of CO_2 injected underground and considered whether an injection threshold should apply. EPA evaluated a no threshold option (*i.e.,* all facilities that inject CO_2 would be required to report), 1,000 metric tons per year, 10,000 metric tons per year, 25,000 metric tons per year, and 100,000 metric tons per year per facility of CO_2 injected.

To establish a count of CO_2 injection facilities, EPA relied on data reported in the Oil and Gas Journal (O&GJ) Enhanced Oil Recovery Survey published in April 2008 (Volume 106, Issue 15). EPA compiled all the projects listed for miscible and immiscible CO_2 floods [20] reported in the O&GJ survey. A total of 105 active ER projects were reported. In some cases multiple projects were conducted by the same company in an oil field. For the purposes of this analysis, EPA grouped these reported projects by field and by owner or operator to align with typical industry practices for reporting project information to State oil and gas commissions. This computation results in eighty facilities for the facility count.

The O&GJ survey does not provide the specific volume of CO_2 used in each of the active ER projects. To calculate the estimated volume of CO_2 injected at each ER project, EPA took the total amount of CO_2 used daily for ER, as reported by the U.S. EPA in the Draft 1990–2007 Inventory of U.S. Greenhouse Gas Emissions and Sinks,[21] apportioned it to each ER project according to an average value for the fractional production of oil attributed to ER using CO_2 as presented in the O&GJ survey, and normalized the amount of CO_2 injection on an annual basis. EPA recognizes that this is likely an oversimplification of the actual injection volumes used at each facility and is seeking comment on whether it is reasonable to rely on the principle that higher production is a function of higher CO_2 injection volumes. If a different analytical approach would be more appropriate, EPA seeks detailed recommendations on the alternative approach as well as additional data that would enable EPA to conduct a more comprehensive analysis.

The results of the threshold analysis are presented in Table 3 of this preamble. For further information on the assumptions underlying the threshold analysis, please refer to the general technical support document (TSD) for this proposal.[22]

TABLE 3—CO_2 INJECTION FACILITIES: EFFECT OF INJECTION THRESHOLD ON REPORTED AMOUNT OF CO_2 INJECTED AND NUMBER OF FACILITIES REQUIRED TO REPORT

Threshold level (metric tons/yr of CO_2 injected)	Total estimated national (metric tons/yr of CO_2 injected)	Total number of U.S. facilities	Reported amount of CO_2 injected		Number of facilities required to report	
			Metric tons/yr of CO_2 injected	Percent covered	Number	Percent covered
All In	40,111,639	80	40,111,639	100.0	80	100.0
1,000	40,111,639	80	40,111,115	100.0	74	92.5
10,000	40,111,639	80	40,099,065	100.0	71	88.8
25,000	40,111,639	80	40,005,238	100.0	65	81.3
100,000	40,111,639	80	39,065,039	97.4	48	60.0

The analysis shown in Table 3 of this preamble suggests that nearly all injection data can be collected from roughly half of operating facilities at an injection threshold of 100,000 metric tons/yr of CO_2 injected. EPA considered establishing an injection threshold of 100,000 metric tons/yr of CO_2 injected. However, a low CO_2 injection or production quantity in one year is not a reliable prediction of the quantity that may be injected in the following year or in a year of full-scale operation. For example, six of the eighty facilities reported zero or near zero production and therefore did not exceed the 1,000 metric tons threshold as shown in Table 3 of this preamble. However, these six facilities may inject over this threshold in the following year. In addition, more than 40 of the 105 projects in this analysis were described in the OG&J survey as "just started" or pilot projects, indicating that they may not be at fully operational levels of CO_2 injection. Given the variability of CO_2 injection rates, EPA is proposing that all facilities report irrespective of injection or production quantities in the reporting year.

EPA is proposing that all CO_2 injection facilities would be required to report the minimum information in subpart RR (quantity of CO_2 injected, quantity of CO_2 transferred onsite from offsite, and source of the CO_2 if known) at no threshold. An all-in reporting threshold would allow the Agency to comprehensively track all CO_2 supply (as reported in Suppliers of CO_2, subpart PP) that is injected underground. This approach is consistent with the all-in requirements in the MRR for suppliers of petroleum, natural gas, and coal-to-liquid products (subparts LL, MM, and NN), producers of industrial gases (subpart OO), and suppliers of CO_2 (subpart PP). It was reasonable to require all of the facilities in these source categories to report because it would result in the most comprehensive accounting possible, simplify the rule, and permit facilities to quickly determine whether or not they must

[20] A miscible CO_2 flood injects CO_2 as a liquid at high pressure to completely mix with oil and make it flow more easily. An immiscible CO_2 flood uses lower pressures of CO_2 to swell the oil and provide additional gas pressure to move the oil.

[21] U.S. EPA Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2007, Draft Report, EPA 430–R–09–004. Available at: *http://epa.gov/climatechange/emissions/usinventoryreport.html.*

[22] Subpart RR General TSD (*see* docket ID No. EPA–HQ–OAR–2009–0926).

report; the same rationale applies for this source category proposed today. Furthermore, it would create a uniform burden for all covered facilities, ensuring a level playing field in, and preventing fragmentation of, the ER sector. EPA has estimated the cost for CO_2 injection facilities to comply with the minimum reporting requirements in this proposed rule and has determined that the burden would be small, given the equipment and data collection efforts already in place at ER projects.

EPA seeks comment on whether an all-in reporting threshold for injection facilities is appropriate or if a 100,000 metric tons/yr of CO_2 injected or other threshold on quantity injected (*e.g.,* 1 million metric tons/yr of CO_2 injected) should be applied, leveraging information collected through the UIC program. To apply a reporting threshold to injection facilities, EPA would need to more specifically define which wells should be grouped together to delineate an injection facility. One option would be to group wells together by field as EPA did with the OG&J data in this threshold analysis. This definition would not be appropriate for injection facilities that are not producing oil or gas, however, such as those injecting into saline formations or coal seams. A second option would be to group wells together by basin. This definition would not be appropriate for injection facilities that are not producing oil or gas, however, such as those injecting into saline formations or coal seams. A third option would be to group wells by UIC permit; an injection well would be delineated by individual well if permitted by UIC as such and by a group of wells if permitted by UIC as a group. This definition would not be appropriate for sub-seabed injection wells outside the jurisdiction of SDWA. A fourth option would be to define injection facility as one individual well. This definition could be impractical for injection facilities that operate hundreds of wells, however, such as some ER projects. EPA seeks comment on which of these options for delineating an injection facility, or any options not discussed, would be most appropriate in the case that a reporting threshold based on injection quantity is appropriate.

2. GS Facilities

Under this action, EPA is proposing that the subset of CO_2 injection facilities that are conducting GS (*i.e.,* a GS facility) must report to EPA a second tier of data. EPA considered whether a threshold should apply to this second tier of data given that it would place a reporting burden on GS facilities. However, EPA could not perform an analysis on GS facilities based on emissions without data on actual or expected GS facility emissions. EPA also could not perform a threshold analysis based on injection due to the uncertainty around predictions of injection quantities for potential GS facilities. In addition, it is difficult to predict how many injection facilities would choose to report GS. Therefore, EPA is proposing to exempt GS R&D projects but otherwise require all GS facilities to comply with the GS monitoring, reporting, and verification requirements of subpart RR, and that they report fugitive, vented, and combustion emissions from surface equipment (under subpart W, RR, or C, as applicable). An all-in threshold will allow EPA to work with the early-movers of this nascent industry and to strengthen EPA's understanding of GS.

EPA is seeking comment on the proposed injection-based threshold analysis approach and how the Agency might use an alternative threshold approach, such as an emissions-based threshold or risk-based threshold. The Agency is also seeking comment on whether the threshold analysis conducted for CO_2 injection facilities could also be applied to GS and, if so, whether a 100,000 metric tons/yr of CO_2 injected or other threshold (*e.g.,* 1 million metric tons/yr of CO_2 injected) should be applied. The Agency requests supporting data which could be used to establish a threshold.

C. Selection of Data To Be Reported

This section describes the data that injection facilities and GS facilities must report under subpart RR. The first tier of reporting requirements described is for all facilities that inject CO_2 underground. The second tier of reporting requirements described is for GS facilities only.

The first tier has three proposed reporting requirements. First, EPA is proposing that all CO_2 injection facilities report the mass of CO_2 injected. This would be determined by the mass flow or volumetric flow and CO_2 concentration of the CO_2 stream injected. Facilities must use mass flow meters to accurately measure the mass of the CO_2 injected or volumetric flow meters to accurately measure the volumetric flow of the CO_2 injected. To minimize the purchase and installation of new equipment, facilities subject to the UIC program would be allowed to measure the mass or volume of CO_2 injected with the flow meters installed for purposes of compliance with their UIC permits. EPA accordingly is proposing two methodologies for making these calculations, depending on whether the facility is using a volumetric or a mass flow meter. EPA is proposing this approach so that facilities can comply with these reporting requirements regardless of the type of flow meter already installed. In the case of a facility using a volumetric flow meter, EPA assumes that the facility can determine operating temperature and pressure, which would allow for the volumetric flow of CO_2 to be converted from operating conditions to standard conditions and, using a density value for CO_2 at standard conditions and the measured concentration of CO_2 in the flow, determine the mass of CO_2. EPA seeks comment on the assumption that facilities can determine operating temperature and pressure, and alternative approaches for determining the mass of CO_2 using a volumetric flow meter where operating temperature and pressure cannot be determined.

Facilities would measure the CO_2 concentration by sampling and testing the injected stream at the flow meter. With this approach, the flow and the concentration would be measured at the same point in the system for maximized data accuracy. Accordingly, if the flow meter were installed at the compressor(s), then the concentration would be measured at the compressor(s). If the flow meter were installed at the well(s), then the concentration would be measured at the well(s). EPA recognizes that a facility with tens or hundreds of injection wells, all of which have flow meters already installed at the wellheads, may face a significant burden in testing concentration at each of those flow meters. EPA seeks comment on alternative locations other than the flow meter(s) where concentration of the CO_2 injected could be measured at decreased burden without decreasing accuracy. EPA also seeks comment on potential methodologies to estimate concentration of the flow injected if flow is measured elsewhere, such as apportioning the concentration of CO_2 transferred onsite and the concentration of recycled CO_2 to the quantities from each source.

Second, EPA is proposing that all CO_2 injection facilities report the mass of the flow transferred onsite from offsite to verify the mass of CO_2 reported as injected. This would be determined by the mass flow or volumetric flow and CO_2 concentration of the flow transferred onsite from offsite. A subset of CO_2 injection facilities—facilities conducting ER—inject a combination of new CO_2 transferred onsite from offsite and old CO_2 recycled from the operation. Therefore, EPA would use reported data on CO_2 transferred onsite

from offsite to estimate the amount of CO_2 recycled from ER operations.

EPA is proposing that all CO_2 injection facilities monitor the CO_2 concentrations and mass flow or volumetric flow quarterly. The purpose of these measurements is to account for fluctuations in the CO_2 concentration over the reporting year. EPA seeks comment on this proposal and on the level of burden this frequency of reporting requires for facilities following different frequency parameters for their UIC permit.

Third, EPA is proposing that all CO_2 injection facilities would report the source contracted to supply the CO_2, if known. EPA would seek information on whether the CO_2 was contracted from a natural source (*i.e.,* produced from a natural CO_2 dome) or an industrial source. If an industrial source, EPA would seek information on the type of source if known (captured at a power plant, pulp and paper mill, ethanol plant, natural gas processing facility, or other type of industrial source). This would allow EPA to track the movement of CO_2 through a CCS system and any shift toward anthropogenic CO_2 supply sources. Pipelines that carry CO_2 to the CO_2 injection facility may contain a mix of CO_2 from various sources. EPA recognizes that facilities may not know the source of CO_2 that they purchase. Accordingly, EPA would require the data to be reported only if known. EPA seeks comment on the proposed approach for reporting the source contracted to supply the CO_2 if known.

EPA recognizes that at this time the source of CO_2 injected underground is predominantly CO_2 produced from natural CO_2 domes. It is possible that GS using naturally sourced CO_2 may not qualify as a GHG mitigation action because the purpose of GS is to isolate CO_2 that would otherwise have been emitted to the atmosphere. Under this proposed rule, however, GS facilities must report annual CO_2 sequestered regardless of the source.

EPA seeks comment on whether the three reporting requirements described above are sufficient or if there are additional reporting requirements that should apply to all CO_2 injection facilities. EPA is proposing that the best available monitoring methods (BAMM) provision outlined in § 98.3(d) of the MRR would apply in 2011 to injection facilities for the first tier of reporting requirements. EPA seeks comment on this proposal.

For this proposed rule, EPA also considered, but is not proposing, that a CO_2 injection facility be required to report only the CO_2 injection data it collects under its current UIC permit (under any class) or relevant permit in the case of a facility that is outside SDWA jurisdiction. Although this would impose the lowest burden on the reporter since no new data would need to be collected, EPA would not receive complete data on the mass of CO_2 injected. While collection of injection volume is a minimum monitoring requirement for all UIC well classes, CO_2 concentration data are not. Furthermore, facilities are not required to report CO_2 transferred onsite from offsite sources or the source of CO_2 under any UIC permit class.

EPA is proposing that GS facilities would be required to report a second tier of data in subpart RR. These reporting requirements include the amount of leakage of CO_2 to the surface (if any), the amount of CO_2 in produced oil or gas (for GS facilities conducting active ER operations), the amount of fugitive and vented CO_2 emissions from surface equipment, and the total annual amount of CO_2 sequestered using a mass balance equation. In this equation, the sum of the CO_2 emissions listed above would be subtracted from the amount of CO_2 injected to equal the amount of CO_2 sequestered. These four reporting requirements are described in more detail below.

GS facilities must report CO_2 leakage, if any occurs from the subsurface geologic formation to the surface. EPA is not proposing specific procedures or methodologies for detecting or quantifying CO_2 leakage. However, each GS facility would be required to develop and implement a site-specific approach to monitoring, detecting, and quantifying CO_2 leakage based on five requirements that are described in Section II.D of this preamble.

Second, EPA is proposing that GS facilities that are actively producing oil or gas would be required to report the quantity of CO_2 produced out of the subsurface with produced oil or natural gas. This would be done by measuring at each separator the volumetric flow or mass flow and the concentration of a CO_2 stream. These GS facilities would also report CO_2 that remains in the oil or gas after separation.

Third, unless already reported in the petroleum and natural gas system subpart, subpart W, EPA is proposing that all GS facilities would be required to report fugitive and vented CO_2 emissions from surface components located within the facility for which procedures and methodologies are provided in subpart W. This could include pump blow-downs and fugitive emissions from valves, flanges, and compressors. EPA seeks these data to better understand the volume of fugitive and vented GHG emissions at GS facilities as compared to the volume of CO_2 sequestered. This information is an important indicator of the effectiveness of GS as a GHG mitigation technology. In addition, fugitive and vented CO_2 emissions will need to be included in the mass balance calculation of GS if they occur downstream of the CO_2 injection flow meter or (if applicable for ER projects) upstream of the production flow meter. This is further discussed in Section II.D.3 of this preamble. This proposed rule does not impose a general requirement for all CO_2 injection facilities to report fugitive and vented CO_2 emissions from surface components since facilities that are not sequestering CO_2 would not report GS. EPA seeks comment on this approach.

Lastly, EPA is proposing that GS facilities use a mass balance equation to calculate and report CO_2 sequestered in the subsurface geologic formation in the reporting year. This reported data point would be valuable for EPA as the Agency tracks CO_2 across a CCS system and will provide EPA with information on the performance of GS projects over time. EPA seeks comment on this approach.

Alternatively, EPA could approximate CO_2 sequestered in the subsurface without proposing additional reporting requirements for GS facilities, by using data already reported on CO_2 transferred from offsite and CO_2 injected. EPA considered but did not propose this approach because it does not account for potential leakage from the subsurface and does not properly account for CO_2 fugitive or vented emissions from surface equipment during post-production, processing, transport, or compression. Given the importance of GS as a GHG mitigation technology, EPA seeks to achieve an accurate reporting of GS. EPA seeks comment on the proposed requirements for GS facilities.

EPA recommends that CO_2 injection and GS facilities review subparts C and PP and proposed subpart W. Subpart C provides GHG calculation procedures and reporting requirements for stationary fuel combustion devices that combust solid, liquid, or gaseous fuel. CO_2 injection and GS facilities should pay close attention to compressors and pumps located within the facility boundary. Subpart PP provides procedures for calculating and reporting quantities of CO_2 supplied to the economy. The subpart W proposal covers petroleum and natural gas systems by defining eight types of facilities and providing calculation procedures and reporting requirements for the GHG emissions of specific

equipment that may be located in those facilities. CO_2 injection and GS facilities should review in particular the definitions of onshore and offshore petroleum and natural gas production facilities.

EPA is proposing that if an injection facility is not conducting GS, it would determine applicability to other subparts of the rule separately from applicability to subpart RR (*see* Table 4 of this preamble). This is similar to the approach taken by reporters of upstream petroleum products supply, natural gas supply, natural gas liquids supply, and carbon dioxide supply (reporters in subparts MM, NN, and PP). For example, an injection facility not characterized as a GS facility would not automatically trigger reporting under subpart C by this proposal, but would make a separate applicability determination under subpart C. A GS facility would automatically trigger applicability under other subparts of the rule. This is similar to the approach taken by reporters of downstream emissions in the rest of the MRR. For example, the GS facility would report under subpart C the emissions from combustion sources located within the facility boundary, such as compressors.

TABLE 4—REPORTING REQUIREMENTS IN MRR FOR CO_2 INJECTION AND GS FACILITIES (IN SUBPART RR, SUBPART C, AND PROPOSED SUBPART W)

Data to report	Injection facilities (no GS)		GS facilities	
	ER	Other	With ER	Other
Quantity of CO_2 transferred onsite	subpart RR	subpart RR	subpart RR	subpart RR.
Source of CO_2 if known	subpart RR	subpart RR	subpart RR	subpart RR.
Quantity of CO_2 injected	subpart RR	subpart RR	subpart RR	subpart RR.
Fugitive and vented CO_2 emissions from surface equipment.	subpart W	Not Applicable	subpart W or subpart RR [1]	subpart RR.
Emissions from combustion sources.	Separate applicability determination.	Separate applicability determination.	subpart C [2]	subpart C [2].
Quantity of CO_2 produced with oil or natural gas.	Not Required	Not Required	subpart RR	subpart RR.
Percent of CO_2 estimated to remain with the oil and gas.	Not required	Not required	subpart RR	Not applicable.
Quantity of CO_2 emitted from the subsurface.	Not Required	Not Required	subpart RR	subpart RR.
Quantity of CO_2 sequestered	Not Applicable	Not Applicable	subpart RR	subpart RR.

[1] Subpart W if the facility meets the subpart W threshold; if not then report in subpart RR.
[2] All GS facilities will be required to report combustion emissions according to subpart C.

In selecting data to be reported under today's proposal, EPA compared reporting requirements under today's subpart RR proposal with reporting under the UIC Class VI proposal (*see* Table 5 of this preamble). EPA found two data elements with potential overlap. The first area of potential overlap is the reporting of the amount (flow rate) of injected CO_2. The UIC Class VI and subpart RR proposals differ in the measurement unit and collection/reporting frequency. EPA determined that reporting of the amount (flow rate) of injected CO_2 was necessary in order to harmonize the data with other subparts of the MRR. To ensure that data needs are harmonized between the MRR and the UIC program requirements and to reduce burden, and because this data under a State-issued UIC permit is currently submitted to States while, under today's subpart RR proposal, reporters will be submitting data directly to EPA. EPA will look for ways to integrate data management between the UIC and MRR programs and the Agency is seeking comment on reporting the amount (flow rate) of CO_2 injected for purposes of this proposal.

TABLE 5—DATA ELEMENTS REPORTED UNDER UIC CLASS VI PROPOSAL AND SUBPART RR PROPOSAL

Data element	UIC class VI proposal	Subpart RR proposal	
		CO_2 injection facilities (no GS)	GS facilities
Quantity of CO_2 transferred onsite	No	Yes	Yes.
Quantity (flow rate) of CO_2 injected	Yes	Yes	Yes.
Fugitive and vented emissions from surface equipment	No	No	Yes.
Quantity of CO_2 produced with oil or natural gas (ER)	No	No	Yes.
Percent of CO_2 estimated to remain with the oil and gas (ER).	No	No	Yes.
Quantity of CO_2 emitted from the subsurface	No	No	Yes.
Quantity of CO_2 sequestered in the subsurface	No	No	Yes.
Cumulative mass of CO_2 sequestered in the subsurface	No	No	Yes.
Monitoring plan	Yes	No	Yes.

The second area of potential overlap relates to monitoring plans. Although both the UIC Class VI proposal and today's subpart RR proposal have monitoring plan requirements, the UIC Class VI proposal is focused on protection of USDWs, while today's subpart RR proposal is focused on air emissions. Potential differences include

baseline data and detection and measurement of CO_2 leakage to the surface. Recognizing that air monitoring under the UIC Class VI proposal is at the discretion of the UIC director, EPA notes that a UIC Class VI permit may fulfill requirements under today's proposal.

EPA considered whether a GS facility should also report methane (CH_4) leakage emissions from the subsurface. CH_4 emissions from the subsurface may occur at oil and natural gas reservoirs or ECBM sites. The cases in which leakage of CH_4 could occur at these sites may be similar to the potential for CO_2 leakage. CH_4 leakage could potentially occur through improperly sealed wells, open faults, and other pathways that have also been identified as potential CO_2 leakage pathways. However, CH_4 is present as a gas, and thus may be more upwardly mobile than CO_2 which is injected as a supercritical fluid. Therefore, the potential for leakage of methane at depleted oil and gas or ECBM sites may be greater than for CO_2.

EPA is proposing to focus on CO_2 emissions. EPA recognizes the potential for CH_4 leakage from the subsurface at facilities conducting GS in oil and gas reservoirs or coal seams and therefore seeks comment on whether to require reporting on CH_4 leakage. If the potential for CH_4 leakage exists, the GS reporter could include in the MRV plan a monitoring strategy to detect and quantify potential CH_4 leakage. CH_4 fugitive and vented emissions from surface equipment are covered under the proposed oil and gas subpart, subpart W.

Under subparts C through QQ of the MRR, adjacent or contiguous equipment in actual physical contact under common ownership or common control constitute a facility (*see* Section 98.6 of the MRR). In the case of petroleum and natural gas systems and GS, equipment are not necessarily in physical contact with one another in the conventional sense of the term. Subparts W and RR are each proposing interpretations of what would constitute a facility. As a result, a GS facility conducting ER may apply one facility boundary for reporting under subpart W and a different facility boundary for reporting under subpart RR. EPA acknowledges that this may present a challenge for submitting annual reports, depending on how the data system is designed. A CO_2 injection or GS operation would submit an annual report to EPA according to the proposed definition of facility discussed in Section II.A of this preamble. EPA seeks comment on a resolution that would reduce reporting burden while still meeting the data needs of both proposed subparts W and RR.

EPA also recognizes that, in the case of an ER operation conducting GS, the combustion emissions from equipment within the GS facility would be included in both annual reports. Though this approach results in duplicative reporting, EPA has concluded that to analyze the efficacy of GS as a GHG mitigation tool, EPA needs to collect information on combustion emissions from GS facility equipment at only the GS facility level rather than aggregated with emissions from additional equipment. EPA seeks comment on this approach for reporting combustion emissions from GS facilities.

D. Selection of Monitoring, Reporting, and Verification (MRV) Plan Requirements and Approval Process

1. Selection of MRV Plan Option

EPA considered three alternatives for monitoring, reporting and verification of potential CO_2 leakage at GS sites: do not require an MRV plan, require a universal MRV plan that applies to all GS sites, or require a site-specific MRV plan. The three alternatives vary in stringency and specificity as described below. EPA outlines the advantages and disadvantages of each alternative and seeks comment on each alternative, as well as any alternatives not discussed.

Under the first alternative, EPA would allow GS facilities to report the amount of CO_2 sequestered without requiring an MRV plan. Under this alternative, the Agency would rely on published information and existing studies to assume that injected CO_2 remains sequestered and would assume these results can be generalized to all GS projects. This alternative would impose the least burden on reporters. EPA notes that international guidelines on information collection and reporting efforts outlined in Section I.E of this preamble do not support this approach. Furthermore, EPA did not propose this approach because of the limited empirical data and the variability in geology and other conditions among GS facilities.

The second alternative that EPA considered was a one-size-fits-all MRV plan approach under which the Agency would prescribe specific monitoring technologies and quantification methods for GS facilities. The advantage of this approach is that all GS facilities would use the same monitoring technologies and methods. The disadvantage of this approach is that the geology and other conditions at potential GS facilities will vary from site to site and a one-size-fits all approach may not provide the most effective monitoring strategy for all facilities. EPA notes that international guidelines on information collection and reporting efforts outlined in Section I.E of this preamble do not support this approach. In addition, since the monitoring and testing plans implemented under the UIC program are necessarily site-specific in nature, it would be difficult to prescribe a one-size-fits-all MRV plan that would complement and build upon the UIC program. This alternative would likely be the least cost effective and most burdensome approach for reporters.

The third alternative, and the alternative that EPA is proposing, is that GS facilities be required to develop a site-specific MRV plan and submit it to EPA for approval. Facilities would report CO_2 injection until the final MRV plan has been approved. Once a final MRV plan has been approved by EPA, GS facilities would implement the plan, including the reporting of the amount of CO_2 that has been sequestered. The advantage of this approach is that it provides a flexible and cost-effective option for reporters and complements monitoring requirements under the proposed UIC Class VI rule. EPA recognizes that the rigorous proposed UIC Class VI requirements will provide the foundation for the safe sequestration of CO_2 and should serve to reduce the risk of CO_2 leakage to the atmosphere when finalized. An adequate MRV plan would be tailored to site-specific conditions and be designed for each stage of the GS project. In addition, the MRV plan would allow for modification or adaptation of the plan based on monitoring results. Although the risk of leakage at an appropriately selected and managed GS facility may be low, the MRV plan would ensure that if leakage occurs, the GS reporter would have an approved methodology for measuring the emitted CO_2. If leakage occurs, the MRV plan would also provide a process for revising the MRV plan, if necessary, as described in section II.E of this preamble.

It is important to recognize that this proposed rule is a data collection and monitoring proposal which does not directly address the potential human health and welfare, ground or surface water, ecosystem or geosphere impacts of GS. Therefore, the proposed rule does not address these potential impacts from CO_2 leakage (*e.g.,* requiring remediation or mitigation) as this is outside the scope of this proposal.

2. Background on MRV Approaches

EPA has identified published studies and/or guidelines on monitoring programs that identify and quantify CO_2 leakage from GS facilities.[23] While the science of quantifying CO_2 leakage from GS facilities is evolving, it is generally recognized that, when properly planned and implemented, monitoring methods will be effective at detecting leakages.[24, 25]

Though the methodologies for detecting and quantifying leakage of CO_2 from GS facilities have not been standardized, EPA has concluded that a GS facility would be able to propose a site-specific plan for leak detection and quantification under this rule based on the current availability of monitoring technologies. A wide range of techniques for monitoring sequestration of CO_2 have been used for a number of years in other applications, including oil and natural gas production, natural gas storage, disposal of liquid and hazardous waste in deep geologic formations, groundwater monitoring, and ecosystem research.[26] Some monitoring techniques such as seismic monitoring can detect the presence and location of CO_2 in the subsurface, including both vertical and lateral spread, although the accuracy of seismic monitoring for quantifying the amount of CO_2 may be more limited than other approaches. Other techniques, such as soil gas monitors or eddy covariance techniques, can detect, within a certain limit, leakage of CO_2 from the confining system. Many of these technologies have excellent sensitivity, and have been shown to be able to detect relatively low concentrations of CO_2 above background levels. The minimum leakage rate detectable is a function of parameters such as the volume of CO_2 making its way to the surface, the size of the leak area, and the sensitivity of the monitoring device.

Descriptions of the various monitoring technologies that could be deployed at a GS facility can be found in the general TSD to this proposal.[27] EPA seeks comment on the general TSD and seeks additional data and information on monitoring technologies for leak detection and quantification. Additional information on GS monitoring technologies can also be found in the IPCC Guidelines for National Greenhouse Gas Inventories (2006), the API/IPECA Inventory Guidelines for CCS (2007), Department of Energy MVA Best Practices Manual (2009), and the International Energy Agency GHG R&D Programme monitoring tool Web site (*www.co2captureandstorage.info/co2monitoringtool*).

3. MRV Plan Requirements

EPA is proposing that each submitted MRV plan must include at a minimum the four requirements described below:

- Step 1—Assessment of Risk of Leakage: All potential pathways that may result in CO_2 leakage have been identified and characterized and the risk of CO_2 leakage at each pathway has been evaluated;
- Step 2—Strategy for Detecting and Quantifying CO_2 Leakage to Surface: Potential pathways will be monitored according to the risk of CO_2 leakage to ensure that any leakage to the surface will be detected and that leakage to the surface, should it occur, will be quantified according to a specified methodology;
- Step 3—Strategy for Establishing Pre-Injection Environmental Baselines: Environmental baselines against which the monitoring results will be evaluated have been established at potential leakage pathways; and
- Step 4—Tailor Mass Balance Equation: Site-specific variables have been considered and developed for the mass balance equation provided in the regulatory text to calculate the amount of CO_2 sequestered.

These requirements are consistent with the IPCC Guidelines for National Greenhouse Gas Inventories (2006), as well as the other information collection and reporting efforts outlined in Section I.F of this preamble.

EPA developed a monitoring plan TSD that describes characteristics of a robust monitoring plan, and provides descriptions of potential GS geologic settings, potential leakage pathways, and the goals of monitoring.[28] The monitoring plan TSD uses EPA's Vulnerability Evaluation Framework (VEF) to describe potential vulnerabilities that may influence the risk for CO_2 leakage from a GS project and is not intended to be used as a step by step guide to develop an MRV plan. The VEF includes a holistic discussion of the potential impacts of GS. The VEF is also provided in the docket.[29] EPA seeks comment on the monitoring plan TSD.

In developing the proposed MRV plan requirements, EPA compared monitoring requirements under the UIC Class VI proposal with those under today's MRR proposal, as shown in Table 6 of this preamble. Monitoring requirements under the UIC Class VI proposal are focused on demonstrating that USDWs are not endangered as a result of CO_2 injection into the subsurface. As proposed, a UIC Class VI permit would require a site characterization and assessment of leakage pathways for the purpose of protection of USDWs. Therefore, EPA is proposing that a UIC Class VI permit may be used to demonstrate to EPA that the assessment of risk of leakage step of the MRV plan has been satisfied. The UIC Class VI proposal indicates that UIC Class VI permits may include surface monitoring at the UIC Director's discretion. To the extent that the UIC Class VI permit includes these surface monitoring and related environmental baseline components, it may be used to demonstrate to EPA that the strategy for detection and measurement of leakage to the surface and the strategy for establishing pre-injection environmental baselines have been satisfied. EPA seeks comment on allowing the use of a UIC Class VI permit to fulfill certain MRV plan requirements, whether there are situations where EPA's proposal to rely on a UIC Class VI permit would not be sufficient.

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[23] Arts, R, O Eiken, A Chadwick, P Zweigel, L van der Meer, B Zinszner. 2004. "Monitoring of CO_2 injected at Sleipner using time-lapse seismic data." Energy 29: 1383–1392; Wilson, M. and M. Monea (Eds.). 2004. "IEA GHG Weyburn CO_2 Monitoring and Storage Project," Seventh International Conference on Greenhouse Gas Control Technologies, Vol. 3; Klusman, RW. 2003. "Rate Measurements and Detection of Gas Microseepage to the Atmosphere from an Enhanced Recovery Sequestration Project, Rangely, Colorado, USA," Applied Geochemistry, 18, 1825–1838; 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Volume 2—Energy. Chapter 5 Carbon Dioxide Transport, Injection, and Geological Storage. Available at: *http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.htm.;* DOE/NETL. 2009. "Best Practices for Monitoring, Verification, and Accounting for CO_2 Stored in Deep Geologic Formations." U.S. Department of Energy, National Energy Technology Laboratory.

[24] Benson, SM. 2006. "Monitoring Carbon Dioxide Sequestration in Deep Geological Formations for Inventory Verification and Carbon Credits." Society of Petroleum Engineers Paper 102833.

[25] FutureGen Alliance. 2006. "Mattoon Site Environmental Information Volume." December 2006.

[26] Benson, S and L Myer. 2002. "Monitoring to Ensure Safe and Effective Geological Sequestration of Carbon Dioxide." Lawrence Berkeley Laboratory, Berkeley, California; Benson, SM. 2002. "Geologic Sequestration of Carbon Dioxide." The Carbon Dioxide Dilemma, Promising Technologies and Policies, Proceedings of a Symposium, National Academy of Engineering, April 23–24, 2002, Washington, DC, pp. 29–39.

[27] Subpart RR General TSD (*see* docket ID No. EPA–HQ–OAR–2009–0926).

[28] Monitoring Plans for Geologic Sequestration TSD (see docket ID No. EPA–HQ–OAR–2009–0926).

[29] Vulnerability Evaluation Framework for Geologic Sequestration of Carbon Dioxide (*see* docket ID No. EPA–HQ–OAR–2009–0926).

TABLE 6—PROPOSED MRV PLAN ELEMENTS UNDER UIC CLASS VI PROPOSAL AND SUBPART RR PROPOSAL

Proposed MRV plan element	Required under UIC Class VI proposal	Required under subpart RR proposal
Assessment of Risk of Leakage	to USDWs	to surface.
Strategy for Detecting and Quantifying CO_2 Leakage to Surface	No	Yes.
Strategy for Establishing Pre-Injection Environmental Baselines at Surface.	No	Yes.
Tailor Mass Balance Equation	No	Yes.

Reporters that do not hold UIC Class VI permits would be required to provide the MRV plan element information outlined in this section.

Assessment of Risk of Leakage to the Surface. EPA is proposing that the GS facility reporter must provide sufficient information in the MRV plan to demonstrate to EPA that the potential risk for CO_2 leakage to the surface has been evaluated. This evidence must be "a combination of site characterization and realistic models that predict the movement of CO_2 over time and locations where emissions might occur".[30] EPA seeks this information to evaluate the leak detection strategy put forth by the reporter in the MRV plan. EPA believes this information is reasonable to request because it determines the boundaries of the area which will be monitored for potential CO_2 leakage. The risk assessment for CO_2 leakage allows the reporter to target monitoring in specific areas within these boundaries.

EPA is proposing that to demonstrate to the Agency that the risk of leakage to the surface has been evaluated over the appropriate spatial area,[31] the GS facility must determine through site characterization and computational modeling the spatial area that may be impacted by the CO_2 injection activity over the lifetime of the project, accounting for the physical and chemical properties of all phases of the injected CO_2 stream. This spatial area must be determined to account for all potential leakage pathways, including wells. If the GS facility is producing oil or gas, the spatial area would also need to contain the production wells associated with CO_2 injection.

EPA is proposing that the GS facility would be required to re-evaluate and re-model the spatial area of evaluation at least every ten years or to describe the rationale for a different frequency in its MRV plan and, once approved, apply that frequency. Requiring re-evaluation of the spatial area of monitoring through updating simulation models with new monitoring data will provide the most accurate representation of subsurface CO_2 movement.

EPA seeks comment on the proposed re-evaluation frequency and whether the spatial area required for site characterization is adequate to detect and quantify potential leakage to the surface. Specifically, EPA seeks comment on whether there will be cases in which the spatial area should be larger to detect unexpected leakage to the surface beyond the pressure front boundary. Alternatively, EPA seeks comment on whether the spatial area should be larger than the lateral extent of the CO_2 plume, but smaller than the area defined by the pressure front. EPA also seeks comment on whether the spatial area should be defined by the lateral extent of the CO_2 plume.

The MRV plan should include a description of the site characterization that confirms that the geology and the local and regional hydrogeology of the GS facility have been evaluated and that explains how the spatial area was established. This should include a narrative description of the geologic formation(s) along with simple stratigraphic depictions showing formation depths and locations, information on the presence of an effective confining system [32] overlying the injection zone,[33] and a map showing the modeled spatial area of evaluation over the lifetime of the project.

The MRV plan should also demonstrate to EPA that all potential leakage pathways for CO_2 escape to the surface from the injection zone in the spatial area have been identified and characterized. Wells (and other artificial penetrations such as boreholes) are one of the most probable conduits for the escape of CO_2 from the injection zone.[34] If a well penetrates the confining system, the site characterization should include an assessment of supporting documentation such as well construction and plugging. Faults and fractures that are natural or that may be induced by pressure changes may also serve as pathways for CO_2 leakage out of the confining zone and to the surface. Additionally, geologic heterogeneities, such as high permeability zones in the confining system or an insufficient lateral extent of the confining system, may be potential leakage pathways for CO_2. The MRV plan should include the location and depth of all potential leakage pathways along with a qualitative description of their condition. For more information on leakage pathways, see the monitoring plan TSD.[35] The MRV plan should include an overview of the methods used to characterize the site; actual data can but does not need to be initially submitted.

Finally, the risk assessment component of the MRV plan should

[30] 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Volume 2—Energy. Chapter 5 Carbon Dioxide Transport, Injection, and Geological Storage. Available at: *http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.htm; see* also UIC Class VI proposal, 73 FR 43492 (July 25, 2008).

[31] EPA recognizes that surface rights access to the entire spatial area required for site characterization and monitoring may not conveniently rest with the owner or operator of the CO_2 injection wells (*i.e.,* the GS facility reporter in subpart RR). Issues associated with surface and pore space ownership are outside the scope of this proposed rule. However, the Agency recognizes that the MRV plan will need to take into account the relevant ownership rights and property access.

[32] A confining system is a geological formation, group of formations, or part of a formation that is comprised of impermeable or distinctly less permeable material stratigraphically overlying the injection zone that acts as a barrier to CO_2 movement. (73 FR 43492).

[33] The injection zone is a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a GS project. (73 FR 43492).

[34] Gasda, SE, S Bachu and MA Celia. 2004. "The potential for CO_2 leakage from storage sites in geological media: Analysis of well distribution in mature sedimentary basins," Environmental Geology 46 (6–7), pp. 707–720; Benson, SM. 2005. "Monitoring to Ensure Safe and Effective Geologic Sequestration of Carbon Dioxide," IPCC Workshop on Carbon Dioxide Capture and Storage; IPCC. 2005. "IPCC Special Report on Carbon Dioxide Capture and Storage," by Working Group III of the Intergovernmental Panel on Climate Change. Available at: *http://www1.ipcc.ch/ipccreports/srccs.htm;* Carey, J, M Wigand, SJ Chipera, G WoldeGabriel, R Pawar, PC Lichtner, SC Wehner, MA Raines, GD Guthrie, Jr. 2007. "Analysis and performance of oil well cement with 30 years of CO_2 exposure from the SACROC Unit, West Texas, USA." 8th International Conference on Greenhouse Gas Control Technologies, International Journal of Greenhouse Gas Control Volume 1, Issue 1, April 2007, Pages 75–85.

[35] Monitoring Plans for Geologic Sequestration TSD (*see* docket ID No. EPA–HQ–OAR–2009–0926).

include an overview of the methods used to model the subsurface behavior of CO_2 and the modeling results that estimate the timing, location, route and flux of potential leakage to the surface. It should include a brief overview of the input data quantity and the level of uncertainty associated with the models, as well as sensitivity analysis to assess the range of potential CO_2 leakage emissions.

Strategy for Detecting and Quantifying CO_2 Leakage to the Surface. EPA is proposing that the MRV plan must provide a strategy for leak detection. The MRV plan would include the methodology for, rationale for, and frequency of monitoring that will be conducted to detect potential leakage of CO_2 to the surface. The strategy for leak detection should be based on the risk assessment required in this Section II.D.3 of this preamble and be targeted to where and when leakage to the surface is most likely to occur. Therefore, the MRV plan should also describe the methodology for, rationale for, and frequency of evaluation of the entire spatial area of the GS facility to detect any CO_2 emissions from unexpected leakage pathways. The MRV plan should describe the monitoring technologies that will be employed at the facility, the assumed detection limits of the technologies, the monitoring locations, spatial array, and frequency of sampling. The MRV plan should provide the rationale and justification for each of these choices. A leak detection strategy that adequately meets this proposed rule's requirements may include a combination of subsurface, vadose zone, soil zone, ocean, surface water, and/or atmospheric monitoring and modeling. For the purposes of this proposed rule, CO_2 leakage to the surface includes CO_2 emitted to the atmosphere, CO_2 emitted to the ocean from the sub-seabed, CO_2 emitted to surface water, and CO_2 emitted to indoor air environments. The Agency notes that continuous air monitoring or mitigation is not required by this proposal.

Even though only the CO_2 that leaks to the surface must be quantified for this proposed rule, information about the movement of CO_2 in the subsurface and near-surface can serve as an early warning of a potential leak at the surface. This information will lead to a better understanding of the GS facility and the anticipated movement of the CO_2 plume, and it will help to pinpoint the area and the timing in which a potential leak to the surface may occur. This in turn will inform where monitoring for leak detection at the surface must be deployed.

For example, sampling at a deep monitoring well may indicate migration of the CO_2 out of the confining system. Though this monitoring result does not necessarily mean that CO_2 will eventually leak to the surface, the GS reporter would use this information on the sub-surface movement of CO_2 to deploy monitoring equipment according to the strategy outlined in the MRV plan in case detection and quantification of CO_2 leakage to the surface is necessary.

Generally, an iterative process should be in place to update the predictive models by applying results of ongoing monitoring. The GS reporter needs to consider how the monitoring results will change the leak detection and quantification strategies in the MRV plan approved by EPA. Adjustments to the MRV plan may result from updates to the models that were used to identify the leakage pathways, assess the risk of leakage, and predict the scope of potential leakage scenarios. If the MRV plan is adjusted in these circumstances, the reporter must submit an addendum to EPA that describes how the leak detection and quantification strategy was adjusted (*see* Section II.E of this preamble for more detail).

EPA is proposing that the MRV plan would not need to include methods for monitoring fugitive and vented CO_2 emissions from surface equipment (*e.g.,* CO_2 compression systems) at GS facilities because, in EPA's view, those methods need not vary from site to site in order to estimate emissions effectively. Universal methods are proposed in subpart W, and those methods would be used to quantify fugitive and vented CO_2 emissions from surface equipment and to report those emissions under subpart W or subpart RR as appropriate (*see* Section II.C of this preamble).

If a CO_2 leak is detected at the surface, the GS reporter must quantify the amount of CO_2 leaked. EPA considered three alternatives for reporting CO_2 leakage: assuming that all injected CO_2 remains sequestered, assuming that a proportion of injected CO_2 remains sequestered, and reporting of CO_2 leakage based on site-specific monitoring. EPA outlines the advantages and disadvantages of each alternative and seeks comment and data on each alternative, as well as any alternatives not discussed.

Under the first alternative, EPA would rely on published information and existing studies to assume that all injected CO_2 remains sequestered. EPA would assume these results can be generalized to all GS projects. EPA notes that international guidelines on information collection and reporting efforts outlined in Section I.E of this preamble do not support this approach. Furthermore, EPA did not propose this approach because of the limited empirical data and the variability in geology, site management and/or business practices, and other conditions among GS facilities. In addition, assuming that all injected CO_2 remains sequestered would not take into account potential fugitive or vented emissions from surface equipment or CO_2 produced from oil or gas production wells, during or after operations.

Under the second alternative, EPA would assume that a proportion of injected CO_2 remains sequestered. EPA would assume that this proportion can be generalized to all GS projects. International guidelines on information collection and reporting efforts outlined in Section I.E of this preamble do not support this approach. Furthermore, EPA did not propose this approach because of the limited empirical data and the variability in geology, site management and/or business practices, and other conditions among GS facilities. EPA also seeks comment and data on whether a sequestration factor could be applied to ER operations in cases where CO_2 injection and site operations are not specifically designed with GS in mind.

The third approach, and the approach EPA is proposing today, is that the MRV plan describe the approaches that the GS reporter will take to quantify CO_2 emissions if leakage is detected. The approach should be specific to the type of potential leak. For example, for point sources of CO_2 (*e.g.,* leakage from wells), bagging or tenting methods could be used. EPA recognizes that quantifying CO_2 emissions and distinguishing CO_2 leakage from background emissions is challenging, but necessary for the purposes of determining the total amount of CO_2 that is sequestered at a GS facility. EPA is proposing that a leak could be quantified through estimation or by direct measurement and seeks comment on allowing either estimation or direct measurement for quantifying a leak.

In cases where a leak is not quantified by estimation, EPA is proposing that if a leak is detected, the reporter must assume that the duration of the leak is equal to the duration between demonstrated null monitoring results unless subsurface monitoring can be used to provide a better indication on the timing of the leak. EPA finds this conservative approach reasonable because the estimate of the duration of the leak directly influences the estimate of the amount of CO_2 emitted to the surface. The Agency recognizes that this

approach could overestimate emissions of CO_2. EPA considered requiring that the MRV plan include a site-specific strategy for determining duration of any leakage detected in cases where a leak is not determined by estimation, but EPA concluded that this approach would allow too much variation in reporting on CO_2 leakage (if any occurs) and would make the quantities of CO_2 reported as sequestered less comparable. EPA seeks comment on the selected approach for determining the duration of the leak event and the alternatives. EPA is proposing that if multiple CO_2 leaks to the surface occur in a reporting year, the mass of each leak should be quantified and the totals then aggregated for reporting.

An approach for an uncertainty assessment of the leakage estimates and measurements derived from the proposed modeling and monitoring at the GS facility should also be included in this component of the MRV plan.

As further outlined in Section II.E of this preamble, EPA is proposing that if leakage is detected during a given reporting year, the GS reporter must submit an annual report addendum to coincide with submission of the next annual report (March 31 of a following year).

Strategy for Establishing Pre-Injection Environmental Baselines. EPA is proposing that the MRV plan describe when and how pre-injection environmental baselines would be established based on the strategy for leak detection described in this section of the preamble. The GS reporter is required to establish baselines at potential leakage pathways (based on the risk of leakage from these pathways), and over the entire spatial area of evaluation for periodic evaluation of unidentified leakage pathways. Pre-injection baselines will be used to evaluate the performance of the site and are essential to detect CO_2 leakage from the site.

CO_2 is ubiquitous in the environment and concentrations may vary over space and time (*e.g.,* diurnally, seasonally, annually). Therefore, determining background levels of CO_2 and understanding natural fluctuations is necessary to discern whether detected CO_2 is attributable to leakage or to preexisting sources. It is also important to establish baselines before injection because many of the instruments used to monitor CO_2 at the surface do not measure fluxes of CO_2 directly; rather, the instruments are useful for tracking the injected CO_2 because one can compare parameters before and after injection and over time.[36] Environmental baselines at the facility before injection must reflect diurnal, seasonal, and annual changes in not only the levels of CO_2 but also in other relevant surface and/or near-surface conditions (*e.g.,* wind speed). Baseline monitoring could also include gas composition and isotopic analysis of any background fluxes of CO_2, which may be useful for distinguishing between natural (biogenic or thermogenic) and anthropogenic CO_2.[37]

There may be cases in which CO_2 injection has taken place for some time (potentially years, as in the case of currently operating ER projects) and the baseline was not evaluated pre-injection. EPA is proposing that a facility in this situation would outline in this component of the MRV plan alternatives to establishing pre-injection baselines. In such situations, alternatives to characterizing baseline conditions could include identification of proximal locations where diurnal, seasonal, and annual measurements that are assumed to be similar to pre-injection conditions at the site can be taken. This technique was used by a site that detected annual CO_2 emissions of about 3,800 tonnes/year (0.01 percent of total injected CO_2) from surface monitoring but could not compare the flux to a pre-injection baseline to determine what percentage was attributable to injected CO_2.[38] Other approaches could include permanent continuous monitor networks with upwind and downwind correlation or mobile monitoring capable of determining local ambient background levels. EPA recognizes the challenge in establishing a baseline in these cases and seeks comment on this proposed case-by-case approach and on whether real-time determination of environmental baseline upwind of potential leakage is preferred.

Tailor Mass Balance Equation for Sequestration. As explained in Section II.C of this preamble, a GS reporter would be required to report the annual amount of CO_2 sequestered at a facility using a mass balance equation, in which the sum of CO_2 emissions would be subtracted from the amount of CO_2 injected to equal the amount of CO_2 sequestered. A specific mass balance equation is provided in the regulatory text, to which the facility must apply site-specific variables based on operational conditions. Accordingly, EPA is proposing that a GS reporter must consider whether any fugitive or vented CO_2 surface emissions were measured downstream of the injection flow meters (*i.e.,* between the injection flow meter and the injection well). If so, these quantities should not be accounted as stored and should be subtracted from the mass balance equation as a variable. A GS facility with ER operations must additionally consider whether any fugitive or vented CO_2 emissions were measured upstream of the production flow meters (*i.e.,* between the production well and the separator) and how much produced CO_2 is not successfully measured by the production flow meter because it remains dissolved in the produced oil or gas. For ER operations, these quantities should not be accounted as stored and should also be subtracted from the mass balance equation as variables.

EPA is proposing that GS reporters be required to include a written summary of these considerations, including any assumptions made and methodologies used to calculate these site-specific variables over the reporting year.

4. MRV Plan Approval Process

EPA is proposing to evaluate each MRV plan to ensure that the GS facility has an appropriate strategy in place to effectively quantify geologically sequestered CO_2. EPA will evaluate the adequacy of the methodologies proposed to detect and quantify leakage, including whether the chosen monitoring technologies are suitable for the type of leakage pathway and for the type of risk evaluated at that pathway.

This proposal is being conducted under CAA section 114. As such, it does not require control measures, remediation, or any other actions that would alter operations at a facility. In order to develop, gain approval of, and implement its MRV plan, a GS facility would not be expected to shut down or delay its operations. EPA developed the proposed reporting requirements with

[36] Benson, S, E Gasperikova, and M Hoversten. 2004. "Overview of Monitoring Techniques and Protocols for Geologic Storage Projects." Prepared for the IEA GHG Programme. PH4–29; Johnson, J. 2009. "Integrated modeling, monitoring, and site characterization to assess the isolation performance of geologic CO_2 storage: Requirements, challenges, and methodology." Energy Procedia 1:1855–1861; Forbes, S, P Verma, T Curry, J Friedman, S Wade. 2008. "Guidelines for carbon dioxide capture, transport, and storage." World Resources Institute. Available at: *http://pdf.wri.org/ccs_guidelines.pdf.*

[37] American Petroleum Institute and International Petroleum Industry Environmental Conservation Association. 2007. "Oil and Natural Gas Industry Guidelines for Greenhouse Gas Reduction Projects Part II: Carbon Capture and Geological Storage Emission Reduction Family," June, 2007.

[38] Klusman, RW. 2003. "Rate measurements and detection of gas microseepage to the atmosphere from an enhanced oil recovery/sequestration project, Rangely, Colorado, USA." Applied Geochemistry, volume 18, issue 12.

consideration for business-as-usual operations in order to minimize burden.

Although MRV plan approval would be an inherently EPA function, the Agency is considering approaches and processes to streamline and facilitate external technical input in the development of specific evaluation criteria or guidelines, particularly at the outset of the program. EPA recognizes that an adaptive approach to the GS portion of this proposal will be necessary to take advantage of the experience gained in developing and implementing MRV plans and in complying with the proposed UIC Class VI requirements. EPA expects to update the guidelines and requirements of an MRV plan over time as technologies, methodologies, and scientific understanding of GS evolve; and the Agency believes that the site-specific nature of the MRV plan enables the proposed approach to adapt and improve over time.

E. Selection of Schedule and Process for Reporting

1. First Tier Reporting Requirements for Injection Facilities

All injection facilities that meet the definitions in subpart RR and that are in active operation when this proposed rule is finalized would begin collecting data on CO_2 injected, CO_2 transferred from offsite, and source of CO_2, if known, on January 1, 2011, covering a period between January 1 to December 31. Data would be submitted to EPA by operating facilities in an annual report on each March 31 of each calendar year, beginning with March 31, 2012, for data collected in the previous calendar year.

The Agency plans to issue the final rule in sufficient time for existing injection facilities to prepare for monitoring and reporting before January 1, 2011, and to begin monitoring CO_2 injection and CO_2 transferred from offsite on January 1, 2011. Preparation would include studying the final rule, determining whether it applies to the facility, identifying the requirements with which the facility must comply, and preparing to monitor and collect the required data needed to calculate and report GHG emissions. However, EPA recognizes that meeting that goal may be challenging and seek comments on alternative effective dates.

The date on which a new facility begins injecting CO_2 is the date on which a new facility must begin monitoring the first tier of requirements for subpart RR. The annual report submitted by the new facility on March 31 of the year following start-up therefore may include data for only part of the year.

2. Second Tier Reporting Requirements for GS Facilities—Submission, Approval, and Reporting

EPA is proposing that all GS facilities and any injection facilities that opt-in to the GS monitoring and reporting requirements would submit MRV plans to EPA and seek EPA approval. Where the GS facility would be relying on a new UIC Class VI permit for MRV plan requirements, EPA anticipates that the MRV plan review would be conducted concurrently with the UIC Class VI permit review. EPA would require the unique identification number associated with the permit application and notification of approval of the UIC Class VI permit. Once an MRV plan is approved by EPA, the GS facility would implement it and then begin collecting data on CO_2 emitted and CO_2 sequestered. Finally, the reporter would include this additional quantitative data in the first annual report submitted to EPA after the approved MRV plan has been implemented and in all subsequent annual reports. An annual report addendum would also be required to be submitted if the GS facility triggered any of the addendum submission requirements outlined in this proposal.

The Agency seeks to establish an MRV plan submission and approval schedule that allows the GS facility reporter to implement its plan without delay. Therefore, EPA is proposing a rolling schedule for submission of the MRV plan to EPA whereby the reporter could submit the plan to EPA on any calendar date. From the date submitted, EPA would determine if the application is complete, review the plan, work with each reporter to ensure that the MRV plan appropriately addresses the requirements, and revise the plan accordingly. This interactive process would be limited to a reasonable time period, after which EPA would approve a revised MRV plan.

EPA is proposing to provide for an appeal process in situations where the GS facility does not agree with the Agency's approved plan. One option would be for a reporter to request a formal administrative review (and if appropriate, an evidentiary hearing) with the Environmental Appeals Board using the appeal procedures provided in 40 CFR Part 78. Under this approach, filing an appeal and exhausting all administrative remedies would be a prerequisite to seeking judicial review. Another option would allow the reporter to appeal directly with the appropriate court, pursuant to CAA section 307(b)(1). EPA seeks comment on both options for resolving disputes regarding MRV plans, or whether any alternative, expedited process is more appropriate.

EPA is proposing that the GS facility must begin implementing the MRV plan within thirty days of EPA approval. Because implementation may require more than thirty days (*e.g.*, in order to establish environmental baselines), it is possible that implementation would not be completed within 30 days of EPA approval, depending on the MRV plan; the facility would follow implementation as set forth in the facility's MRV plan. If the MRV plan is appealed, EPA is proposing to require the GS facility to begin implementation of the approved plan until such a time that the MRV plan appeal process is complete. EPA seeks comment on whether the implementation of the MRV plan should be delayed until the appeal is resolved.

Every annual report submitted by the GS facility after MRV plan implementation begins would include both the first tier of data required of all CO_2 injection facilities and the second tier of data related to GS. In the first year following initial MRV plan implementation, it is possible that the GS-related data collected and reported may only cover part of the year.

EPA is proposing that an injection facility opting in to the GS portion of this proposed rule may submit an MRV plan at any time. All other GS facilities will be required to submit an MRV plan to EPA (A) within six months from the time that their UIC permitting authority confirms the area of review or (B) by December 31 of the year that the UIC permitting authority confirms the area of review, whichever date is later. If such facilities already have a UIC permit as of the date of publication of the final subpart RR in the **Federal Register**, they must submit the MRV plan to EPA within six months of the date of publication of this subpart. This submission deadline would allow the facility to implement all monitoring required by EPA as quickly and seamlessly as possible, and in parallel with a facility's UIC permit requirements. All facilities that are required to submit an MRV plan to EPA will be allowed to request an extension of up to an additional six months. In the case of a facility that is not under the jurisdiction of the SDWA, the MRV plan submission schedule would be based on the facility's relevant permit, rather than a UIC permit. EPA seeks comment on this approach for MRV plan submissions and on whether an alternative deadline, such as a submission deadline based on when a

GS facility's UIC permit is issued, would be more appropriate and efficient.

EPA seeks comment on the proposed rolling submission process and whether an alternative would be more appropriate. For example, GS facilities (both required and opt-in facilities) could be required to submit an MRV plan by a specific date or within a specific window of time each calendar year if they plan to begin operating in the subsequent calendar year.

3. Second Tier Reporting Requirements for GS Facilities—Post Implementation

Once a reporter begins implementing an EPA-approved MRV plan, it may be required to submit additional information to EPA, either through an annual report addendum, or through re-submitting a revised MRV plan for EPA approval.

When a reporter initially develops an MRV plan, it does so based on its existing understanding of the GS facility site characterization and in some cases previous experience with CO_2 injection, modeling, and monitoring. When EPA reviews the plan, it evaluates whether the procedures proposed will result in the most effective collection of data possible and practical, given this existing understanding. However, EPA recognizes that a reporter's understanding of the GS facility may evolve because of new information or altered site conditions. Under these circumstances, the site should continue to prioritize the most effective collection of data possible and practical, even if it requires an adjustment in the monitoring procedures used. The site would implement these adjustments as needed and would inform EPA about them via an annual report addendum, submitted at the same time as the next annual report (March 31 of the subsequent calendar year). An annual report addendum should also describe changes to the spatial area of monitoring. Data reporting should not be disrupted as a result. EPA is proposing that the annual report addendum will not require EPA approval.

A reporter would also be required to submit an annual report addendum if leakage is detected. The addendum should outline the procedures or equipment that detected the leakage, what assumptions were made to quantify the detected leakage to the surface, including assumptions about when the leak began and the duration of the leak, and any adjustment made to the MRV plan. If the number reported for leakage represents more than one leakage event, the addendum should describe how each leak was detected and quantified.

In general, the MRV plan should be revised as experience is gained over the course of the project (for example, as monitoring results are used to validate and update model predictions) and should keep pace with the development of monitoring instruments and methods. These revisions will be shared with EPA through annual report addenda.

EPA seeks comment on whether the GS facility should resubmit an MRV plan at a minimum frequency that compiles all revisions over the previous years into one updated document and that undergoes an EPA approval process. EPA seeks comment on whether such a routine resubmission is appropriate, and if so how the minimum frequency for re-submittal should be established. This minimum frequency could be a fixed number for all facilities, such as every ten years. Alternatively, it could be established on a site-by-site basis based on the reporter's technical justification or on the minimum frequency associated with the re-evaluation of the facility's spatial area of evaluation.

EPA is proposing that the MRV plan must be revised and re-submitted to EPA for approval if the reporter is out of compliance with its UIC permit (or relevant permit in the case of a facility that is not under the jurisdiction of the SDWA), or if EPA deems a resubmission necessary as the result of an annual report addendum received or an EPA on-site audit conducted as part of the MRR verification provisions. EPA seeks comment on whether any other events or conditions should require resubmission of the MRV plan. In addition, EPA is proposing that the GS facility under its own volition could submit a revised MRV plan in any reporting year. Resubmitted MRV plans would be accepted on a rolling basis just as initial MRV plans.

4. Annual Reports

For this proposed rule, EPA seeks quantitative data from all facilities in a consistent format and at a consistent level, in a timely fashion at the beginning of every reporting year (covering the previous year's data) in order to electronically verify the data, publish it as authorized by the CAA, and use the collected information for the purposes described in this proposal. Therefore, EPA is proposing that, as with the other data reported in the MRR, CO_2 injection and sequestration data would be reported directly to EPA electronically via an annual report. EPA is also proposing that MRV plans and annual report addenda developed by GS facilities would be submitted electronically to EPA. To minimize redundancy and burden on industry, EPA has considered the procedures, methodologies, units, quality assurance and quality control (QA/QC) requirements, and formats required under the UIC permit classes when developing the requirements of this proposed rule. EPA's intention is that reporters use the same data to meet the reporting requirements of both programs to the greatest extent possible.

All injection facilities would submit reports with quantitative data annually on an ongoing basis. The snapshot of information provided by a one-time information collection request would not provide the type of ongoing information which could inform the variety of potential policy options being evaluated for addressing climate change. Due to the comprehensive reporting and monitoring requirements in this proposal, the Agency has concluded that it is not appropriate to require reporting of historical emissions data. EPA proposed and evaluated comments on this reporting provision under the MRR. The historical data provision of the MRR also applies to today's proposed rule.

Most voluntary and mandatory GHG reporting programs include provisions for operators to revise previously submitted data. Under the final MRR, EPA requires the reporter to submit a revised report within 45 days of discovering or being notified by EPA of errors in an annual GHG report. The revised report must correct all identified errors. The reporter must retain documentation for three years to support any revisions made to an annual GHG report. EPA proposed and evaluated comments on this reporting provision under the MRR. As a final provision of that rule, the requirement to submit a correct report within 45 days and retention of documentation for three years applies to today's rule.

The final MRR provides a mechanism for facilities to exit the reporting program when they are below a reporting threshold for five or three consecutive years, depending on the exact emissions levels. Because of the unique nature of CO_2 injection and GS activities as noted in the threshold analysis discussion in Section II.B of this preamble, EPA is proposing that this provision would not apply to GS facilities. Instead, EPA is proposing that all CO_2 injection facilities would be allowed to cease reporting CO_2 injection upon the plugging of the injection well or wells that constitute the facility. GS facilities will be allowed to cease all other reporting requirements under this

subpart once the CO_2 plume and pressure front have stabilized. EPA will accept demonstrations made to fulfill UIC Class VI permit requirements in order to meet requirements for ceasing GS reporting under this proposal. EPA seeks comment on this approach for allowing facilities to cease reporting. EPA recognizes that there are other possible approaches. For example, the Agency could conform the mechanism that other facilities use for exiting the MRR to subpart RR, allowing CO_2 injection facilities that are not GS facilities to cease reporting if they are below an injection threshold for five or three consecutive years, depending on the exact injection levels. EPA did not propose this alternative because of a lack of data on the incidence and scale of surface emissions and leakage. Another approach would be to provide a "no exit" approach for GS facilities, which would allow EPA to obtain valuable data on the long-term efficacy of GS. EPA is not proposing a "no exit" approach because the Agency wanted to provide an opportunity for reporters to cease reporting. However, EPA seeks comment on these alternative approaches for allowing facilities to cease reporting.

Each annual report developed under this proposed rule would contain a signed certification by a Designated Representative of the facility. On behalf of the reporter, the Designated Representative would certify under penalty of law that the report has been prepared in accordance with the requirements of 40 CFR part 98 and that the information contained in the report is true and accurate, based on a reasonable inquiry of individuals responsible for obtaining the information. EPA proposed and evaluated comments on these reporting provisions under the MRR. As final provisions of the MRR, they apply to today's proposal.

5. Data Verification

In the MRR, EPA will verify emissions data electronically using numerous approaches such as: Executing equations and comparing the results to reported data; comparing reported data to a realistic data range; comparing trends in reported data across years; comparing data from one year across reporters; conducting a pass/fail check on binary data; collecting secondary data that can proxy emissions; and conducting statistical analysis to identify outliers. EPA may conduct selective audits on facilities whose data raises questions during the verification process. In addition, all reporting entities will select a Designated Representative to certify that the data reported is accurate to the best of his/her knowledge.

For this proposed rule, EPA is proposing that the data submitted by GS facilities may be evaluated and verified manually by EPA along with the qualitative contents of the MRV plan (*see* Section II.D of this preamble). It may be that electronic verification of GS data would not be adequate to verify whether the EPA-approved MRV plan was followed and whether any leakage was detected in the reporting year at a particular facility. EPA seeks comment on manual evaluation of data and qualitative elements of an MRV plan.

6. Confidential Business Information (CBI)

EPA's public information regulations contain a definition of "emissions data" at 40 CFR 2.301, and EPA has discussed in an earlier **Federal Register** notice what data elements constitute emissions data that cannot be withheld as CBI (56 FR 7042–7043, February 21, 1991). While determinations about whether information claimed as CBI and whether the information meets the definition of emissions data are usually made on a case-by-case basis, EPA recognizes that such an approach would be cumbersome given the scope of the MRR and the compelling need to make data that are not CBI, or are emissions data, available to the public. For this reason, EPA will be initiating a separate notice and comment process to make CBI and emissions data determinations for the categories of data collected under the MRR.

As stated in the MRR, EPA will protect any information claimed as CBI in accordance with regulations in 40 CFR part 2, subpart B. However, in general, emissions data collected under CAA section 114 shall be available to the public and cannot be withheld as CBI.

F. Selection of Procedures for Estimating Missing Data

EPA has concluded that it is important to have missing data procedures in order to ensure a complete report of amounts of CO_2 and emissions from a particular facility. In this rule, EPA is proposing missing data procedures for the quarterly values of mass or volume and concentration of these streams, and CO_2 transferred from offsite. EPA is proposing that these procedures can be used by all injection facilities, including GS facilities. EPA is also proposing procedures for missing data on CO_2 production from GS facilities. EPA seeks comment on these procedures and on whether it is appropriate to provide missing data procedures for GS facilities.

EPA is not proposing missing data procedures for leakage quantification. EPA is proposing that the MRV plan include quantification methods and assumptions for all potential leakage scenarios. If leakage is detected for which a quantification approach is not outlined in the plan, this information must be included in the addendum.

G. Selection of Records To Retain

EPA is proposing that, in addition to the records required by § 98.3(g), each facility must retain quarterly records of injected CO_2 and CO_2 transferred from offsite sources, including mass flow or volumetric flow at standard conditions and operating conditions, operating temperature and pressure, and concentration of these streams. EPA is proposing that GS facilities would also retain quarterly records of produced CO_2, if applicable, including mass flow or volumetric flow at standard conditions and operating conditions, operating temperature and pressure, and concentration of these streams; annual records of the emitted CO_2 from subsurface geologic formation leakage pathways; and any other records as outlined for retention in your MRV plan. EPA seeks comment on these record retention requirements.

III. Economic Impacts of the Proposed Rule

This section of the preamble examines the costs and economic impacts of the proposed rulemaking for CO_2 injection and GS 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 proposed rule can be found in the text of the economic impact analysis (EIA) (EPA–HQ–OAR–2009–0926). EPA seeks comment on the methodology and data used for the analysis.

A. How were compliance costs estimated?

1. Summary of Method Used To Estimate Compliance Costs

EPA estimated costs of complying with this proposed rule and the total incremental annual cost of compliance. A base case is created assuming relevant monitoring costs required under UIC requirements (including the UIC Class VI proposal). Then incremental reporting from geologic storage sites were evaluated in terms required technologies, practices, and costs.

The estimated costs include capital and operating and maintenance (O&M)

including labor costs. The cost of drilling and equipping wells represents a large component of sequestration costs. Examples of other costs include seismic data acquisition, periodic sampling and testing of the injected CO_2.

The estimated costs are based on hypothetical or pro-forma sites for various types of projects such as R&D GS projects, commercial saline formation projects, and ER GS projects. The geologic and engineering assumptions for these pro-forma projects are the same as those used by the EPA Office of Water in the proposed UIC Class VI rule for CO_2 injection wells. The costs are presented in 2008 dollars.

The capital costs are annualized using an interest rate of 7% with projects lasting 7 years or 20 years. Next, annual O&M costs are added to the annualized capital costs to determine total annual direct costs. Finally, a 20 percent overhead and general and administrative cost factor is added to obtain total annual costs. These are then divided by the amount assumed to be injected each year in the pro-forma project to arrive at total costs per metric ton of CO_2 injected. These per-ton costs are then used to estimate total annual costs for the level of injection expected in the activity baseline.

B. What are the costs of the proposed rule?

1. Summary of Costs

The total annualized costs incurred under the rule by these entities would be approximately $714,000 ($2008 dollars), as illustrated in Table 7 of this preamble. The public sector burden estimate is $344,000 for program implementation and verification activities. This may underestimate the total public sector burden depending on the extent to which DOE R&D projects funded with public dollars transition to demonstration or commercial GS, and consequently incur costs associated with monitoring, reporting and verification. Given uncertainties related to project adoption and the costs of the reporting program, EPA considered two other private cost scenarios (one higher and one lower than the reference cost scenario) in order to assess a range of economic impacts on affected entities, as illustrated in table 8 of this preamble.

TABLE 7—NATIONAL ANNUALIZED MANDATORY REPORTING COSTS ESTIMATES (2008$): SUBPART RR

Type	Number of projects	Metric tons CO_2 injected per year	Total annual cost (thousand, 2008$)
R&D	9	5,320,000	37
CO_2 Injection Facilities (no GS) [1]	80	36,815,442	332
Private Sector, Total All Projects	89	45,435,442	369
Private Sector, Average ($/ton)			0.01
Public Sector, Total			344
National Total			714

[1] Includes Class II ER Facilities.

TABLE 8—ANNUALIZED REPORTING COSTS PER PROJECT (2008$): SUBPART RR

Type	Average		
		Alternative cost scenarios	
	Reference ($1,000)	Low ($1,000)	High ($1,000)
GS Facilities (commercial saline) [1]	289	7	470
GS Facilities (ER opt in)	1,679	1,485	1,804
CO_2 Injection Facilities [1]	4	4	4

[1] Includes Class II ER Facilities.

C. What are the economic impacts of the proposed rule?

1. Summary of Economic Impacts

EPA assessed how the regulatory program may influence the profitability of companies by comparing the monitoring program costs to total sales (*i.e.,* a "sales" test). Given limited data on commercial GS operations, EPA restricted the analysis to ER operations (approximately 90 percent of the fields). To do this, EPA divided the average annualized mandatory reporting costs per field by the estimated revenue for a representative field. Sales test ratios are between 3.1 to 3.3 percent for GS facilities (ER opt in). In contrast, ER CO_2 injection facilities (no GS) sales test ratios are below 0.01 percent, as illustrated in Table 9 of this preamble.

TABLE 9—ESTIMATED ANNUAL REVENUE FOR A REPRESENTATIVE COMMERCIAL ER FIELD OPERATION (2008$)

	Cost-to-Sales Ratios (CSRs)		
		Alternative cost scenarios	
	Reference (percent)	Low (percent)	High (percent)
GS Facilities (ER opt in)	3.1	2.7	3.3
CO_2 Injection Facilities (no GS) [1]	<0.01	<0.01	<0.01

[1] Includes Class II ER Facilities.

D. What are the impacts of the proposed 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 IV.C of this preamble for definitions of small entities.)

After considering the economic impact of the rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Currently EPA believes small ER operations will most likely be UIC Class II ER projects. As shown in Table 9 of this preamble, the average ratio of annualized reporting program costs to revenues of a typical ER operation likely owned by a representative small enterprise was less than 0.1%.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless took several steps to reduce the impact of this rule on small entities. For example, EPA is proposing monitoring and reporting requirements that build off of the UIC program. In addition, EPA is proposing equipment and methods that may already be in use by a facility for compliance with its UIC permit. Also, EPA is requiring annual reporting instead of more frequent reporting.

In addition to the public hearing that EPA plans to hold, EPA has an open door policy, similar to the outreach conducted during the development of the proposed and final MRR. Details of these meetings are available in the docket (EPA–HQ–OAR–2009–0926).

E. What are the benefits of the proposed rule for society?

EPA examined the potential benefits of this proposed rule. EPA's previous analysis of the MRR discussed the benefits of a reporting system with respect to policy making relevance, transparency issues, 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.

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.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not by itself an "economically significant regulatory action" because it is unlikely to have an annual economic effect of less than $100 million. EPA's cost analysis, presented in Section 4 of the EIA, estimates that for the minimum reporting under the recommended regulatory option, the total annualized cost of the rule will be approximately $713,000 (in 2008$) during the first year of the program and $713,000 in subsequent years (including $0.3 million of programmatic costs to the Agency). This proposed action adds subpart RR to the MRR, which was a significant regulatory action. Thus, EPA has chosen to analyze the impacts of subpart RR as if it were significant. EPA submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this proposed action.

In addition, EPA prepared an analysis of the potential costs associated with this proposed action. This analysis is contained in the "Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Subpart RR" (EPA–HQ–OAR–2009–0926). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. In this report, EPA has identified the regulatory options considered, their costs, the emissions that would likely be reported under each option, and explained the selection of the option chosen for the rule. Overall, EPA has concluded that the costs of this proposed rule are outweighed by the potential benefits of more comprehensive information about GHGs.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2372.01.

EPA has identified the following goals of the mandatory reporting system, including:

- Obtain data that is of sufficient quality that it can be used to analyze and inform the development of a range of future climate change policies and potential regulations.
- Balance the rule's coverage to maximize the amount of emissions reported while excluding small emitters.
- Create reporting requirements that are, to the extent possible and appropriate, consistent with existing GHG reporting programs in order to reduce reporting burden for all parties involved.

The information from CO_2 injection and GS facilities will allow EPA to make well-informed decisions about whether and how to use the CAA to regulate these facilities and encourage voluntary reductions. Because EPA does not yet know the specific policies that will be adopted, the data reported through the mandatory reporting system should be of sufficient quality to inform policy and program development. Also, consistent with the Appropriations Act, the reporting rule covers a broad range of sectors of the economy.

This information collection is mandatory and will be carried out under CAA section 114. Information identified and marked as Confidential Business Information (CBI) will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. However, emissions information collected under CAA section 114 generally cannot be claimed as CBI and will be made public.[39]

[39] Although CBI determinations are usually made on a case-by-case basis, EPA has issued guidance

Continued

The projected ICR cost and respondent burden is $0.8 million and 4,510 hours per year. The estimated average burden per response is 6.8 hours; the frequency of response is annual for all respondents that must comply with the rule's reporting requirements, except for electricity-generating units that are already required to report quarterly under 40 CFR Part 75 (acid rain program); and the estimated average number of likely respondents per year is 89. The cost burden to respondents resulting from the collection of information includes the total capital and start-up cost annualized over the equipment's expected useful life (averaging $0.1 million per year) a total operation and maintenance component (averaging $0.3 million per year), and a labor cost component (averaging $0.3 million per year). Burden is defined at 5 CFR 1320.3(b).

These cost numbers differ from those shown elsewhere in the EIA because ICR costs represent the average cost over the first three years of the rule, but costs are reported elsewhere in the EIA for the first year of the rule. Also, the total cost estimate of the rule in the EIA includes the cost to the Agency to administer the program. The ICR differentiates between respondent burden and cost to the Agency.

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 the final rule.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0926. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [date of publication], a comment to OMB is best assured of having its full effect if OMB receives it by [publication plus 30]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Currently EPA believes small ER operations will most likely be CO_2 injection facilities, including Class II ER projects. The average ratio of annualized reporting program costs to revenues of a typical ER operation likely owned by representative small enterprises is less than 1%

After considering the economic impacts of today's proposed rule on small entities, I therefore certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless took several steps to reduce the impact of this rule on small entities. For example, EPA is proposing monitoring and reporting requirements that build off of the UIC program. In addition, EPA is proposing equipment and methods that may already be in use by a facility for compliance with its UIC permit. Also, EPA is requiring annual reporting instead of more frequent reporting. In addition to the public hearing that EPA plans to hold, EPA has an open door policy, similar to the outreach conducted during the development of the proposed and final MRR. Details of these meetings are available in the docket (EPA–HQ–OAR–2009–0926).

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 proposed 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 proposed rule are approximately $713,000 per year. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Facilities subject to the proposed rule include facilities that inject CO_2 for enhanced recovery of crude oil, and those intending to sequester CO_2. None of the facilities currently known to undertake these activities are owned by small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that inject CO_2 underground. Few, if any, State or local 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, Executive Order 13132 does not apply to this action.

in an earlier **Federal Register** notice on what constitutes emissions data that cannot be considered CBI (956 FR 7042–7043, February 21, 1991). As discussed in Section II.R of the Final MRR preamble, EPA will be initiating a separate notice and comment process to make CBI determinations for the data collected under this proposed rulemaking.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This proposed rule is not expected to have tribal implications, as specified in Executive Order 13175. This regulation applies to facilities that inject CO_2 underground. Few facilities expected to be affected by the rule are likely to be owned by tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA sought opportunities to provide information to tribal governments and representatives during development of the MRR. In consultation with EPA's American Indian Environment Office, EPA's outreach plan included tribes. During the proposal phase, EPA staff provided information to tribes through conference calls with multiple Indian working groups and organizations at EPA that interact with tribes and through individual calls with two tribal board members of TCR. In addition, EPA prepared a short article on the GHG reporting rule that appeared on the front page of a tribal newsletter—*Tribal Air News*—that was distributed to EPA/Office of Air Quality Planning & Standards' network of tribal organizations. EPA gave a presentation on various climate efforts, including the MRR, at the National Tribal Conference on Environmental Management in June, 2008. In addition, EPA had copies of a short information sheet distributed at a meeting of the National Tribal Caucus. EPA participated in a conference call with tribal air coordinators in April 2009 and prepared a guidance sheet for Tribal governments on the proposed rule. It was posted on the MRR Web site and published in the Tribal Air Newsletter. For a complete list of tribal contacts, see the "Summary of EPA Outreach Activities for Developing the Greenhouse Gas Reporting Rule," in the MRR Docket (EPA–HQ–OAR–2008–0508–055). In addition to the consultation activities supporting the MRR, EPA continues to provide requested information to tribal governments and representatives during development of MRR source categories that have not been finalized (Track II rules) such as this proposed rulemaking. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed 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 proposed rule 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, EPA has concluded that this proposed rule is not likely to have any adverse energy effects. This proposed rule relates to monitoring, reporting and recordkeeping at facilities that inject CO_2 underground and does not impact energy supply, distribution or use. Therefore, EPA concludes that this proposed 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 (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 proposed rulemaking involves technical standards. EPA will use voluntary consensus standards from at least seven different voluntary consensus standards bodies, including the following: American Society for Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), International Standards Organization (ISO), Gas Processors Association, American Gas Association, American Petroleum Institute, and National Lime Association. These voluntary consensus standards will help facilities monitor, report, and keep records of CO_2 injections or geologic sequestration, and any associated GHG emissions. No new test methods were developed for this proposed rule. Instead, from existing rules for source categories and voluntary greenhouse gas programs, EPA identified existing means of monitoring, reporting, and keeping records of greenhouse gas emissions. The existing methods (voluntary consensus standards) include a broad range of measurement techniques, such as methods to measure gas or liquid flow; and methods to gauge and measure petroleum and petroleum products. The test methods are incorporated by reference into the proposed rule and are available as specified in 40 CFR 98.7.

By incorporating voluntary consensus standards into this proposed rule, EPA is both meeting the requirements of the NTTAA and presenting multiple options and flexibility in complying with the proposed rule. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed regulation.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it does not affect the level of protection provided to human health or the environment. This proposed rule does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 22, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

2. Section 98.2 is amended by revising paragraph (a) introductory text to read as follows:

§ 98.2 Who must report?

(a) The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this part apply to the owners and operators of any facility that is located in the United States or under or attached to the Outer Continental Shelf (as defined in 43 U.S.C. 1331) and that meets the requirements of either paragraph (a)(1), (a)(2), or (a)(3) of this section; and any supplier that meets the requirements of paragraph (a)(4) of this section:

* * * * *

3. Section 98.6 is amended by adding the following definitions in alphabetical order to read as follows:

§ 98.6 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory or possession of the United States, as well as the territorial sea as defined by Presidential Proclamation No. 5928.

* * * * *

4. Section 98.7 is amended by revising paragraph (e)(39) to read as follows:

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(e) * * *

(39) ASTM E1747–95 (Reapproved 2005) Standard Guide for Purity of Carbon Dioxide Used in Supercritical Fluid Applications, IBR approved for § 98.424(b) and § 98.444(a).

* * * * *

5. Part 98 is amended by adding subpart RR to read as follows:

Sec.

98.440 Definition of the source category.
98.441 Reporting threshold.
98.442 GHGs to report.
98.443 Calculating CO_2 Injection and Sequestration.
98.444 Monitoring and QA/QC requirements.
98.445 Procedures for estimating missing data.
98.446 Data reporting requirements.
98.447 Records that must be retained.
98.448 Geologic Sequestration Monitoring, Reporting, and Verification (MRV) Plan.
98.449 Definitions.

Subpart RR—Injection and Geologic Sequestration of Carbon Dioxide

§ 98.440 Definition of the source category.

(a) The injection and geologic sequestration of carbon dioxide (CO_2) source category comprises any well or group of wells that inject CO_2 into the subsurface, which includes under a seabed offshore. The source category consists of all wells that inject CO_2 into the subsurface, including wells for geologic sequestration (GS) or for any other purpose.

(b) A facility that is subject to this rule only because of CO_2 injection wells that do not meet the definition of geologic sequestration facility in paragraph (c) of this section is not required to report emissions under any other subpart of part 98.

(c) Geologic sequestration (GS) facility.

(1) For the purposes of this source category, a geologic sequestration facility is a facility that injects CO_2 for the long-term containment of a gaseous, liquid, or supercritical CO_2 stream in subsurface geologic formations. A facility that injects CO_2 to enhance the recovery of oil or natural gas is not a geologic sequestration facility for the purposes of this source category unless the facility also injects the CO_2 in subsurface geologic formations for long-term containment of a gaseous, liquid, or supercritical CO_2 stream and chooses to submit a monitoring, reporting, and verification (MRV) plan to EPA that is then approved by EPA.

(2) A facility that is not required to report for the purposes of this source category as a geologic sequestration facility, injects CO_2 for the long-term containment of a gaseous, liquid, or supercritical CO_2 stream in subsurface geologic formations, and chooses to submit an MRV plan to EPA that is then approved by EPA, is a geologic sequestration facility.

(3) A geologic sequestration facility includes all structures associated with injection located between the points of CO_2 transfer onsite and the injection wells.

(4) A geologic sequestration facility that injects CO_2 to enhance the recovery of oil or natural gas includes all structures associated with production located between the production wells and the separators.

(d) This source category does not include the following:

(1) Storage of CO_2 above ground.

(2) Temporary storage of CO_2 below ground.

(3) Transportation or distribution of CO_2.

(4) Purification, compression, or processing of CO_2 at the surface.

(5) Capture of CO_2.

(6) CO_2 in cement, precipitated calcium carbonate (PCC), or any other technique that does not involve injection of CO_2 into the subsurface.

§ 98.441 Reporting threshold.

(a) You must report under this subpart if your facility is an injection facility that injects CO_2 into the subsurface and the facility meets requirements of either § 98.2(a)(1) or (a)(2).

(b) The requirements of § 98.2(i) do not apply to this subpart. Once a facility is subject to the requirements of this subpart, the owner or operator must continue for each year thereafter to comply with all requirements of this subpart, including the requirement to submit annual GHG reports, even if the facility does not meet the applicability requirements in paragraph (a) of § 98.2(a) of this part in a future year, unless paragraphs (b)(1) or (b)(2) of this section apply.

(1) If the injection well or wells constituting the facility are plugged in compliance with the facility's Underground Injection Control permit requirements (or relevant permit requirements, if any, in the case of a facility that is not under the jurisdiction

of the Safe Drinking Water Act), a facility conducting geologic sequestration subject to the requirements of this subpart may discontinue complying with § 98.442(a) and § 98.442(b) and all other facilities subject to the requirements of this subpart may discontinue complying with this subpart. The owner or operator of the facility must notify EPA that the injection well or wells constituting the facility have been plugged in compliance with the facility's Underground Injection Control permit requirements (or relevant permit requirements, if any, in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act), and such notification must be certified as accurate by the owner or operator of the facility. The owner or operator must resume reporting for any future calendar year during which any activities that are source categories of this subpart resume operation.

(2) If the CO_2 plume and pressure front have stabilized and the GS facility has been closed in compliance with the facility's Underground Injection Control permit requirements (or relevant permit requirements, if any, in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act), a facility conducting geologic sequestration may discontinue complying with the remainder of this subpart. The owner or operator of the facility must notify EPA that the CO_2 plume and pressure front have stabilized and the GS facility has been closed in compliance with the facility's Underground Injection Control permit requirements (or relevant permit requirements, if any, in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act), and such notification must be certified as accurate by the owner or operator of the facility. The owner or operator must resume reporting for any future calendar year during which any activities that are source categories of this subpart resume operation.

§ 98.442 GHGs to report.

You must report:

(a) Mass of CO_2 received onsite.

(b) Mass of CO_2 injected into the subsurface.

(c) Facilities conducting geologic sequestration also report:

(1) Mass of CO_2 produced, if any.

(2) Mass of CO_2 sequestered in the subsurface geologic formation.

(3) Mass of CO_2 emitted from subsurface leaks.

(4) Mass of fugitive and vented CO_2 emissions from surface equipment at the facility if not reported under subpart W of this part.

§ 98.443 Calculating CO_2 Injection and Sequestration.

(a) A facility must calculate and report the annual mass of CO_2 transferred to the facility from offsite sources using the procedures in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) For each transfer point for which flow is measured using a mass flow meter, you must calculate the total annual mass of CO_2 in a CO_2 stream transferred onsite from offsite sources in metric tons by multiplying the mass flow by the CO_2 concentration in the flow, according to Equation RR–1 of this section. You must collect these data quarterly. Mass flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,v} = \sum_{p=1}^{4} Q_{p,v} * C_{CO_{2},p,v} \qquad \text{(Eq. RR-1)}$$

Where:

$CO_{2,v}$ = Annual CO_2 mass transferred onsite from offsite sources (metric tons) through transfer point v.

$Q_{p,v}$ = Quarterly mass flow rate measurement for transfer point v in quarter p (metric tons per quarter).

$C_{CO2,p,v}$ = Quarterly CO_2 concentration measurement in flow for transfer point v in quarter p (wt. $\%CO_2/100$).

p = quarter.

v = transfer point.

(2) For each transfer point for which flow is measured using a volumetric flow meter, you must calculate the total annual mass of CO_2 in a CO_2 stream transferred onsite from offsite sources in metric tons by multiplying the volumetric flow at standard conditions by the CO_2 concentration in the flow and the density of CO_2 at standard conditions, according to Equation RR–2 of this section. You must collect these data quarterly. Volumetric flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,v} = \sum_{p=1}^{4} Q_{p,v} * D_{p,v} * C_{CO_{2},p,v} \qquad \text{(Eq. RR-2)}$$

Where:

$CO_{2,v}$ = Annual CO_2 mass transferred onsite from offsite sources (metric tons) through transfer point v.

$Q_{p,v}$ = Quarterly volumetric flow rate measurement for transfer point v in quarter p at standard conditions (standard cubic meters per quarter).

$D_{p,v}$ = Density of CO_2 at standard conditions (metric tons per standard cubic meter): 0.0018704.

$C_{CO2,p,v}$ = Quarterly CO_2 concentration measurement in flow for transfer point v in quarter p (wt. $\%CO_2/100$).

p = quarter.

v = transfer point.

(3) To aggregate transfer data at the facility level, you must sum the mass of all CO_2 transferred onsite from offsite sources through all facility transfer points in accordance with the procedure specified in Equation RR–3 of this section.

$$CO_{2T} = \sum_{v=1}^{V} CO_{2,v} \qquad \text{(Eq. RR-3)}$$

Where:

CO_{2T} = Total annual CO_2 mass transferred onsite from offsite sources (metric tons) through all transfer points at the facility.

$CO_{2,v}$ = Annual CO_2 mass transferred (metric tons) through transfer point v.

v = transfer point.

(b) A facility must report annually the mass of CO_2 injected in accordance with the procedures specified in paragraphs (b)(1) through (b)(3) of this section.

(1) For each point at which the flow of an injected CO_2 stream is measured using a mass flow meter, you must calculate annually the total mass of CO_2 in the CO_2 stream injected in metric

tons by multiplying the mass flow by the CO_2 concentration in the flow, according to Equation RR–4 of this section. You must collect these data quarterly. Mass flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,u} = \sum_{p=1}^{4} Q_{p,u} * C_{CO_{2,p,u}} \qquad \text{(Eq. RR-4)}$$

Where:

$CO_{2,u}$ = Annual CO_2 mass injected (metric tons) as measured by flow meter u.
$Q_{p,u}$ = Quarterly mass flow rate measurement for flow meter u in quarter p (metric tons per quarter).
$C_{CO2,p,u}$ = Quarterly CO_2 concentration measurement in flow in quarter p (wt. $\%CO_2/100$).
p = quarter.
u = flow meter.

(2) For each point at which the flow of an injected CO_2 stream is measured using a volumetric flow meter, you must calculate annually the total mass of CO_2 in the CO_2 stream injected in metric tons by multiplying the volumetric flow at standard conditions by the CO_2 concentration in the flow and the density of CO_2 at standard conditions, according to Equation RR–5 of this section. You must collect these data quarterly. Volumetric flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,u} = \sum_{p=1}^{4} Q_{p,u} * D_{p,u} * C_{CO_{2,p,u}} \qquad \text{(Eq. RR-5)}$$

Where:

$CO_{2,u}$ = Annual CO_2 mass injected (metric tons) as measured by flow meter u.
$Q_{p,u}$ = Quarterly volumetric flow rate measurement for flow meter u in quarter p at standard conditions (standard cubic meters per quarter).
$D_{p,u}$ = Density of CO_2 at standard conditions (metric tons per standard cubic meter): 0.0018704.
$C_{CO2,p,u}$ = CO_2 concentration measurement in flow for transfer point u in quarter p (wt. $\%CO_2/100$).
p = quarter.
u = flow meter.

(3) To aggregate injection data at the facility level, you must sum the mass of all CO_2 injected through all injection wells at the facility in accordance with the procedure specified in Equation RR–6 of this section.

$$CO_{2I} = \sum_{u=1}^{U} CO_{2,u} \qquad \text{(Eq. RR-6)}$$

Where:

CO_{2I} = Total annual CO_2 mass injected (metric tons) through all injection wells.
$CO_{2,u}$ = Annual CO_2 mass injected (metric tons) as measured by flow meter u.
u = flow meter.

(c) All GS facilities must also report the mass of CO_2 emitted as fugitive or vented emissions from surface equipment (if this information is not required to be reported under subpart W of this part), the mass of CO_2 produced (if applicable), the mass of CO_2 emitted from subsurface leakage, and the mass of CO_2 geologically sequestered in accordance with the procedures as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) If you do not report CO_2 emitted as fugitive or vented emissions from surface equipment at your facility in the reporting year under subpart W of this part, you must report them under subpart RR of this part in accordance with the procedures specified in subpart W of this part for each type of surface equipment. If you report these emissions under subpart W of this part, you do not need to report these emissions under subpart RR of this part.

(2) You must calculate the annual mass of CO_2 produced from oil or gas production wells (if applicable) at the facility for each separator that sends a stream of gas into a recycle or end use system in accordance with the procedures specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) For each gas-liquid separator for which flow is measured using a mass flow meter, you must calculate annually the total mass of CO_2 produced from an oil or gas stream in metric tons by multiplying the mass flow by the CO_2 concentration in the flow, according to Equation RR–7 of this section. You must collect these data quarterly. Mass flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,w} = \sum_{p=1}^{4} Q_{p,w} * C_{CO_{2,p,w}} \qquad \text{(Eq. RR-7)}$$

Where:

$CO_{2,w}$ = Annual CO_2 mass produced (metric tons) through separator w.
$Q_{p,w}$ = Quarterly mass flow rate measurement for separator w in quarter p (metric tons per quarter).
$C_{CO2,p,w}$ = Quarterly CO_2 concentration measurement in flow for separator w in quarter p (wt. % $CO_2/100$).
p = quarter.
w = separator.

(ii) For each gas-liquid separator for which flow is measured using a volumetric flow meter, you must calculate annually the total mass of CO_2 produced from an oil or gas stream in metric tons by multiplying the volumetric flow at standard conditions by the CO_2 concentration in the flow and the density of CO_2 at standard conditions, according to Equation RR–8 of this section. You must collect these data quarterly. Volumetric flow and concentration data measurements must be made in accordance with § 98.444.

$$CO_{2,w} = \sum_{p=1}^{4} Q_{p,w} * D_{p,w} * C_{CO_{2},p,w} \qquad \text{(Eq. RR-8)}$$

Where:

$CO_{2,w}$ = Annual CO_2 mass produced (metric tons) through separator w.

$Q_{p,w}$ = Volumetric flow rate measurement for separator w in quarter p at standard conditions (standard cubic meters per quarter).

$D_{p,w}$ = Density of CO_2 at standard conditions (metric tons per standard cubic meter): 0.0018704.

$C_{CO2,p,w}$ = CO_2 concentration measurement in flow for separator w in quarter p (wt. % CO_2/100).

p = quarter.

w = separator.

(iii) To aggregate production data at the facility level, you must sum the mass of all of the CO_2 separated at each gas-liquid separator at the facility in accordance with the procedure specified in Equation RR–9 of this section. You must assume that the total CO_2 measured at the separator(s) represents (100–X)% of the total CO_2 produced. In order to account for the X% of CO_2 produced that is estimated to remain with the produced oil and gas, you must multiply the quarterly mass of CO_2 measured at the separator(s) by (100+X)%. The value of X must be estimated using a methodology approved by EPA per your MRV plan.

$$CO_{2P} = (100 + X)\% * \sum_{w=1}^{W} CO_{2,w} \qquad \text{(Eq. RR-9)}$$

Where:

CO_{2P} = Total annual CO_2 mass produced (metric tons) through all separators in the reporting year.

$CO_{2,w}$ = Annual CO_2 mass produced (metric tons) through separator w in the reporting year.

X = Percent of CO_2 that is estimated to remain with the produced oil and gas.

w = separator.

(3) You must report the annual mass of CO_2 that is emitted from each leakage pathway identified in your MRV plan. You must calculate the total annual mass of CO_2 emitted from all leakage pathways at the facility in accordance with the procedure specified in Equation RR–10 of this section.

$$CO_{2E} = \sum_{x=1}^{X} CO_{2,x} \qquad \text{(Eq. RR-10)}$$

Where:

CO_{2E} = Total annual CO_2 mass emitted from the subsurface geologic formation (metric tons) at the facility in the reporting year.

$CO_{2,x}$ = Annual CO_2 mass emitted (metric tons) at leakage pathway x in the reporting year.

x = leakage pathway.

(4) You must report the annual mass of CO_2 that is sequestered in the subsurface geologic formation in the reporting year in accordance with the procedures specified in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(i) GS facilities that are conducting enhanced recovery operations and that are actively producing oil or natural gas must calculate the annual mass of CO_2 that is sequestered in the underground subsurface formation in the reporting year in accordance with the procedure specified in Equation RR–11 of this section.

$$CO_2 = CO_{2I} - CO_{2P} - CO_{2E} - CO_{2FI} - CO_{2FP} \qquad \text{(Eq. RR-11)}$$

Where:

CO_2 = Total annual CO_2 mass sequestered in the subsurface geologic formation (metric tons) at the facility in the reporting year.

CO_{2I} = Total annual CO_2 mass injected (metric tons) at the facility in the reporting year.

CO_{2P} = Total annual CO_2 mass produced (metric tons) at the facility in the reporting year.

CO_{2E} = Total annual CO_2 mass emitted (metric tons) from the subsurface geologic formation in the reporting year.

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) as fugitive or vented emissions from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

CO_{2FP} = Total annual CO_2 mass emitted (metric tons) as fugitive or vented emissions from equipment located on the surface between the production wellhead and of the flow meter used to measure production quantity.

(ii) GS facilities that are not actively producing oil or natural gas must calculate the annual mass of CO_2 that is sequestered in the subsurface geologic formation in the reporting year in accordance with the procedures specified in Equation RR–12 of this section.

$$CO_2 = CO_{2I} - CO_{2E} - CO_{2FI} \qquad \text{(Eq. RR-12)}$$

Where:

CO_2 = Total annual CO_2 mass sequestered in the subsurface geologic formation (metric tons) at the facility in the reporting year.

CO_{2I} = Total annual CO_2 mass injected (metric tons) at the facility in the reporting year.

CO_{2E} = Total annual CO_2 mass emitted (metric tons) from the subsurface geologic formation in the reporting year.

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) as fugitive or vented emissions from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

§ 98.444 Monitoring and QA/QC requirements.

(a) All reporters must adhere to the requirements and procedures in paragraph (a) in this section if there has been no EPA direction or order specifying a preferred method of measurement.

(1) You must determine the quantity transferred by following the most appropriate of the following procedures:

(i) A reporter can measure quantity at the custody transfer meter installed at the facility boundary prior to any subsequent processing operations at the facility.

(ii) If you took ownership of the CO_2 in a commercial transaction, you can use the quantity data from the sales contract if it is a one-time transaction or from invoices or manifests if it is an ongoing commercial transaction with discrete shipments.

(2) The point of measurement for the quantity injected is specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(i) For facilities regulated by the Underground Injection Control program, the point of measurement is the flow meter installed at the facility you already use to comply with the flow monitoring and reporting provisions of your Underground Injection Control permit.

(ii) For facilities not regulated by the Underground Injection Control program because they are outside of Safe Drinking Water Act jurisdiction, the point of measurement is the flow meter installed at the facility you already use to comply with the flow monitoring and reporting provisions of your relevant permit. If no such requirement exists, the point of measurement is the flow meter installed closest to the point of injection at your facility.

(3) You must determine the quantity injected by using a flow meter or meters.

(4) You must operate and calibrate all flow meters used to measure quantities reported in § 98.443 according to the following procedure:

(i) You must use an appropriate standard method published by a consensus-based standards organization if such a method exists. Consensus-based standards organizations include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB).

(ii) Where no appropriate standard method developed by a consensus-based standards organization exists, you must follow industry standard practices.

(iii) You must ensure that any flow meter calibrations performed are NIST traceable.

(5) You must determine concentration of the transferred CO_2 stream by following the most appropriate of the following procedures:

(i) A reporter can sample the CO_2 stream at the point of transfer and measure its concentration.

(ii) If you took ownership of the CO_2 in a commercial transaction for which the sales contract was contingent on CO_2 concentration, and if the supplier of the CO_2 sampled the CO_2 stream and measured its concentration per the sales contract terms, you can use the CO_2 concentration data from the sales contract.

(6) You must determine the CO_2 concentration of the injected CO_2 stream by measuring immediately downstream of the flow meter as specified in paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(7) If you measure the concentration of any CO_2 quantity for reporting, you must use methods that conform to applicable chemical analytical standards. Acceptable methods include U.S. Food and Drug Administration food-grade specifications for CO_2 (*see* 21 CFR 184.1240) and ASTM standard E1747–95 (Reapproved 2005) Standard Guide for Purity of Carbon Dioxide Used in Supercritical Fluid Applications (incorporated by reference, *see* § 98.7).

(8) You must determine the transferred CO_2 concentration and flow quarterly.

(9) You must sample the injected CO_2 concentration and calculate the flow quarterly.

(10) You must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

(11) If you measure the flow of the CO_2 transferred or injected with a volumetric flow meter, you shall convert all measured volumes of carbon dioxide to the following standard industry temperature and pressure conditions for use in equations RR–2 and RR–5: Standard cubic meters at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 1 atmosphere.

(b) GS facilities must additionally submit an MRV plan to EPA, receive approval from EPA, and adhere to the requirements and procedures in paragraph (b) of this section.

(1) You must adhere to paragraphs (a)(1) through (a)(11) of this section.

(2) For reporters who are not required to report the quantity of CO_2 emitted as fugitive or vented emissions from surface equipment at the injection site under subpart W of this part, and are thereby required to report fugitive and vented emissions from surface equipment under this subpart, monitoring and QA/QC requirements for these data should be followed in accordance with procedures specified in subpart W of this part.

(3) The point of measurement for the quantity of CO_2 produced from oil or natural gas production wells at the GS facility is a flow meter directly downstream of each separator that sends a stream of gas into a recycle or end use system.

(4) The point of measurement for the concentration of the stream of CO_2 produced is directly downstream of each separator that sends a stream of gas into a recycle or end use system.

(5) You must sample the produced CO_2 concentration and flow quarterly.

(6) A reporter must follow the procedures outlined in the most recent MRV plan submitted to and approved by EPA to determine the quantity of CO_2 emitted from the subsurface geologic formation and the percent of CO_2 that is estimated to remain with the produced oil and natural gas.

(c) For 2011, a facility that is subject to this rule only because of a CO_2 injection well(s) that does not meet the definition of GS facility in § 98.440(c) may follow the provisions of § 98.3(d)(1) through (3) for best available monitoring methods rather than follow the monitoring requirements of this section. For purposes of this subpart, any reference to the year 2010 in § 98.3(d)(1) through (3) shall mean 2011.

(d) All flow meters must be operated continuously.

(e) If you measure the flow of the CO_2 produced with a volumetric flow meter, you shall convert all measured volumes of carbon dioxide to the following standard industry temperature and pressure conditions for use in equation RR–8: Standard cubic meters at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 1 atmosphere.

§ 98.445 Procedures for estimating missing data.

(a) A complete record of all measured parameters used in the GHG quantities calculations is required. Whenever the quality assurance procedures for all facilities covered under this subpart cannot be followed to measure flow and concentration, the most appropriate of the following missing data procedures must be followed if EPA has not specified a preferred procedure:

(1) A quarterly quantity of CO_2 injected that is missing must be estimated using the quantity of CO_2 injected from the nearest previous period of time at a similar injection pressure.

(2) A quarterly quantity of new CO_2 transferred onto the facility from offsite that is missing must be estimated using the quantity of new CO_2 flow based on supplier data or supplier-operated flow meters.

(3) A quarterly concentration value that is missing must be estimated using a concentration value from the nearest previous time period.

(b) A complete record of all measured parameters used in the GHG quantities calculations is required. Whenever the quality assurance procedures for facilities conducting GS cannot be followed, the most appropriate of the following missing data procedures must be followed:

(1) For any values associated with fugitive or vented CO_2 emissions from surface equipment at the facility that are reported in this supbart, missing data estimation procedures should be followed in accordance with those specified in subpart W of this part.

(2) The annual quantity of CO_2 produced from the subsurface geologic formation that is missing must be estimated according to the following:

(i) If an applicable procedure was included in the reporter's MRV plan submitted to EPA, that procedure must be applied.

(ii) If the procedure included in the reporter's MRV plan is not applicable, or if the reporter did not include a procedure in the MRV plan, the reporter must estimate annual quantity of CO_2 produced by subtracting the annual quantity of CO_2 transferred onsite from offsite from the annual quantity of CO_2 injected.

(3) The annual quantity of CO_2 emitted from the subsurface geologic formation must be estimated following the procedure included in the reporter's MRV plan submitted to EPA.

(4) All other missing data procedures as outlined in your approved MRV plan must be followed.

§ 98.446 Data reporting requirements.

In addition to the information required by § 98.3(c), report the information listed in this section. Facilities that are subject to this rule only because of CO_2 injection wells and that do not meet the definition of GS facility in § 98.440(c) do not report the information in § 98.3(c)(4).

(a) For each transfer point flow meter (mass or volumetric), report:

(1) CO_2 quantity transferred onsite (metric tons or standard cubic meters, as appropriate) in each quarter.

(2) CO_2 concentration in flow (volume or wt. % CO_2/100) in each quarter.

(3) If a volumetric flow meter is used, volumetric flow rate at standard conditions (standard cubic meters) in each quarter.

(4) If a mass flow meter is used, mass flow rate (metric tons) in each quarter.

(5) The standard used to calculate each value in paragraphs (a)(1) through (a)(4) of this section.

(6) The number of times in the reporting year for which substitute data procedures were used to calculate values reported in paragraphs (a)(1) through (a)(4) of this section.

(b) For each injection flow meter (mass or volumetric), report:

(1) CO_2 quantity injected (metric tons or standard cubic meters) in each quarter.

(2) CO_2 concentration in flow (volume or wt. % CO_2/100) in each quarter.

(3) If a volumetric flow meter is used, volumetric flow rate at standard conditions (standard cubic meters) in each quarter.

(4) If a mass flow meter is used, mass flow rate (metric tons) in each quarter.

(5) The standard used to calculate each value in paragraphs (b)(1) through (b)(4) of this section.

(6) The number of times in the reporting year for which substitute data procedures were used to calculate values reported in paragraphs (b)(1) through (b)(4) of this section.

(c) The source of the supplied CO_2, if known, according to the following categories:

(1) CO_2 production wells.

(2) Electric generating unit.

(3) Ethanol plant.

(4) Pulp and paper mill.

(5) Natural gas processing.

(6) Other anthropogenic source.

(7) Unknown.

(d) The total CO_2 received onsite (metric tons) in the reporting year as calculated in Equation RR–3.

(e) The total CO_2 injected (metric tons) in the reporting year as calculated in Equation RR–6.

(f) GS facilities must also report the following information:

(1) If you do not report under subpart W of this part, report the annual fugitive and vented CO_2 emissions from surface equipment (metric tons) located in the GS facility under this subpart.

(2) Annual CO_2 mass emitted (metric tons) as fugitive or vented emissions from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

(3) Annual CO_2 mass emitted (metric tons) as fugitive or vented emissions from equipment located on the surface between the production wellhead and of the flow meter used to measure production quantity.

(4) For each separator flow meter (mass or volumetric), report:

(i) CO_2 quantity produced (metric tons or standard cubic meters) in each quarter.

(ii) CO_2 concentration in flow (volume or wt. % CO_2/100) in each quarter.

(5) For each separator volumetric flow meter, volumetric flow rate at standard conditions (standard cubic meters) in each quarter.

(6) For each separator mass flow meter, mass flow rate (metric tons) in each quarter.

(7) The standard used to calculate each value in paragraphs (f)(4) through (f)(6) of this section.

(8) The number of times in the reporting year for which substitute data procedures were used to calculate values reported in paragraphs (f)(4) through (f)(6) of this section.

(9) The value for X (%) used in Equation RR–9 and as determined in your MRV plan.

(10) Annual CO_2 produced in the reporting year as calculated in Equation RR–9.

(11) For each leakage pathway, report the CO_2 (metric tons) emitted through that pathway in the reporting year.

(12) Annual CO_2 mass emitted (metric tons) from the subsurface geologic formation at the facility in the reporting year as calculated by Equation RR–10.

(13) Annual CO_2 (metric tons) sequestered in the subsurface geologic formation in the reporting year as calculated by Equation RR–11 or RR–12.

(14) Cumulative mass of CO_2 reported as sequestered in the subsurface geologic formation in all years since you began reporting.

(15) Date that the most recent MRV plan was approved and the MRV plan approval number that was issued by EPA.

(16) Whether any of the MRV plan resubmissions scenarios were triggered in the reporting year such that you must submit a new MRV plan in the following year.

(17) If the well is permitted by an Underground Injection Control permitting authority, for each injection well, report:

(i) The well ID number used for the Underground Injection Control permit.

(ii) The Underground Injection Control permit class.

(18) Any other reporting requirement that is specified in your MRV plan.

§ 98.447 Records that must be retained.

In addition to the records required by § 98.3(g), you must retain the records specified in paragraphs (a) through (c) of this section, as applicable.

(a) You must retain quarterly records of injected CO_2 and CO_2 transferred onto the facility from offsite sources,

including mass flow or volumetric flow at standard conditions and operating conditions, operating temperature and pressure, and concentration of these streams.

(b) GS facilities must retain:

(1) Quarterly records of produced CO_2, if applicable, including mass flow or volumetric flow at standard conditions and operating conditions, operating temperature and pressure, and concentration of these streams.

(2) Annual records of the emitted CO_2 from subsurface geologic formation leakage pathways.

(3) Any other records as outlined for retention in your MRV plan.

§ 98.448 Geologic Sequestration Monitoring, Reporting, and Verification (MRV) Plan.

(a) A GS facility as defined in § 98.440(c) of this subpart must follow the procedures outlined in this section to develop a monitoring, reporting, and verification (MRV) plan, submit it to EPA, receive approval from EPA on the plan, implement the plan, and submit annual report addenda.

(1) You must develop an MRV plan that contains the following components.

(i) An assessment of the risk of leakage of CO_2 to the surface.

(ii) A strategy for detecting and quantifying any CO_2 leakage to the surface.

(iii) A strategy for establishing pre-injection environmental baselines.

(iv) Summary of considerations made to calculate site-specific variables for the mass balance equation.

(2) A facility that injects CO_2 to enhance the recovery of oil or natural gas or a facility that is not required to report as a GS facility can voluntarily submit the MRV plan to EPA at any time.

(3) A GS facility that does not inject CO_2 to enhance the recovery of oil or natural gas must submit the MRV plan on the following schedule.

(i) A GS facility must submit the MRV plan to EPA (A) within six months from the time the facility's Underground Injection Control permitting authority (or relevant permitting authority in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act) confirms the area of review or (B) by December 31 of the year that that the Underground Injection Control permitting authority (or relevant permitting authority in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act) confirms the area of review, whichever date is later. A facility will be allowed to request one extension of up to an additional six months.

(ii) If the GS facility holds an Underground Injection Control permit (or relevant permit in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act) as of the date of publication of this subpart or if the Underground Injection Control permitting authority (or relevant permitting authority in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act) has confirmed the area of review as of the date of publication of this subpart, such facility must submit the MRV plan to EPA within six months of the date of publication of this subpart. A facility will be allowed to request one extension of up to an additional six months.

(4) If you are using an Underground Injection Control Class VI permit to demonstrate that MRV plan requirements have been satisfied and the Underground Injection Control Class VI permit has not been approved, you must submit the identification number associated with the Underground Injection Control Class VI permit application and notify EPA when the Underground Injection Control Class VI permit has been approved.

(5) Upon MRV plan submission, the following approval process will apply.

(i) On a case-by-case basis, EPA will determine if the submitted MRV plan is complete, and evaluate the MRV plan to ensure that the facility has an appropriate strategy in place to effectively quantify geologically sequestered CO_2.

(ii) You must implement the EPA-approved MRV plan once the plan is final, regardless of the point in the reporting year.

(6) If adjustments to the MRV plan are made due to new information or altered site conditions or if a leak is detected in a calendar year, you must submit an addendum at the same time as the next annual report (March 31 of the subsequent calendar year) that includes the following components.

(i) A description of the leak including all assumptions, methodology, and technologies involved in leakage detection and quantification, if a leak was detected.

(ii) A description of how the monitoring strategy was adjusted, if adjustments were made.

(7) The MRV plan must be revised and resubmitted to EPA by March 31 of the calendar year following any of the following events.

(i) The reporter is out of compliance with its Underground Injection Control permit (or relevant permit in the case of a facility that is not under the jurisdiction of the Safe Drinking Water Act).

(ii) An EPA audit conducted under the verification procedures of this part determines it to be necessary.

(8) An MRV plan may be resubmitted in any reporting year on a reporter's own volition.

(9) Each MRV plan and annual report addendum must be submitted electronically in a format specified by the Administrator.

(b) [Reserved]

§ 98.449 Definitions.

All terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

Leakage means the movement of CO_2 from the injection zone to the surface, including to the atmosphere, indoor air, oceans or surface water.

Research and development means, for the purposes of geologic sequestration facility requirements in this subpart, those projects receiving Federal funding to research practices and monitoring techniques that will enable safe and effective long-term containment of a gaseous, liquid, or supercritical CO_2 stream in subsurface geologic formations that are neither demonstration nor commercial projects.

Separator means a vessel in which streams of multiple phases are gravity separated into individual streams of single phase.

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April 12, 2010

Part III

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0923; FRL–9131–1]

RIN 2060–AP99

Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a supplemental rule to require reporting of greenhouse gas (GHG) emissions from petroleum and natural gas systems. Specifically, the proposed supplemental rulemaking would require emissions reporting from the following industry segments: Onshore petroleum and natural gas production, offshore petroleum and natural gas production, natural gas processing, natural gas transmission compressor stations, underground natural gas storage, liquefied natural gas (LNG) storage, LNG import and export terminals, and distribution. The proposed supplemental rulemaking does not require control of GHGs, rather it requires only that sources above certain threshold levels monitor and report emissions.

DATES: Comments must be received on or before June 11, 2010. There will be one public hearing. The hearing will be on April 19, 2010 in Arlington, VA and will begin at 8 a.m. local time and end at 5 p.m. local time.

ADDRESSES: You may submit your comments, identified by docket EPA–HQ–OAR–2009–0923 and/or RIN number 2060–AP99 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHG_Reporting_Rule_Oil_and_Natural_Gas@epa.gov.* Include EPA–HQ–OAR–2009–0923 and/or RIN number 2060–AP99 in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Phone:* (202) 566–1744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Attention Docket EPA–HQ–OAR–2009–0923, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center Public Reading Room, Room 3334, EPA West Building, Attention Docket EPA–HQ–OAR–2009–0923, 1301 Constitution Avenue, NW., Washington, DC 20004. 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–OAR–2009–0923. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA's Docket Center, Public Reading Room, EPA West Building, 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 telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER GENERAL 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: *GHGMRR@epa.gov.* For technical information contact the Greenhouse Gas Reporting Rule Hotline at telephone number: (877) 444–1188; or e-mail: *GHGMRR@epa.gov.* To obtain information about the public hearings or to register to speak at the hearings, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

SUPPLEMENTARY INFORMATION: EPA first proposed Mandatory GHG Reporting requirements for petroleum and natural gas systems (under 40 CFR, part 98, subpart W) in April 2009. EPA received a substantial number of comments on this initial proposal for petroleum and natural gas systems. For this reason, EPA decided not to finalize the rule for petroleum and natural gas systems, and instead to propose a supplemental rule.

EPA reviewed and considered comments submitted on the previous proposal in drafting this proposed supplemental rulemaking. However, as this is a new proposal, EPA is not here responding to comments on the earlier version of this rule. Any comments must be submitted as provided herein, to be considered. A more detailed background concerning the subpart W rulemaking and proposed changes can be found in section II–A.

Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9263, e-mail: *GHG_Reporting_Rule_Oil_and_Natural_Gas@epa.gov.*

Although as indicated above, EPA previously proposed a version of this rule, that proposal never became final. This is a newly proposed rule and comments which were submitted on the earlier version of the rule are not being considered in the context of this rule. Any parties interested in commenting must do so at this time.

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.").

This is a proposed regulation. If finalized, these regulations would affect owners or operators of petroleum and natural gas systems. Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source Category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

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. 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 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 proposed 40 CFR part 98, subpart A or the relevant criteria in the sections related to petroleum and natural gas systems. 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 that are affected by the proposed supplemental rule have GHG emissions from multiple source categories listed in Table 1 of this preamble. Table 2 of this preamble has been developed as a guide to help potential reporters in the petroleum and natural gas industry subject to the proposed rule identify the source categories (by subpart) that they may need to (1) consider in their facility applicability determination, and/or (2) include in their reporting. The table should only be seen as a guide. Additional subparts in 40 CFR part 98 may be relevant for a given reporter. Similarly, not all listed subparts are relevant for all reporters.

TABLE 2—SOURCE CATEGORIES AND RELEVANT SUBPARTS

Source category	Other Subparts recommended for review to determine applicability
Petroleum and Natural Gas Systems	40 CFR part 98, subpart C.
	40 CFR part 98, subpart Y.
	40 CFR part 98, subpart MM.
	40 CFR part 98, subpart NN.
	40 CFR part 98, subpart PP.
	40 CFR part 98, subpart RR (proposed).

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ASTM American Society for Testing and Materials
CAA Clean Air Act
CBI confidential business information
cf cubic feet
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e CO_2-equivalent
EO Executive Order
EOR enhanced oil recovery
EPA U.S. Environmental Protection Agency
GHG greenhouse gas
GWP global warming potential
ICR information collection request
IPCC Intergovernmental Panel on Climate Change
kg kilograms
LDCs local natural gas distribution companies
LNG liquefied natural gas
LPG liquefied petroleum gas
MRR mandatory GHG reporting rule
$MMTCO_2e$ million metric tons carbon dioxide equivalent
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
OMB Office of Management and Budget
QA quality assurance
QA/QC quality assurance/quality control
RFA Regulatory Flexibility Act
RGGI Regional Greenhouse Gas Initiative
SSM startup, shutdown, and malfunction
TCR The Climate Registry
TSD technical support document
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VOC volatile organic compound(s)
WCI Western Climate Initiative

Table of Contents

I. Background

A. Organization of This Preamble

This preamble is broken into several large sections, as detailed above in the Table of Contents. The paragraphs below describe the layout of the preamble and provide a brief summary of each section.

The first section of this preamble contains the basic background information about the origin of this proposed supplemental rulemaking, including a discussion of the initial proposed rule for petroleum and natural gas systems. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect the proposed data, and the benefits of collecting the data. The relationship between the mandatory GHG reporting program and other mandatory and voluntary reporting programs at the national, regional and State level also is discussed.

The second section of this preamble summarizes the general provisions of this proposed supplemental rulemaking for petroleum and natural gas systems. It also highlights the major changes between the initial proposed rule and the supplemental rule that we are proposing today, including changes in the scope of the proposed rule and the monitoring methods proposed. This section then provides a brief summary of, and rationale for, selection of key design elements. Specifically, this section describes EPA's rationale for (i) the definition of the source category (ii) selection of reporting thresholds (iii) selection of monitoring methods, (iv) missing data procedures (v) proposed data reporting requirements, and (vi) recordkeeping requirements. Thus, for example, there is a specific discussion regarding appropriate thresholds, monitoring methodologies and reporting and recordkeeping requirements for each segment of the petroleum and natural gas industry proposed for inclusion in the rule: onshore petroleum and natural gas production, offshore petroleum and natural gas production, natural gas processing, natural gas transmission compressor stations, natural gas underground storage, LNG storage, LNG import and export terminals, and distribution. EPA describes the proposed options for each design element, as well as the other options considered. Throughout this discussion, EPA highlights specific issues on which we solicit comment. Please refer to the specific source category of interest for more details.

The third section provides the summary of the cost impacts, economic impacts, and benefits of this proposed rule from the Economic Analysis. Finally, the last section discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on the Proposed Rule

The Final Mandatory GHG Reporting Rule ("Final MRR"), (40 CFR part 98) was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 209 (October 30, 2009) pp. 56260–56519). The Final MRR which is effective on December 29, 2009 included reporting of GHGs from facilities and suppliers that EPA determined met the criteria in the 2008 Consolidated Appropriations Act.[1] These source categories capture approximately 85 percent of U.S. GHG emissions through reporting by direct emitters as well as suppliers of fossil fuels and industrial gases. There are, however, many additional types of data and reporting that the Agency deems important and necessary to address an issue as large and complex as climate change (*e.g.* indirect emissions from electricity use). In that sense, one could view the Final MRR (40 CFR part 98) as focused on certain sources of emissions and upstream suppliers. For information on existing programs at the Federal, Regional and State levels that also collect valuable information to inform and implement policies necessary to address climate change, relationship of the Final MRR to EPA and U.S. government climate change efforts and to other State and Regional Programs, see the Preamble to the Final MRR.

In the April 2009 proposed mandatory GHG reporting rule the petroleum and natural gas systems subcategory was included as Subpart W. EPA received a number of lengthy, detailed comments regarding this subpart W proposal. Some comments were focused on the significant cost burden that the April 2009 proposed rule would impose on petroleum and natural gas systems, whereas others focused on whether certain sources, such as onshore production and distribution, that were not included in the initial proposal, should be included. EPA recognized the concerns raised by stakeholders, and decided not to finalize subpart W with the Final MRR, but instead to propose a new supplemental rule for petroleum and natural gas systems. This proposed supplemental rule incorporates a number of changes including, but not limited to, different methodologies that provide improved emissions coverage at a lower cost burden to facilities than would have been covered under the initial proposed rule; the inclusion of onshore production and distribution facilities; and separate definitions for "vented" and "fugitive" emissions. As noted earlier, stakeholders should submit comments in the context of this new proposed supplemental rule.

This proposed supplemental rule 40 CFR part 98, subpart W requires annual reporting of fugitive and vented carbon dioxide (CO_2) and methane (CH_4) emissions from petroleum and natural gas systems facilities, as well as combustion-related CO_2, CH_4, and nitrous oxide (N_2O) emissions from flares at those facilities, following the methods outlined in the proposal. This proposed rule would also establish appropriate thresholds and frequency for reporting, as well as provisions to ensure the accuracy of emissions through monitoring, reporting and recordkeeping requirements.

This proposed rule applies to facilities in specific segments of the petroleum and natural gas industry that emit GHGs greater than or equal to 25,000 metric tons of CO_2 equivalent per year. Reporting would be at the facility level.

C. Legal Authority

EPA is proposing this rule under its existing CAA authority, specifically authorities provided in section 114 of the CAA. As discussed further below and in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Legal Issues" (EPA–HQ–OAR–2008–0508–2264), EPA is not citing the FY 2008 Consolidated Appropriations Act as the statutory basis for this action. While that law required that EPA spend no less than $3.5 million on a rule requiring the mandatory reporting of GHG emissions, it is the CAA, not the Appropriations Act, that EPA is citing as the authority to gather the information proposed by this rule.

As stated in the Final MRR, CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA's carrying out a wide variety of CAA provisions. As discussed in the initial proposed rule (74 FR 16448, April 10, 2009), section 114(a)(1) of the CAA authorizes the Administrator to require emissions sources, persons

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

subject to the CAA, manufacturers of 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 notes that comments were submitted on the initial rule proposal questioning EPA's authority under the Clean Air Act to collect emissions information from certain offshore petroleum and natural gas platforms. Some commenters argued that EPA does not have the authority to collect emissions information from offshore platforms located in areas of the Western Gulf because they are under the jurisdiction of the Department of the Interior. They cited, among other things, the Outer Continental Shelf Act, 43 U.S.C. 1334. Without opining on the accuracy of the commenter's summary of OCSLA or other law, we note that even the commenter describes these authorities as relating to the regulation of air emissions. Today's proposal does not regulate GHG emissions; rather it gathers information to inform EPA's evaluation of various CAA provisions. Moreover, EPA's authority under CAA Section 114 is broad, and extends to any person "who the Administrator believes may have information necessary for the purposes" of carrying out the CAA, even if that person is not subject to the CAA. Indeed, by specifically authorizing EPA to collect information from both persons subject to any requirement of the CAA, as well as any person who the Administrator believes may have necessary information, Congress clearly intended that EPA could gather information from a person not otherwise subject to CAA requirements. EPA is comprehensively considering how to address climate change under the CAA, including both regulatory and non-regulatory options. The information from these and other offshore platforms will inform our analyses, including options applicable to emissions of any offshore platforms that EPA is authorized to regulate under the CAA.

EPA is proposing to amend 40 CFR 98.2(a) so that the final MRR applies to facilities located in the United States and on or under the Outer Continental Shelf. These revisions are necessary to ensure that any petroleum or natural gas platforms located on our under the Outer Continental Shelf of the United States would be required to report under this rule. In addition, EPA is proposing revisions to the definition of United States to clarify that the United States includes the territorial seas. Other facilities located offshore of the United States covered by the mandatory reporting program at 40 CFR part 98 would also be affected by this change in the definition of United States. Revising the definition of United States will also ensure that facilities located offshore of the United States that are injecting CO_2 into sub-seabed for long-term containment will also be required to report data regarding greenhouse gases. EPA is proposing a separate rule on geologic sequestration and any comments specific to that issue should be directed to the Agency on that rulemaking not this one. Finally, in addition to the change to the definition of United States, EPA is adding a definition of "Outer Continental Shelf." This definition is drawn from the definition in the U.S. Code. Together, these changes make clear that the Mandatory GHG Reporting Rule applies to facilities on land, in the territorial seas, or on or under the Outer Continental Shelf, of the United States, and that otherwise meet the applicability criteria of the rule.

For further information about EPA's legal authority, see the proposed and final MRR.

D. Relationship to Other Federal, State and Regional Programs

In developing the initial proposal for mandatory reporting from petroleum and natural gas systems that was released in April 2009, as well as this supplemental proposed rulemaking, EPA reviewed monitoring methods included in international guidance (*e.g.,* Intergovernmental Panel on Climate Change), as well as Federal voluntary programs (*e.g.,* EPA Natural Gas STAR Program and the U.S. Department of Energy Voluntary Reporting of Greenhouse Gases Program (1605(b)), corporate protocols (*e.g.,* World Resources Institute and World Business Council for Sustainable Development GHG Protocol) and industry guidance (*e.g.,* methodological guidance from the American Petroleum Institute, the Interstate Natural Gas Association of America, and the American Gas Association).

EPA also reviewed State reporting programs (*e.g.,* California and New Mexico) and Regional partnerships (*e.g.,* The Climate Registry, the Western Regional Air Partnership). These are important programs that not only led the way in reporting of GHG emissions before the Federal government acted but also assist in quantifying the GHG reductions achieved by various policies. Many of these programs collect different or additional data as compared to this proposed rule. For example, State programs may establish lower thresholds for reporting, request information on areas not addressed in EPA's reporting rule, or include different data elements to support other programs (*e.g.,* offsets). For further discussion on the relationship of this proposed rule to other programs, refer to the preamble to the Final MRR.

II. Rationale for the Reporting, Recordkeeping and Verification Requirements

A. Overview of Proposal

The U.S. petroleum and natural gas industry encompasses hundreds of thousands of wells, hundreds of processing facilities, and over a million miles of transmission and distribution pipelines. This proposed rule would apply to the calculation and reporting of vented, fugitive, and flare combustion emissions from selected equipment at the following facilities that emit equal to or greater than 25,000 metric tons of CO_2 equivalent per year from source categories covered by the mandatory GHG reporting rule: offshore petroleum and natural gas production facilities, onshore petroleum and natural gas production facilities (including enhanced oil recovery (EOR)), onshore natural gas processing facilities, onshore natural gas transmission compression facilities, onshore natural gas storage facilities, LNG storage facilities, LNG import and export facilities and natural gas distribution facilities owned or operated by local distribution companies (LDCs). This proposal does not address the production of gas from landfills or manure management systems. Methods and reporting procedures for stationary combustion emissions other than flares at petroleum and natural gas industry facilities are covered under Subpart C of the Final MRR.

This proposed supplemental rule incorporates a number of different methodologies to provide improved emissions coverage at a lower cost burden to affected facilities, as compared to the initial proposed rule. In this supplemental proposal, EPA is requiring the use of direct measurement of emissions for only the most significant emissions sources where other options are not available, and proposing the use of engineering estimates, emissions modeling software, and leak detection and publicly available emission factors for most other vented and fugitive sources. For smaller fugitive and inaccessible to plain view sources, component count and population emissions factors are proposed. In the case of offshore platforms, EPA is recommending that

emissions sources identified under the Minerals Management Services (MMS) GOADS (Gulfwide Offshore Activities Data System) be used for reporting, and the GOADS process be extended to platforms in other Federal regions (*i.e.,* California and Alaska) and in State waters. The alternative methodologies proposed in this rule will provide similar or better estimation of vented and fugitive CH_4 and CO_2 emissions in the petroleum and gas industry, while significantly reducing industry burden.

Under this supplemental proposal, facilities not already reporting but required to report under subpart W would begin data collection in 2011 following the methods outlined in the proposed rule, and submit data to EPA by March 31, 2012.

EPA would require reporting of calendar year 2011 emissions in 2012 because the data are crucial to the timely development of future GHG policy and regulatory programs. In the Appropriation Act, Congress requested EPA to 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 considered, but decided not to propose, the use of best available monitoring methods for part (*e.g.,* the first three months) or all of the first year of data collection. EPA concluded that the time period that would be allowed under this schedule is sufficient to allow facilities to implement the monitoring methods that would be required by the proposed rule. In general, the proposed monitors are widely available and are not time consuming to install. Further, some of the monitoring methods (*e.g.,* use of emission factors) may not require the installation of any monitoring equipment. Finally, the emissions assessment may be done at any time during the year, and measurements do not necessarily need to be undertaken during the first quarter.

EPA seeks comment on the proposal not to allow use of best available monitoring methods for part or all of the first year of data collection. Further, if commenters recommend that EPA allow the use of best available monitoring methods for a designated time period (*e.g.,* three months), EPA seeks comments on whether requests for use of best available monitoring methods should only be approved for parameters subject to direct measurement, or also in cases where engineering calculations and/or emission factors are used.

Amendments to the General Provisions. In a separate rulemaking package that was recently published (March 16, 2010), EPA issued minor harmonizing changes to the general provisions for the GHG reporting rule (40 CFR part 98, subpart A) to accommodate the addition of source categories not included in the 2009 final rule (*e.g.,* subparts proposed in April 2009 but not finalized in 2009, any new subparts that may be proposed in the future). The changes update 98.2(a) on rule applicability and 98.3 regarding the reporting schedule to accommodate any additional subparts and the schedule for their reporting obligations (*e.g.,* source categories finalized in 2010 would not begin data collection until 2011 and reporting in 2012).

In particular, we restructured 40 CFR 98.2(a) to move the lists of source categories from the text into tables. A table format improves clarity and facilitates the addition of source categories that were not included in calendar year 2010 reporting and would begin reporting in future years. A table, versus list, approach allows other sections of the rule to be updated automatically when the table is updated; a list approach requires separate updates to the various list references each time the list is changed. In addition to reformatting the 98.2(a)(1)–(2) lists into tables, other sections of subpart A were reworded to refer to the source category tables because the tables make it clear which source categories are to be considered for determining the applicability threshold and reporting requirements for calendar years 2010, 2011, and future years.

Because facilities with petroleum and natural gas systems (as defined in proposed 40 CFR part 98, subpart W) would be subject to the rule if facility emissions exceed 25,000 metric tons CO_2e per year, in today's rule we are proposing to add this source category to those threshold categories referenced from 40 CFR 98.2(a)(2) whether the reference is to a list or a table.[2]

In today's proposal, we also propose to amend 40 CFR 98.6 to add definitions for several terms used in proposed 40 CFR part 98, subpart W and to clarify the meaning of certain terms for purposes of subpart W. We also propose to amend 40 CFR 98.7 (incorporation by reference) to include standard methods used in proposed subpart W. In particular, we propose to incorporate by reference the AAPG–CSD Geologic Code Provinces Code Map available from The American Association of Petroleum Geologists Bulletin, Volume 75, No. 10 (October 1991) pages 1644–1651. It would be used to define the geographic boundaries for reporting of onshore oil and gas production systems. We also proposed to incorporate by reference models, including Glycalc and E&P Tanks that would be used to calculate emissions and were not developed by the Federal government.

B. Summary of the Major Changes Since Initial Proposal

Mandatory GHG reporting requirements were proposed for Petroleum and Natural Gas Systems under Subpart W in April 2009 along with a number of other sectors of the economy. As noted in the Preamble to the Final MRR, EPA received a number of lengthy, detailed comments regarding Petroleum and Natural Gas Systems. In total, EPA received comments from over 80 organizations and over 1,200 pages of formal comments on the Petroleum and Gas Systems Initial Proposed Rule. Some comments proposed simplified alternatives to the proposed reporting requirements based on the potential that the proposed requirements would entail significant burden and cost. Other comments addressed whether to include onshore production and the distribution segment, which were excluded from the initial proposal as EPA sought comments on approaches for the level of reporting of fugitive and vented GHG emissions from these segments (*e.g.,* facility or corporate).

EPA has reviewed the comments and issues and suggestions raised by stakeholders within and outside the petroleum and natural gas industry related to emissions coverage and the level of cost burden in this sector. In response, EPA is proposing a new supplemental rule for Petroleum and Natural Gas Systems. This proposed supplemental rule now incorporates all segments of the petroleum and gas industry, adding onshore production and distribution.

Total fugitive, vented and combustion emissions estimated to be covered in this supplemental proposed rulemaking amount to 351 $MMTCO_2e$; 272 $MMTCO_2e$ from fugitive and vented emissions and 79 $MMTCO_2e$ from combustion emissions.[3] Fugitive and

[2] Since we are proposing to change the list of covered subcategories to tables, we are not providing regulatory text in this proposal because the preamble is clear.

[3] Some petroleum and natural gas facilities will already be required to report emissions from stationary combustion under the MRR that was

vented emissions estimates included in the supplemental proposed rulemaking are significantly higher than the 131 $MMTCO_2e$ reported in the 2008 U.S. Inventory of Greenhouse Gases, due to the inclusion of items believed to be under-reported in the inventory (discussed further below).

Table W–1 summarizes the estimated fugitive, vented and combustion emissions for the segments included in the initial proposal and the added segments of onshore production and distribution. Additional details can be found in the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions under Subpart W Supplemental Rule (EPA–HQ–OAR–2009–0923).

TABLE W–1—FUGITIVE/VENTED AND COMBUSTION EMISSIONS FROM PETROLEUM AND NATURAL GAS SYSTEMS, $MMTCO_2e$

Segment	Fugitive and vented emissions: Initial proposed rule	Fugitive and vented emissions: Supplemental proposed rulemaking	Combustion emissions: Supplemental proposed rulemaking
Initial Proposed Rule Six Segments	85	94.3	9.8
Onshore Production	NA	154.9	69.3
Natural Gas Distribution	NA	22.7	NA
Total Emissions	85	271.9	[1] 79.1

[1] This estimate reflects only incremental combustion emissions (*i.e.*, only those combustion emissions from facilities above and beyond what will already be required to be reported under the Final MRR). For example, combustion-related emissions ftrom many natural gas processing plants are already required to be reported under subpart C and are therefore not included here. The combustion estimate also includes combustion emissions from flares.

Inclusion of onshore production and distribution results in estimated fugitive and vented emissions that are more than triple the estimated emissions in the initial rule proposal for petroleum and natural gas systems.

In addition to expanding emissions coverage under the proposed supplemental rule, EPA has assessed a number of alternative methodologies that were either recommended by commenters or are known to provide effective quantification of emissions at a significantly lower cost burden. The changes include the use of:

- Limited use of fugitive leak detection.
- Leaker factors to quantify detected fugitive emissions.
- Population factors and component count for fugitive emissions that are widely scattered or inaccessible to plain view.
- Use of existing MMS GOADS methods and calculated emissions for offshore production facilities.
- Modeling software to quantify glycol dehydrator and tank emissions.
- Engineering estimation for well venting from liquids unloading.
- Engineering estimation for well venting from completions and workovers.
- Engineering estimation for well testing and flaring.
- Engineering estimation for flaring emissions.
- Limited sampling to determine gas composition.

Another significant change in the proposed supplemental rule is the use of the term "fugitives". The initial rule proposal from April 2009 included both vented and fugitive emissions sources, and collectively defined both sources as "fugitive". EPA received a large number of comments from industry stakeholders and others indicating that this definition created confusion. Hence EPA is defining vented emissions separately from fugitives in the supplemental proposed rulemaking. For this supplemental rulemaking, emissions from the petroleum and natural gas industry are defined as (1) vented emissions, which include intentional or designed releases of CH_4 and/or CO_2 containing natural gas or hydrocarbon gas (not including stationary combustion flue gas) from emissions sources including, but not limited to, process designed flow to the atmosphere through seals or vent pipes, equipment blowdown for maintenance, and direct venting of gas used to power equipment (such as pneumatic devices). In addition, this supplemental rule includes (2) fugitive emissions, or unintentional emissions, which are defined to include those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. This supplemental rule also includes (3) flare combustion emissions, which include CH_4, CO_2 and N_2O emissions resulting from combustion of gas in flares. EPA seeks comment on the use of the term "equipment leak" versus "fugitive" and "vented" as defined in the proposed supplemental rule.

C. Definition of the Source Category

EPA discusses here the general approach used in identifying the key segments of the petroleum and natural gas industry that would be required to report under the proposal. This general discussion is followed by a specific discussion for each industry segment.

One factor EPA considered in assessing the applicability of certain petroleum and natural gas industry emissions in the proposed rule is the definition of a facility. In other words, what physically constitutes a facility? This definition is important to determine the reporting entity, to ensure that delineation is clear, and to minimize double counting or omissions of emissions. For some segments of the industry (*e.g.,* onshore natural gas processing facilities, natural gas transmission compression facilities, and offshore petroleum and natural gas facilities), identifying the facility is clear since there are physical boundaries and ownership structures that lend themselves to identifying scope of reporting and responsible reporting entities. In other segments of the industry (*e.g.,* the pipelines between compressor stations and onshore petroleum and natural gas production) such distinctions are not as

signed in September 2009. This proposed petroleum and natural gas subpart will require additional facilities to report to the MRR that are not currently required to report. These facilities will have to report combustion, fugitive and vented emissions. These incremental combustion emissions are estimated at 79 $MMTCO_2e$.

straightforward. In defining a facility, EPA reviewed current definitions used in the Clean Air Act (CAA), ISO definitions, comments provided under the initial proposed rule, and current regulations relevant to the industry. A complete description of our assessment can be found in Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background Technical Support Document (TSD) (EPA–HQ–OAR–2009–0923).

At the same time, EPA also decided that it was impractical to include each of the over 160 different sources of vented and fugitive CH_4 and CO_2 emissions in the petroleum and natural gas industry. In response to comments received on the initial proposed rule, EPA undertook a systematic review of each emissions source included in the 2008 U.S. GHG Inventory in order to propose reporting of only the most significant emissions sources (*e.g.* emissions that account for the majority of oil and gas fugitive and vented emissions). In determining the most relevant vented and fugitive emissions sources for inclusion in this supplemental proposed rulemaking, EPA considered the following criteria: The coverage of emissions for the source category as a whole; the coverage of emissions per unit of the source category; the feasibility of a viable monitoring method, including direct measurement and engineering estimations; and the number of facilities that would be required to report. Sources that contribute significantly large emissions were considered for inclusion in this supplemental proposed rulemaking, since they increase the coverage of emissions reporting. Typically, at petroleum and gas facilities, 80 percent or more of a facility's emissions come from approximately 10 percent of the emissions sources. EPA used this benchmark to reduce the number of emissions sources required for reporting while keeping the reporting burden to a minimum. Sources in each segment of the petroleum and natural gas industry were sorted into two main categories: (1) The largest sources contributing to approximately 80 percent of the emissions from the segment, and (2) the sources contributing to the remaining 20 percent of the emissions from that particular segment. EPA assigned sources into these two groups by determining the emissions contribution of each emissions source to its relevant segment of the petroleum and gas industry, listing the emissions sources in a descending order, and identifying all the sources at the top that contribute to approximately 80 percent of the emissions. Generally, those sources that fell into approximately the top 80 percent were considered for inclusion. Details of the analysis can be found in Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923).

The following is a brief discussion of the proposed emission sources to be included and excluded based on our analysis. Additional information can be found in Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923. Note that this subpart of the GHG reporting rule addresses only vented, fugitive and flare combustion emissions. As mentioned previously, stationary combustion emissions are included in Subpart C of the Final MRR Preamble.

Onshore Petroleum and Natural Gas Production

The onshore petroleum and natural gas production segment uses wells to extract raw natural gas, condensate, crude oil, and associated gas from underground formations and inject CO_2 for EOR. Extraction includes several types of processes: Reservoir management, primary recovery, secondary recovery such as down-hole pumps, water flood or natural gas/nitrogen/immiscible CO_2 injection, and tertiary recovery such as using critical phase miscible CO_2 injection. The largest sources of CH_4 and CO_2 emissions include, but are not limited to, natural gas driven pneumatic devices and pumps, field crude oil and condensate storage tanks, glycol dehydration units, releases and flaring during well completions, well workovers, and well blowdowns for liquids unloading, releases and flaring of associated gas, and blowdowns of compressors and EOR pumps.

EPA is proposing to include the onshore petroleum and natural gas production segment due to the fact that these operations represent a significant emissions source, representing approximately 66 percent of fugitive, vented and incremental[4] combustion emissions from the petroleum and natural gas segments covered by the proposed rule.

EPA considered a range of possible options for reporting emissions from onshore petroleum and natural gas facilities. Although several options for defining the facility were considered and described below, EPA has determined that only two of the options are feasible: Basin-level reporting and field-level reporting. For this supplemental proposed rulemaking, EPA proposes that emissions from onshore petroleum and natural gas production be reported at the basin level. The reporting entity for onshore petroleum and natural gas production would be the operating entity listed on the state well drilling permit, or a state operating permit for wells where no drilling permit is issued by the state, who operates onshore petroleum and natural gas production wells and controls by means of ownership (including leased and rented) and operation (including contracted) stationary and portable (as defined in this Subpart) equipment located on all well pads within a single hydrocarbon basin as defined by the American Association of Petroleum Geologists (AAPG) three-digit Geological Province Code. The equipment referenced above includes all structures associated with wells used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate) including equipment that is leased, rented or contracted. This includes equipment such as compressors, generators or storage facilities, piping (such as flowlines or intra-facility gathering lines), and portable non-self-propelled equipment (such as well drilling and completion equipment, workover equipment, gravity separation equipment, auxiliary non-transportation-related equipment). This also includes associated storage or measurement equipment and all equipment engaged in gathering produced gas from multiple wells, EOR operations using CO_2, and all petroleum and natural gas production operations located on islands, artificial islands or structures connected by a causeway to land, an island, or artificial island.

Where more than one entity may hold the state well drilling permit, or well operating permit where no drilling permit is issued by the state, the permitted entities for the facility would be required to designate one entity to report all emissions from the jointly controlled facility. Where an operating entity holds more than one permit to operate wells in a basin, then all onshore petroleum and natural gas production well permits in their name in the basin, including all equipment on the well pads, would be considered one onshore petroleum and natural gas

[4] The denominator includes total fugitive and vented emissions, as well as any additional combustion related emissions that will be required to be reported by the petroleum and natural gas industry and that wasn't already covered in the final MRR.

production facility for purposes of reporting.

There are at least two industry recognized definitions available that identify hydrocarbon basins; one from the United State Geological Survey (USGS) and the other from the AAPG. The AAPG geologic definition is referenced to county boundaries and hence likely to be familiar to the industry, *i.e.* if the owner or operator knows in which county their well is located, then they know to which basin they belong. Basins are mapped to county boundaries only to give a surface manifestation to the underground geologic structures, thus making it easier to relate surface facilities to basin underground geologic boundaries. On the other hand, the USGS definition is based purely on the geology of the hydrocarbon basin without consideration of state and county boundaries. Hence using the USGS definition may make it more difficult to map surface operations to a particular basin. Therefore, EPA is proposing to use the AAPG definition of a basin. EPA seeks comments on the availability of other appropriate standard basin level definitions that could be applied for the purposes of this rule and their merits over the AAPG definition.

EPA is proposing a basin level approach, because the boundaries for reporting are clearly defined and the approach covers approximately 81 percent of emissions from onshore petroleum and natural gas production.

EPA evaluated and is taking comment on one alternative option for reporting from onshore petroleum and natural gas production; field level. Field level reporting would require aggregation of emissions from all covered equipment at onshore petroleum and natural gas production facilities at the field level, as opposed to the basin level as described above. A typical field level definition is available from the Energy Information Administration Oil and Gas Field Code Master. As outlined in the Economic Impact Analysis for this proposed rule, the field level option would result in a significantly lower coverage in emissions, estimated at 55 percent in comparison to the basin level coverage of 81 percent. In essence the two reporting options are not different from a methodological point of view because both definitions rely on geographical boundaries. Therefore, EPA has proposed the use of a basin level definition to increase coverage. EPA seeks comments on our decision to propose the basin level approach, and whether there would be advantages to requiring reporting at the field level instead.

In addition to basin and field level reporting, EPA considered one other alternative approach for defining a facility for onshore petroleum and natural gas production; individual well pads. This well pad approach included all stationary and portable equipment operating in conjunction with that well, including drilling rigs with their ancillary equipment, gas/liquid separators, compressors, gas dehydrators, crude oil heater-treaters, gas powered pneumatic instruments and pumps, electrical generators, steam boilers and crude oil and gas liquids stock tanks. This definition was analyzed with available data including four cases to represent the full range of petroleum and natural gas well pad operations ranging from unconventional well drilling and operation starting in the beginning of the year with higher emitting practices, to production at an associated gas and oil well (no drilling) with minimal equipment and a vapor recovery unit.

EPA analyzed the average emissions associated with each of the four well pad facility cases and determined that average emissions at these operations were low (from about 370 metric tons of CO_2e per year to slightly less than 5,000 metric tons of CO_2e per year). This analysis shows that the threshold would have to be set at less than 400 metric tons CO_2e per year to capture the largest possible amount of onshore production emissions (only 33 percent) which would result in close to 170,000 reporters. Additional information can be found in Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923). If the threshold was set at approximately 5,000 metric tons, EPA estimates that the number of reporters would decrease significantly to approximate 3,300 but the emission coverage would be only 6 percent. Based on the results above, EPA did not consider the well pad definition further in the Economic Impact Analysis.

Offshore Petroleum and Natural Gas Production

Offshore petroleum and natural gas production is any platform structure, affixed temporarily or permanently to offshore submerged lands, that houses equipment to extract hydrocarbons from the ocean or lake floor and that transfers such hydrocarbons to storage, transport vessels, or onshore. In addition, offshore production includes secondary platform structures and storage tanks associated with the platform structure. GHG emissions result from sources housed on the platforms.

In 2006, offshore petroleum and natural gas production CO_2 and CH_4 emissions accounted for 5.1 million metric tons CO_2e. The primary sources of emissions from offshore petroleum and natural gas production are from valves, flanges, open-ended lines, compressor seals, platform vent stacks, and other source types. Flare stacks account for the majority of combustion CO_2 emissions.

Offshore petroleum and natural gas production facilities are proposed for inclusion due to the fact that this segment represents approximately 1.9 percent of fugitive, vented and incremental [5] combustion emissions from the petroleum and natural gas industry, an existing activity data collection system already exists that can readily be used to calculate GHG emissions (*i.e.,* GOADS) and major fugitive and vented emissions sources can be characterized by an existing reasonable methodology which will minimize incremental burden for reporters. This is consistent with comments received on the initial proposed rule.

Onshore Natural Gas Processing

Natural gas processing facilities remove hydrocarbon and water liquids and various other constituents (*e.g.,* hydrogen sulfide, carbon dioxide, helium, nitrogen, and hydrocarbons heavier than methane) from the produced natural gas. The resulting "pipeline quality" natural gas is transported to transmission pipelines. Natural gas processing facilities also include gathering/boosting stations that dehydrate and compress natural gas to be sent to natural gas processing facilities or directly to natural gas transmission or distribution systems. Compressors are used within gathering/boosting stations to adequately pressurize the natural gas so that it can be transported to natural gas processing, transmission, and distribution facilities through gathering pipelines. In addition, compressors at natural gas processing facilities are used to boost natural gas pressure so that it can pass through all of the processes and into the high-pressure transmission pipelines.

Vented and fugitive CH_4 emissions from reciprocating and centrifugal compressors, including centrifugal compressor wet and dry seals, wet seal oil degassing vents, reciprocating compressor rod packing vents, and all

[5] The denominator includes total fugitive and vented emissions, as well as any additional combustion related emissions that will be required to be reported by the petroleum and natural gas industry and that wasn't already covered in the final MRR.

other compressor emissions, are the primary CH_4 emission sources from this segment. The majority of vented CO_2 emissions come from acid gas removal vent stacks, which are designed to remove CO_2 and hydrogen sulfide, when present, from natural gas. While these are the major emissions sources in natural gas processing facilities, other potential sources such as dehydrator vent stacks, piping connectors, open-ended vent and drain lines and gathering pipelines associated with the processing plant would also need to be reported under the proposed supplemental rule.

Onshore natural gas processing facilities are proposed for inclusion due to the fact that these operations represent a significant emissions source, approximately 8 percent of fugitive, vented and incremental [6] combustion emissions from the natural gas segment, methods are available to estimate emissions, and there are a reasonable number of reporters. Most natural gas processing facilities proposed for inclusion in this supplemental proposed rulemaking would already be required to report under subpart C and/or subpart NN of the Final MRR.

Onshore Natural Gas Transmission Compression Facilities and Underground Natural Gas Storage

Natural gas transmission compression facilities move natural gas throughout the U.S. natural gas transmission system. Natural gas is also injected and stored in underground formations during periods of low demand (*e.g.,* spring or fall) and withdrawn, processed, and distributed during periods of high demand (*e.g.,* winter or summer). Storage compressor stations are dedicated to gas injection and extraction at underground natural gas storage facilities.

Vented and fugitive CH_4 emissions from reciprocating and centrifugal compressors, including compressor and station blowdowns, centrifugal compressor wet and dry seals, wet seal oil degassing vents, reciprocating compressor rod packing vents, unit isolation valves, blowdown valves, compressor scrubber dump valves, gas pneumatic continuous bleed devices and all other compressor fugitive emissions, are the primary CH_4 emission source from natural gas transmission compression stations and underground natural gas storage facilities. Dehydrators are also a significant source of CH_4 emissions from underground natural gas storage facilities. While these are the major emissions sources in natural gas transmission, other potential sources include, but are not limited to, condensate (water and hydrocarbon) tanks, open-ended lines and valve stem seals. Condensate tank vents in transmission can be a significant source of emissions from malfunctioning compressor scrubber dump valves and will require detection of such leakage by an optical imaging instrument and direct measurement where found present.

Onshore natural gas transmission compression facilities and underground natural gas storage facilities are proposed for inclusion due to the fact that these operations represent significant sources of fugitive, vented and incremental [7] combustion emissions, 15 and 2 percent, respectively, methods are available to estimate emissions, and there are a reasonable number of reporters. Further, this segment was included in the initial proposed rule and EPA has made improvements to the proposal based on comments received.

LNG Import and Export and LNG Storage

The U.S. imports and exports natural gas in the form of LNG, which is received, stored, and, when needed, re-gasified at LNG import and export terminals. Import and export include both LNG movements between U.S. and foreign sources as well as transport between U.S. sources. LNG storage facilities liquefy and store natural gas from processing plants and transmission pipelines during periods of low demand (*e.g.,* spring or fall) and re-gasify for send out during periods of high demand (*e.g.,* summer and winter)

Fugitive and vented CH_4 and CO_2 emissions from reciprocating and centrifugal compressors, including centrifugal compressor wet and dry seals, wet seal degassing vents, reciprocating compressor rod packing vents, and all other compressor fugitive emissions, are the primary CH_4 and CO_2 emission source from LNG storage facilities and LNG import and export facilities. Process units at these facilities can include vapor recovery compressors to re-liquefy natural gas tank boil-off (at LNG storage facilities), re-condensers, vaporization units, tanker unloading equipment (at LNG import terminals), transportation pipelines, and/or LNG pumps.

LNG storage "facilities" can be defined as facilities that store liquefied natural gas in above ground storage tanks. LNG import terminal can be defined as onshore or offshore facilities that receive imported LNG via ocean transport, store it in storage tanks, re-gasify it, and deliver re-gasified natural gas to a natural gas transmission or distribution system. LNG export terminal (facility) can be defined as onshore or offshore facilities that receive natural gas, liquefy it, store it in storage tanks, and send out the LNG via ocean transportation, including to import facilities in the United States. EPA is proposing inclusion of these facilities because the National Inventory has very little data on methane emissions in these segments which are expected to grow substantially in forward years.

Petroleum and Natural Gas Pipelines

Natural gas transmission involves high pressure, large diameter pipelines that transport gas long distances from field production and natural gas processing facilities to natural gas distribution pipelines or large volume customers such as power plants or chemical plants. Crude oil transportation involves pump stations and bulk tank terminals to move crude oil through pipelines and loading and unloading crude oil tanks, marine vessels, and railroad tank cars. The majority of vented and fugitive emissions from the transportation of natural gas occur at the compressor stations, which are proposed for inclusion in the supplemental rule and discussed above.

EPA is not proposing to include reporting of fugitive emissions from natural gas pipeline segments between compressor stations, or crude oil pipelines and tank terminals in the supplemental rulemaking due to the dispersed nature of the fugitive emissions, and the fact that once fugitives are found, the emissions are generally addressed quickly. For natural gas gathering pipelines, EPA is proposing that producers who own or operate gathering lines associated with their production fields and natural gas processors who own or operate gathering lines associated with their processing plants should include those gathering lines in their field or processing plant reported emissions.

Natural Gas Distribution

Natural gas distribution facilities are local distribution companies (LDCs) that

[6] The denominator includes total fugitive and vented emissions, as well as any additional combustion related emissions that will be required to be reported by the petroleum and natural gas industry and that wasn't already covered in the final MRR.

[7] The denominator includes total fugitive and vented emissions, as well as any additional combustion related emissions that will be required to be reported by the petroleum and natural gas industry and that wasn't already covered in the final MRR.

include the above grade (above ground) gas metering and pressure regulation (M&R) equipment, M&R equipment below grade in vaults, buried pipelines and customer meters used to transport natural gas primarily from high pressure transmission pipelines to end users. In the distribution segment, high-pressure gas from natural gas transmission pipelines enters a "city gate" station, which reduces the pressure and distributes the gas through primarily underground mains and service lines to individual end users. Distribution system CH_4 and CO_2 emissions result mainly from fugitive emissions from above ground gate stations (metering and regulating stations), below grade vaults (regulator stations), and fugitive emissions from buried pipelines. At gate stations, fugitive and vented CH_4 emissions primarily come from valves, open-ended lines, connectors, pressure safety valves, and natural gas driven pneumatic devices. CH_4 emissions in vaults are entirely fugitive, primarily from piping connectors to meters and regulators.

Although emissions from a single vault, gate station or segment of pipeline in the natural gas distribution segment may not be significant, collectively these emissions sources contribute a significant share of emissions from natural gas systems.

EPA proposes to include natural gas distribution facilities because these operations represent a significant emissions source, approximately 6 percent of fugitive, vented and incremental [8] combustion emissions from the petroleum and natural gas industry. EPA proposes that LDC's would report for all of the distribution facilities that they own or operate.

Crude Oil Transportation

Crude oil is commonly transported by barge, tanker, rail, truck, and pipeline from production operations and import terminals to petroleum refineries or export terminals. Typical equipment associated with these operations is storage tanks and pumping stations. The major sources of CH_4 and CO_2 emissions include releases from tanks and marine vessel loading operations.

EPA is not proposing to include the crude oil transportation segment of the petroleum and natural gas industry in this supplemental rulemaking due to its small contribution to total petroleum and natural gas CH_4 and CO_2 emissions, accounting for much less than 1 percent.

D. Selection of Reporting Threshold

EPA proposes that owners or operators of facilities with emissions equal to or greater than 25,000 metric tons CO_2e per year be subject to these reporting requirements. This threshold is applicable to all petroleum and natural gas system reporters covered by this subpart: onshore petroleum and natural gas production facilities, offshore petroleum and natural gas production facilities, onshore natural gas processing facilities, including gathering/boosting stations; natural gas transmission compression facilities, underground natural gas storage facilities; LNG storage facilities; LNG import and export facilities and natural gas distribution facilities. As described above, under the proposed rule, for onshore petroleum and natural gas production facilities an owner or operator (as defined by the proposed rule) would evaluate emissions from all equipment covered by the proposed rule, including vented, fugitive, flared and stationary combustion, in a defined basin against the threshold to determine applicability.

Consistent with the rest of the Final MRR, EPA is proposing that for the purposes of determining whether a facility emits equal to or greater than a 25,000 $mtCO_2e$, a facility must include emissions from all source categories for which methods are provided in the rule. EPA proposes that when a facility determines emissions for the purposes of the threshold determination under subpart W, that the fuel combustion emissions estimates include both stationary and portable equipment (*e.g.,* compressors, drilling rigs, and dehydrators that are skid-mounted) that are controlled by well operators through ownership, direct operation, leased and rented equipment, and contracted operation. Fugitive, vented and combustion emissions from portable equipment are proposed for inclusion in the threshold determination for this source category due to the unique nature of the petroleum and natural gas industry. In addition to well drilling rigs and their ancillary equipment for well completions, it is common practice in onshore production to use skid mounted portable compressors, glycol dehydrators and other equipment partly for installation cost savings and partly because well flow rates decline over time and well-head equipment becomes over sized, and is moved around to match equipment capacity with wells of the same production capacity.

Also due to the unique nature of the industry, EPA believes that it may be possible that onshore petroleum and natural gas production equipment from onshore petroleum and natural gas production facilities may be co-located with other manufacturing facilities already covered under other subparts of the rule (*e.g.,* cement manufacturing facilities or glass manufacturing facilities). It is not EPA's intent to have these manufacturing facilities include emissions from onshore petroleum and natural gas production equipment in their threshold determination. EPA seeks comment on this approach.

To identify the most appropriate threshold level for reporting of emissions, EPA conducted analyses to determine emissions reporting coverage and facility reporting coverage at four different threshold levels: 1,000 metric tons CO_2e per year, 10,000 metric tons CO_2e per year, 25,000 metric tons CO_2e per year, and 100,000 metric tons CO_2e per year. Table W–2 provides coverage of emissions and number of facilities reporting at each threshold level for all the industry segments under consideration for this proposed supplemental rule.

TABLE W–2—THRESHOLD ANALYSIS FOR EMISSIONS FROM THE PETROLEUM AND NATURAL GAS INDUSTRY

Segment	Total national emissions (metric tons CO_2e per year)	Total number of facilities	Threshold level	Total emissions covered by threshold (metric tons CO_2e per year)	Total emissions covered by threshold Percent	Facilities covered Number	Facilities covered Percent
Onshore Petroleum & Gas Production	277,798,737	27,993	100,000	187,175,289	67	466	2
			25,000	224,227,559	81	1,232	4

[8] The denominator includes total fugitive and vented emissions, as well as any additional combustion related emissions that will be required to be reported by the petroleum and natural gas industry and that wasn't already covered in the final MRR.

TABLE W–2—THRESHOLD ANALYSIS FOR EMISSIONS FROM THE PETROLEUM AND NATURAL GAS INDUSTRY—Continued

Segment	Total national emissions (metric tons CO_2e per year)	Total number of facilities	Threshold level	Total emissions covered by threshold (metric tons CO_2e per year)	Total emissions covered by threshold Percent	Facilities covered Number	Facilities covered Percent
			10,000	242,390,849	87	2,413	9
			1,000	268,848,529	97	10,604	38
Offshore Petroleum & Gas Production	11,261,305	3,235	100,000	3,242,389	29	4	0
			25,000	5,119,405	45	58	2
			10,000	7,111,563	63	184	6
			1,000	10,553,889	94	1192	37
Natural Gas Processing	33,984,015	566	100,000	24,874,783	73	130	23
			25,000	31,229,071	92	289	51
			10,000	32,982,975	97	396	70
			1,000	33,984,015	100	566	100
Natural Gas Transmission Compression	64,059,125	1,944	100,000	34,518,927	54	433	22
			25,000	57,683,144	90	1,145	59
			10,000	62,672,905	98	1,443	74
			1,000	64,051,661	100	1,695	87
Underground Natural Gas Storage	9,713,029	397	100,000	3,548,988	37	36	9
			25,000	7,846,609	81	133	34
			10,000	8,968,994	92	200	50
			1,000	9,696,532	100	347	87
LNG Storage	2,113,601	157	100,000	695,459	33	4	3
			25,000	1,900,793	90	33	21
			10,000	2,030,842	96	41	26
			1,000	2,096,974	99	54	34
LNG Import and Export[2]	315,888	5	100,000	314,803	99.7	4	80
			25,000	314,803	99.7	4	80
			10,000	314,803	99.7	4	80
			1,000	315,888	100.00	5	100
Natural Gas Distribution	25,258,347	1,427	100,000	18,470,457	73	66	5
			25,000	22,741,042	90	143	10
			10,000	23,733,488	94	203	14
			1,000	24,983,115	99	594	42

[1] The emissions include fugitive and vented CH_4 and CO_2 and combusted CO_2, N_2O, and CH_4 gases. The emissions for each industry segment do not match the 2008 U.S. Inventory either because of added details in the estimation methodology or use of a different methodology than the U.S. Inventory. For additional discussion, refer to Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923).

[2] The analysis included only import facilities. There is only one export facility, located in Kenai, Alaska.

EPA is proposing a threshold of 25,000 metric tons CO_2e applied to those emissions sources listed in Table W–2, which will cover approximately 83 percent of estimated vented and fugitive emissions and incremental combustion emissions from facilities that did not meet the reporting requirements under Subpart C alone, from the entire petroleum and natural gas industry, while requiring only a small fraction of total facilities to report. For additional information, please refer to Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923). For specific information on costs, including unamortized first year capital expenditures, please refer to section 4 of the Economic Impact Analysis.

Although EPA is proposing an emissions threshold of 25,000 $mtCO_2e$ for all segments of the petroleum and natural gas industry, EPA is taking comment on whether a 10,000 $mtCO_2e$ threshold for onshore petroleum and natural gas production would be more appropriate.

For onshore petroleum and natural gas production, EPA is proposing that portable and stationary fuel combustion emissions be included in the threshold determination due to the large percentage of emissions from portable equipment in the petroleum and natural gas industry. EPA considered lowering the threshold to 10,000 $mtCO_2e$ and excluding portable equipment from the threshold determination (and reporting), however, data were not available to distinguish portable and stationary combustion emissions in order to evaluate the lower threshold considering just stationary combustion emissions.

Secondly, for onshore petroleum and natural gas production, EPA is proposing that owners or operators report at the basin level. EPA is seeking comment on owners or operators reporting at the field level. Although EPA believes that a 25,000 $mtCO_2e$ threshold is appropriate for the basin level approach, as described above, EPA seeks comment on whether the threshold should be lowered to 10,000 $mtCO_2e$ if reporting were to be at the field level. Table W–3 presents the emissions and facility coverage for a field level definition for onshore petroleum and natural gas production.

TABLE W–3—EMISSIONS COVERAGE AND ENTITIES REPORTING FOR FIELD LEVEL FACILITY DEFINITION

Threshold level [2]	Emissions covered		Facilities covered	
	Metric tons CO_2e/year	Percent	Number	Percent
100,000	99,776,033	38	305	0
25,000	144,547,282	55	1,253	2
10,000	169,160,462	64	2,846	3
1,000	242,621,431	92	39,652	48

In addition to seeking comment on the proposed threshold for onshore production, EPA more broadly is seeking comment on the selection of the threshold for all segments of the petroleum and natural gas industry.

E. Selection of Proposed Monitoring Methods

Many domestic and international GHG monitoring guidelines and protocols include methodologies for estimating emissions from petroleum and natural gas operations, including the 2006 IPCC Guidelines, U.S. GHG Inventory, DOE 1605(b), and corporate industry protocols developed by the American Petroleum Institute, the Interstate Natural Gas Association of America, and the American Gas Association. The methodologies proposed vary by the emissions source and the level of accuracy desired in the estimation.

EPA has carefully considered possible options to estimate emissions from every emission source proposed for reporting. EPA has proposed to use the most appropriate method taking into account both the cost to the reporter as well as accuracy of emissions achieved through the proposed method. Overall, we propose the following types of monitoring methods: (1) Direct measurement to develop site and source-specific emission factors; (2) engineering estimation; (3) combination of direct measurement and engineering estimation; (4) leak detection and use of leaker emission factor; and (5) population count and population emission factors. Table W–4 of this preamble provides a list of the emissions sources to be reported with the corresponding monitoring methods.

A monitoring method proposed for a specific source is to be used across all reporting segments of the petroleum and gas system. Two exceptions to this are: (1) For tanks in onshore natural gas transmission facilities that exhibit gas bypass from scrubber dump valves, EPA is proposing to require direct measurement under the proposal, whereas in other segments under the proposal, the emissions from tanks would be required to be estimated using E&P Tank simulation software; and (2) under the proposal, fugitive emissions from onshore petroleum and natural gas production and inaccessible to plain view (buried or below grade in vaults) emissions in gas distribution would require estimation using population emissions factors as opposed to other segments' fugitive emissions that require leak detection and the use of leaker emissions factors. Finally, offshore petroleum and natural gas production platforms would be required under the proposal to use methods provided by the most recent GOADS reporting system. This means that Federal Gulf of Mexico platforms would report emissions already being calculated and reported to MMS as a part of the GOADS study and the remaining platforms that are not a part of the GOADS study (*i.e.,* platforms in all state waters and other Federal waters outside the Gulf of Mexico) would be required to adopt the GOADS methodology.

TABLE W–4. SOURCE SPECIFIC MONITORING METHODS AND EMISSIONS QUANTIFICATION

Emission source	Monitoring methods	Emissions quantification methods
Natural Gas Pneumatic Bleed Devices (High or Continuous).	Engineering Estimation	Manufacturer device model bleed rate and engineering calculation.

TABLE W–4. SOURCE SPECIFIC MONITORING METHODS AND EMISSIONS QUANTIFICATION—Continued

Emission source	Monitoring methods	Emissions quantification methods
Natural Gas Pneumatic Bleed Devices (Low) ...	Component Count	Population emissions factor.
Natural Gas Driven Pneumatic Pump Venting ..	Engineering Estimation	Manufacturer model emissions per unit volume and volume pumped.
Acid Gas Removal Vent Stacks (CO_2 only)	Engineering Estimation	Engineering Calculation and flow meters.
Dehydrator Vent Stacks	Engineering Estimation	GlyCalc simulation software.
Well Venting for Liquids Unloading	(1) Engineering Estimation or (2) Direct Measurement.	(1) Field specific emission factor times events or (2) Flow metered emission factor times events.
Gas Well Venting during Completions or Workovers.	(1) Engineering Estimation, or (2) Direct Measurement.	(1) Field specific emission factor times events or (2) Flow metered emission factor times events.
Blowdown Vent Stacks	Engineering Estimation	Equipment specific emission factor and number of events.
Storage Tanks (Onshore Production and Processing).	Engineering Estimation	E&P Tank equipment specific emission factor times throughput.
Storage Tanks (Transmission)	Direct Measurement	Flow metered emission factor time operating hours.
Well Testing Venting and Flaring	Engineering Estimation	Gas to oil Ratio (GOR); flow rate.
Associated Gas Venting and Flaring	Engineering Estimation	Gas to oil Ratio (GOR); flow rate.
Flare Stacks	(1) Direct Measurement or (2) Engineering Estimation.	Engineering Calculation.
Centrifugal Compressor Wet Seal Oil Degassing Vent.	Direct Measurement	Flow metered equipment specific emission factor times operating hours.
Large Reciprocating Compressor Rod Packing Vents.	Direct Measurement	Flow metered equipment specific emission factor times operating hours.
Large Compressor Blowdown Valve Leak	Leak Detection with optical gas imaging instrument.	Flow metered equipment specific emission factor times operating hours.
Large Compressor Blowdown Vent (Unit Isolation Valve Leak).	Leak Detection with optical gas imaging instrument.	Flow metered equipment specific emission factor times stand-by depressurized hours.
Fugitive Sources (Processing, Transmission, Underground Storage, LNG Storage, LNG Import Export, LDC).	Leak Detection with optical gas imaging instrument.	Leaker emission factors times detected leaks.
Fugitive Sources (Onshore Production, LDC) ...	Component Count	Population Emission Factors times components.

1. Direct Measurement

EPA is proposing to require five sources in this supplemental proposal to directly measure emissions: storage tanks (transmission) when scrubber dump valves are detected leaking, centrifugal compressor wet seal oil degassing vents, large reciprocating compressor rod packing vents, large compressor blowdown vent valve leaks, and large compressor blowdown vent (unit isolation valve leaks), the latter two when leakage is detected. For example, storage tanks in the onshore natural gas transmission segment typically store the condensate (water, light hydrocarbons, seal oil) from the scrubbing of pipeline quality gas. The volume and composition of liquid is typically low and variable, respectively, in comparison to the volumes and composition of hydrocarbon liquids stored in the upstream segments of the industry. Hence the emissions from condensate itself in the transmission segment are considered insignificant. However, scrubber dump valves malfunction or stick-open due to debris in the condensate and can remain open resulting in natural gas bypass via the open dump valve to and through the condensate tank, and therefore the use of E&P Tanks and other models are not applicable to tanks in the transmission segment. The only potential option for measuring emissions from scrubber dump valves is to monitor storage tank emissions with a gas imaging camera to determine if the emissions do not subside and become negligible when dump valves close. If the scrubber dump valve is stuck and leaking natural gas through the tank then the emissions will be visibly significant and will not subside to inconspicuous volumes. If the scrubber dump valve functions normally and shuts completely after the condensate has been dumped then the storage tank, emissions should subside and taper off to insignificant quantities. If emissions are detected to be continuous for a duration of five minutes then a one-time measurement would be required using a temporary meter to establish an equipment specific emission factor.

This proposal is based on the fact that the emissions magnitude from these five sources are significant enough to warrant reporting for the supplemental proposed rule and that no credible engineering estimation methods or emissions factors exist that can accurately characterize the emissions. There are several public reference studies and guidance documents that provide emissions factors for these sources. However, after close review, EPA has determined that these emissions factors cannot uniquely characterize the emissions specifically from individual equipment or a facility. For example, the emissions from wet seal degassing and rod packing are directly correlated to the size of the compressor, throughput, and the operating time of the compressor in the reporting year. Also, in the case of unit isolation valves and compressor blow down valves the emissions magnitude varies depending on operational and maintenance practices as valves can have excessive leakage, especially when a compressor is not in operation. These factors do not get accounted for using an emissions factor.

The proposed supplemental rule would require that rod packing and blowdown valves be measured for emissions both in operating as well as standby pressurized modes. In addition, unit isolation valve leaks would be required to be measured at the

blowdown vent in the standby depressurized mode. To correctly quantify emissions from centrifugal and large reciprocating compressors the proposal would require that, for each compressor, one measurement be taken in each of the operational modes that occurs during a reporting period: (i) Operating, (ii) standby pressurized, and (iii) not operating, depressurized. Depending on the operational practices each mode could have significantly different emissions and would need to be separately quantified as a part of the proposed rule.

For direct measurement, EPA proposes that the following technologies be used: high volume samplers, meters (such as rotameters, turbine meters, hot wire anemometers, and others), and/or calibrated bags. EPA recognizes that different measurement equipment would be required for different source emissions measurement depending on the configuration of the system. Hence the proposed rule provides these options for multiple direct measurement equipment, but the reporter must calibrate and maintain the equipment based on either consensus based standards or an appropriate method specified by the equipment manufacturer, as specified in the proposed rule. Where a vent emission source cannot be accessed on the ground or from a fixed platform, the reporter has the choice of using a man-lift or installing either a permanent or temporary vent line access port through which a meter can be inserted to measure flow or velocity. If emissions exceed the maximum range of one measurement instrument, the reporter would be required to use a different instrument option that can measure larger magnitude emissions levels. For example, if a high volume sampler maximum rate is exceeded by an emissions source, then emissions would be required to be directly measured using either calibrated bagging or a meter. CH_4 and CO_2 emissions from the emissions stream would be required to be calculated using the composition of the gas in the process equipment (compressor).

2. Engineering Estimation

This proposed rule would require two main types of engineering calculation methods for emissions; (1) volumetric calculation method, and (2) engineering first principle methods.

(1) Volumetric Calculation Method

The volumetric calculation method has been proposed for calculating CH_4 and CO_2 vent emissions from sources where the variable in the emissions magnitude on an annual basis is the number of times the source releases CH_4 and CO_2 emissions to the atmosphere. In addition, the estimation of the total volume of emissions is a matter of simple arithmetic calculation without the need for complex calculations. For example, when a compressor is taken offline for maintenance, the volume of CH_4 and CO_2 blowdown vent emissions that are released is the same during each release, is easily calculable, and the only variable is the number of times the compressor is taken offline and vented.

(2) Engineering First Principle Methods

Emissions from sources such as tanks and glycol dehydrators can be reliably calculated using standard engineering first principle methods such as those available in E&P Tank and GlyCalc. The use of such standard and readily available software is a cost-effective way to uniformly estimate emissions that are representative for the two sources. To maintain standardization across reporters the proposed rule would require the use of E&P Tank for estimating the emissions from well-pad separator conditions when flashed to atmospheric pressure in any downstream stock tank, and GlyCalc for glycol dehydrators.

E&P Tank is available for free and GlyCalc can be purchased at a small fee. Also, these two software models are widely used in the industry and the operation of the software is well understood. Using such software also addresses safety concerns that are associated with direct measurement from the two sources. For example, sometimes the temperature of the emissions stream for glycol dehydrator vent stacks is too high for operators to safely measure emissions. EPA seeks comment on whether there are additional or alternative software packages to E&P Tank and GlyCalc that should be required to be used to calculate emissions.

In cases where tank emissions do not represent equilibrium conditions of the liquid in a gas-liquid separator and no publicly available data are available on vapor bypass direct measurement would be required under the proposal. For pressurized liquids sent to atmospheric storage tanks where tank emissions are not expected to be represented by the equilibrium conditions of the liquid in a gas-liquid separator as calculated by the E&P Tank Model, then emissions calculated by E&P Tank would be multiplied by an empirical factor.

The supplemental proposed rulemaking does not include emissions from tanks containing primarily water with the exception of transmission station condensate tanks where dump valve are determined to be bypassing gas. Therefore, EPA seeks comments on how to quantify emissions from tanks storing water without resulting in additional reporting burden to the facilities.

For further discussion of these software programs and emissions calculation methods, refer to Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923).

3. Combination of Direct Measurement and Engineering Estimation

Several sources provide a choice between engineering estimation based on operating data and direct measurement (if meters are already installed). For continuous flaring, a one-time direct measurement or engineering estimate may be performed in conjunction with engineering estimation based on operating data that relates to the quantity of flared gas. For well completion venting and well workover venting (each during flowback after hydraulic fracturing, the only significant well completion emissions), EPA explored the possibility of using a meter for measuring hydrocarbon gas lost during these venting events which may last from one to ten days. Some companies have reported directly measuring these emissions under certain circumstances. However, such metering could be technically challenging, if not impossible, and also burdensome given the number of well completions and workovers being conducted on an annual basis.

It is important to note, however, that no body of data has been identified that can be summarized into generally applicable emissions factors to characterize emissions from these sources in each unique field. In fact, the emissions factor being used in the 2008 U.S. GHG Inventory is believed to significantly underestimate emissions based on industry experience as included in the Natural Gas STAR Program publicly available information (*http://www.epa.gov/gasstar/*). In addition, the 2008 U.S. GHG Inventory emissions factor was developed prior to the boom in unconventional well drilling (1992) and in the absence of any field data and does not capture the diversity of well completion and workover operations or the variance in emissions that can be expected from different hydrocarbon reservoirs in the country.

As a result, EPA proposes the development of a field-specific emission factor either by direct measurement of

flow rate of hydrocarbons using a meter or by an engineering estimation based on well choke pressure drop. Given the large number of well completions and well workovers, EPA proposes that one representative well completion and one well workover per field horizon be developed to characterize emissions per day of venting from all other completions and workovers in that field horizon. The reporter would be required to update this factor every two years. This would alleviate burden but at the same time achieve a reasonable characterization of the emissions from these two sources.

5. Use of Leak Detection and Leaking Component Emission Factors

Each segment of the petroleum and gas system has a variety of fugitive emissions sources that at a source type level have low emissions volume, but combined together at a segment level contribute significantly towards the total emissions from petroleum and gas systems. EPA considered several options for estimating emissions from fugitive emissions sources. One option considered was to use a population count of each fugitive emissions source (*e.g.,* source types such as valves, connectors, *etc.*) and multiply it by a population emissions factor. This option would not account for differences in operational and maintenance practices among facilities. If population emissions factors are used then the fugitive emissions from a particular facility will remain constant indefinitely until the facilities are modified (*i.e.,* change the population of equipment) or new factors are provided. This approach also will not account for fugitive emissions reduction measures the industry has undertaken in the last few years since the population emission factors were developed. Facilities with good maintenance practices may have fugitive emissions lower than the population emission factors. As described further below, EPA requests comment on the use of emission factors and ways in which these shortcomings may be overcome.

Another option considered was the use of fugitive emissions detection (*e.g.,* an infrared camera) and direct measurement (*e.g.,* calibrated bags or high volume samplers) for fugitive sources. This option may be more cost-effective when the sources of fugitive emissions are in a relatively small geographic area such as at a processing plant, gas compressor station, or distribution gate station. This approach, however, could be less cost effective for widely dispersed sources (*e.g.,* well pads and gathering lines).

Hence, to overcome these issues, EPA proposes conducting fugitive emissions detection and then applying leaking component (or leak only) emissions factors for processing, transmission, underground storage, LNG storage, LNG import and export terminals, and LDC gate stations. The fugitive emissions leak detection method does not require corresponding direct measurement of the fugitive emissions, which is significantly more burdensome than fugitive emissions detection using the most modern optical gas imaging instrument detection technology. This method is an improvement over the use of population emissions factors because the factors were developed for leaking components and applied only to leaking components, leading to a more accurate calculation of emissions from each piece of equipment. Several commenters to the initial proposed rule recommended leak detection with an optical gas imaging instrument and quantification with emission factors. In addition, leaking component emissions factors are applied only to those emissions sources that are determined to be emitting as a result of the fugitive emissions detection process.

EPA analyzed new fugitive leak studies specifically performed on natural gas facilities in processing plants and transmission compressor stations, as recommended by several Subpart W initial proposed rule commenters. Leaking component emissions factors from these studies were compared with other studies (see below). EPA found that emission factors generated from the Clearstone studies related better to methane-rich stream fugitives and were more appropriate than other emission factors developed for highly regulated refinery and petrochemical plants on VOC emissions. Therefore, EPA is using emissions data from the Clearstone studies as the basis for the leaker factors proposed in this rule. EPA requests comments on the use of emission factors from the Clearstone studies. For further details see Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923).

Emission References for Petroleum and Natural Gas Systems

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Clearstone. *Handbook for Estimating Methane Emissions from Canadian Natural Gas Systems.* Clearstone Engineering Ltd., Enerco Engineering Ltd, and Radian International. 2007.

EPA considered the use of the three major types of emissions detection equipment: optical gas imaging instruments, IR laser detector instruments and Toxic Vapor Analyzers (TVA) or Organic Vapor Analyzers (OVA). Optical gas imaging instruments are able to scan hundreds of source types quickly, allowing for the most efficient survey of emissions at a broad range of facilities. In addition, EPA recently adopted detailed performance standards for the optical gas imaging camera in the *Alternative work practice for monitoring equipment leaks (AWP) (40 CFR part 60 subpart A § 60.18(i)(1) and (2))*. We recognize that the purchase of optical gas imaging instruments can be costly, especially for smaller facilities. However, EPA believes that most facilities will opt for contractors to conduct emissions detection once per year. As mentioned above, several commenters to the initial proposed rule recommended leak detection with an optical gas imaging instrument in accordance with the EPA AWP. Hence, the supplemental proposed rule requires the use of an optical gas imaging instrument compliant with the operational requirements of the EPA AWP. In contrast to the EPA AWP, however, the proposed rule does not require multiple surveys per year and does not require leak repair. As discussed further below, for this proposed rule, EPA requires comprehensive annual leak detection of the fugitive emissions sources specified in the proposed rule. The proposed supplemental rule does not allow for the use of an OVA/TVA. The OVA/TVA requires the operator to physically access the emissions source with the probe and thus is much more time intensive than using the optical gas imaging instrument. In addition, the OVA/TVA range is limited to the reach of an operator standing on the ground or fixed platform, thus excluding all emissions out of reach. However, EPA is seeking comments on allowing the OVA/TVA to be used as another option to the optical imaging camera in this proposed rule.

EPA is aware that the optical gas imaging instrument's "detection sensitivity levels" as required by the AWP were established from data on volatile organic compound (VOC) emissions from petroleum refineries and chemical plants. The optical gas imaging instrument has been used extensively to successfully detect methane emissions in the petroleum and gas industry by petroleum and gas companies. A 2006 independent study funded through a grant by EPA and conducted by Clearstone Engineering, was an extensive study of methane emissions in gas processing plants and upstream gathering compressor stations and well sites. Method 21 was employed to detect leaks and HiFlow samplers were used to determine the emissions from those leaks. This study surveyed approximately 74,000 components finding 3,650 leaks (4.9 percent). Of these leaks, 497 (<1 percent of total components) contributed 90 percent of the total fugitive emissions. The smallest of the 497 leaks was 177 grams per hour, so an optical gas imaging instrument should be able to adequately image methane leaks since the smallest leak was well above the 60 to 100 gram per hour detection sensitivity in Table 1 of the AWP. Therefore, for the purposes of this reporting rule, EPA determined that an optical gas imaging instrument that meets the detection sensitivity requirements of the AWP for any monitoring frequency as specified in Table 1 of the AWP, is acceptable for use under this proposed rule. Leak detection and leaker emission factors only apply to emissions sources in streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported.

The proposed rule requires that the survey for fugitive emissions detection be comprehensive. This means that, on an annual basis, the entire population of fugitive emissions sources proposed for reporting in this rule would be surveyed at least once. EPA proposes that emissions are quantified using leaker emissions factors. Under the proposal, if a component fugitive emission is detected, emissions are assumed to occur the entire 365 days in the year.

EPA is aware that the petroleum and natural gas industry is already implementing voluntary fugitive emissions detection and repair programs. Such voluntary programs are useful, but pose an accounting challenge with respect to emissions reporting for this proposed rule. The proposed approach does not preclude any owner or operator from detecting and repairing fugitive emissions prior to quantifying emissions for the purposes of reporting under this proposed rule.

To address this issue, EPA considered, but did not propose, requiring a facility to conduct multiple surveys and to report emissions using the appropriate leaker factors. Under this approach, if a specific emission source is found not leaking in the initial survey but leaking in subsequent surveys, emissions would be quantified from the date of the first survey where a leak was detected forward through the time when the leak is fixed, or the end of the year, whichever is first. Similarly, if an emissions source is found to be leaking in the initial survey, emissions would be quantified from the date of that survey through to when the leak is repaired, or the end of the year, whichever is first. Under this approach, emissions would reflect leak reductions as determined by repairs and follow-up detection surveys

EPA seeks comment on whether this alternative approach better estimates annual facility emissions without resulting in additional reporting burden to the facilities. Further, we seek comment on whether, if implemented, multiple surveys should be optional or required for owners or operators.

6. Use of Population Count and Population Emission Factor

Fugitive emissions detection and use of leaking component emissions factors are not always cost effective and can be burdensome. This is particularly true of onshore petroleum and natural gas production where the fugitive sources are spread out across large geographical areas and fugitive emissions are a minor contributor to total segment emissions. In the distribution segment, pipeline fugitive emissions are a large fraction of total emissions, but the pipelines are buried where leaks are difficult to detect. Similarly, metering/regulator stations, which are an important source of fugitive emissions, are sometimes located inside underground vaults that are difficult to access. In such scenarios, fugitive emissions detection can be burdensome. Therefore, for onshore petroleum and natural gas production, gas gathering pipelines and LDC pipelines and M&R stations below grade in vaults, the proposed rule requires the use of population count of emissions sources and population emissions factor to estimate fugitive emissions. Population count and population emission factors only apply to emissions sources in streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. EPA is using emissions data from studies listed in the Emission References (#2, #4, #5, #7, #8, #9 above) as the basis for the population emissions factors proposed in this rule. However, the API compendium emissions factors that we are proposing to use in the upstream oil and gas production sector may be underestimating emissions. EPA seeks comment on how to improve these

factors and/or collect more accurate data.

7. Alternative Monitoring Methods Considered

Before selecting the monitoring methods proposed above, we considered additional measurement methods. The use of Method 21 was considered for fugitive emissions detection and measurement. Although Toxic Vapor Analyzers (TVA) and Organic Vapor Analyzers (OVA) were considered they were not proposed for fugitive emissions detection and quantification.

Method 21. This is the reference method for equipment leak detection and repair regulations for volatile organic compound (VOC) and hazardous air pollutant (HAP) emissions under several 40 CFR part 60, 40 CFR part 61, 40 CFR part 63, and 40 CFR part 65 emission standards. Petroleum refineries, chemical plants and large gas processing plants are required under state and federal laws to perform LDAR (Leak Detection and Repair) to control VOC air pollution emissions. LDAR programs require VOC and/or HAP leak detection using instruments specified in Method 21, and requires repair of leaks if the rate is above the leak definitions specified within the specific regulation (typically between 500 parts per million to 10,000 parts per million as read on an OVA). Some states and air quality districts have lower leak definitions than the Federal standards. LDAR programs require facilities to conduct multiple surveys per year: either following equipment-specific frequencies using VOC monitoring instruments, or bi-monthly, semi-quarterly or monthly using an optical gas imaging instrument, frequency depending on the sensitivity detection of the instrument. While LDAR programs do not require quantification, state inventories of air emissions use this LDAR leak detection data with "leaker" factors developed by the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) to estimate the quantity of VOC emissions. These factors were developed from petroleum refinery and petrochemical plant data using Method 21. SOCMI factors adjusted for methane content are considerably lower than the methane factors proposed in this rule, which were developed from more recent studies of gas processing plants and compressor stations.

The Federal LDAR program recently adopted an alternative work practice that allows use of optical gas imaging instruments in place of the VOC monitoring instrument specified in Method 21. In a similar vein, this rule proposes the use of optical gas imaging instruments to detect leaks once per year, and has developed leaker factors specific to methane from several recent studies quantifying component leaks in petroleum and gas facilities. While this rule proposes a similar approach to Method 21, given that this is a reporting rule for collecting annual GHG emissions, there are several key differences: the proposed annual reporting rule is focused on gathering fugitive and vented CO_2 and CH_4 emissions, does not require multiple surveys per year, and does not allow measurement using an OVA/TVA for the reasons cited above. Optical gas imaging instruments were found to be more appropriate for leak detection for the proposed supplemental rule as these instruments are able to scan hundreds of source components quickly, including components out of reach for an OVA/TVA.

Mass Balance for Quantification. Except in one case, EPA considered, but decided not to propose, the use of a mass balance approach for quantifying emissions across an entire facility. This approach would take into account the volume of gas entering a facility and the amount exiting the facility, with the difference assumed to be emitted to the atmosphere. This is most often discussed for emissions estimation from the transportation segment of the industry. However, for pipeline transportation, the mass balance is often not recommended because of the uncertainties surrounding meter readings, the highly variable line pack of high pressure gas and the large volumes of throughput relative to emissions.

EPA is proposing this approach in the case of one emission source—acid gas recovery units. Typically, the natural gas volumes and compositions are measured both at the inlet and outlet of the acid gas recovery units as it is required to ensure that natural gas meets transmission system pipeline specifications. Hence, it is considered sufficiently feasible to use the mass balance approach for this source. For all other facilities and sources, the accuracy required in volume measurements will be a significant added burden in addition to being unreliable in many cases.

F. Selection of Procedures for Estimating Missing Data

The proposal requires data collection for a single source a minimum of once a year. If data are lost or an error occurs during emissions detection and/or measurement or calculation, the operator would be required to carry out the detection, direct measurement, and/or calculation a second time to obtain the relevant data point(s) as soon as the missing data are discovered. If this falls outside of the reporting year (*e.g.* between the end of the reporting year and the date when the emissions must be reported) the operator would be required to perform the necessary data development and report the results for the previous year. This prior year's lost data replacement could not be used as the one-time data collection for the current year. Where missing data procedures are used for the previous year, at least 30 days would be required to separate emissions estimation and/or measurements for the previous year and emissions estimation and/or measurements for the current year of data collection in order to better represent emissions estimates for different years. Similarly, engineering estimates would account for relevant source counts and frequency from the previous reporting period.

G. Selection of Data Reporting Requirements

EPA proposes that emissions from the petroleum and natural gas industry be reported on an annual basis. The reporting should be by the owner or operator of the facility as defined in the supplemental rule. Emissions from each source type at the facility would be required to be aggregated for reporting, with a few exceptions for field level reporting (*e.g.,* well completions and well workovers). For other equipment, unit-level reporting would not be required. For example, the owner or operator with multiple reciprocating compressors in an onshore production basin would be required to report emissions collectively from all rod packings on all cylinders from all compressors for all fields in that basin as specified in this proposed rulemaking. Generally, EPA has proposed that onshore production be reported at the basin level, as opposed to the unit or field level, to minimize reporting burden. EPA notes that in a concurrent proposed rulemaking for facilities that conduct CO_2 injection or geologic sequestration (subpart RR), the term "facility" is defined at a more disaggregated level, specifically as a "well or group of wells." EPA seeks comment on the use of more disaggregated reporting options for subpart W.

Emissions from all sources proposed for monitoring, whether in operating condition or on standby, would have to be reported. Any emissions resulting from standby compressor sources would

be separately identified from the aggregate emissions.

The owner or operator would be required to report the following information to EPA as a part of the annual emissions reporting: fugitive, vented and flare combustion emissions monitored at an aggregate source level (unless specified otherwise), emissions from standby sources; and activity data for each aggregate source type level. Owners or operators of natural gas distribution facilities would report emissions at the individual station level.

Additional data are proposed to be reported to support verification: Engineering estimate of total component count; total number of compressors and average operating hours per year in each mode of operation for compressors, if applicable; minimum, maximum and average throughput per year; and specification of the type of any control device used, including flares. For offshore petroleum and natural gas production facilities, the number of connected wells, and whether they are producing oil, gas, or both is proposed to be reported. For compressors specifically, EPA proposes that the total number of compressors of each type (reciprocating, centrifugal with dry seals and centrifugal with wet seals) and average operating hours per year be reported.

A full list of data proposed to be reported is included in proposed 40 CFR part 98, subparts A and W.

H. Selection of Records That Must Be Retained

The owner or operator shall retain relevant information associated with the monitoring and reporting of emissions to EPA for three years as follows: Throughput of the facility when the emissions direct measurement was conducted; date(s) of measurement, detection and measurement instruments used, if any; and results of the emissions detection survey, including a video record of the leak survey.

A full list of records proposed to be retained is included in proposed 40 CFR part 98, subparts A and W.

III. Economic Impacts of the Proposed Rule

This section of the preamble examines the costs and economic impacts of this proposed supplemental rule, including the estimated costs and benefits of the rule, and the estimated economic impacts of the rule on affected entities, including estimated impacts on small entities. Complete details of the economic impacts of the final rule can be found in the text of the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions under Subpart W Supplemental Rule (EPA–HQ–OAR–2009–0923). In brief, all equipment and labor activities for complying with each emissions estimate in the rule were analyzed by technical experts with relevant industry experience. The estimated labor hours and labor categories were applied to each industry segment, in some cases proportioned to small, medium and large facilities where such variation exists, to quantify the total labor hours, multiplied by Government statistics on labor rates, arriving at the total labor and equipment costs for the estimated numbers of sources. Administrative costs for reviewing the reporting rules, training personnel, documenting emissions data and emissions estimates, approving the submission to the EPA, submitting reports and maintaining records were included for each reporting company. These total bottom-up cost estimates were divided by the emissions captured to arrive at the dollar per metric ton, and divided by the number of reporting entities to arrive at average costs per entity. The methods proposed by EPA are a balance between minimizing these costs, maximizing emissions coverage and maximizing quality of emissions estimates. The cost to affected parties on a dollar per metric ton has been reduced by greater than 50 percent when compared to the initial petroleum and natural gas proposal. To achieve this cost reduction, EPA significantly modified the rule to rely significantly less on direct measurement and more on engineering estimates, leaker factors and emissions factors. Table W–5 and Table W–6 compare the first year and subsequent year costs, respectively, to reporters for reporting fugitive and vented emissions based on the reporting requirements proposed under the initial proposal as compared to the new supplemental proposed rule.

TABLE W–5—ESTIMATED FIRST YEAR COST FOR REPORTING FUGITIVE AND VENTED EMISSIONS FOR PETROLEUM AND NATURAL GAS SYSTEMS, $MMTCO_2E$

Segment	Initial proposed rule[1]		New supplemental proposed rulemaking	
	Cost ($million)	Cost per tonne ($/tonne)	Cost ($million)	Cost per tonne ($/tonne)
Original six segments	$32.5	$0.38	$26.7	$0.28
Onshore Production	NA	NA	27.7	0.18
Natural Gas Distribution	NA	NA	1.6	0.07
Total Segments	32.5	0.38	56.0	0.21

[1] The costs for the initial proposed rule, shown here, reflect the in-house monitoring option. Costs for the alternative contractor monitoring option can be found in Docket EPA–HQ–OAR–2008–0508–0138.

TABLE W–6—ESTIMATED SUBSEQUENT YEAR COST FOR REPORTING FUGITIVE AND VENTED EMISSIONS FOR PETROLEUM AND NATURAL GAS SYSTEMS, $MMTCO_2E$

Segment	Initial proposed rule		New supplemental proposed rulemaking	
	Cost ($million)	Cost per tonne ($/tonne)	Cost ($million)	Cost per tonne ($/tonne)
Original six segments	$28.1	$0.33	11.8	$0.13
Onshore Production	NA	NA	8.6	0.06
Natural Gas Distribution	NA	NA	1.0	0.04

TABLE W–6—ESTIMATED SUBSEQUENT YEAR COST FOR REPORTING FUGITIVE AND VENTED EMISSIONS FOR PETROLEUM AND NATURAL GAS SYSTEMS, $MMTCO_2E$—Continued

Segment	Initial proposed rule		New supplemental proposed rulemaking	
	Cost ($million)	Cost per tonne ($/tonne)	Cost ($million)	Cost per tonne ($/tonne)
Total Segments	$28.1	$0.33	21.4	0.08

[1] Subsequent year in the initial proposed rule was defined as Year 2 whereas in the supplemental proposed rule it is defined as the average of Years 2, 3, and 4.

A. How were compliance costs estimated?

1. Summary of EPA's Consideration of Comments Received on the Initial Proposal

A majority of the comments received on the compliance costs of the fugitive emissions reporting rule focused on facility level costs for detection and measurement of emissions. Commenters noted that costs estimated for certain petroleum and gas industry segments ignored available data on average leak factors. Some who commented specifically referred to government programs that gather similar, or in the case of offshore petroleum and gas production in the Gulf of Mexico Federal waters, some of the same data as required under Subpart W. Others who commented noted that Subpart W had higher estimated compliance costs than other sectors for much smaller GHG emissions.

EPA recognizes that the costs presented for some petroleum and gas industry segments in the initial proposal were relatively high for smaller emissions quantified than other industry sectors. EPA also recognizes that for many fugitive and vented emissions sources, new data exist on component emission factors, and long established data may be justified for smaller, inaccessible to plain view or more burdensome to identify emission sources. Furthermore, EPA recognizes that other government programs gather similar or the same data as proposed by this rule.

This proposed supplemental rule incorporates a number of different methodologies to provide improved emissions coverage at a lower cost burden to affected facilities. The approach used in determining the appropriate methodology for the supplemental was to minimize the use of direct measurement of emissions (which results in a higher cost burden to affected facilities) except for the most significant emissions sources where other options are not available, and to use engineering estimates, emissions modeling software, and leak detection and publicly available emission factors for most vented and fugitive sources. For smaller fugitive and inaccessible to plain view (*i.e.* buried or below grade in vaults) sources, component count and population emissions factors are proposed. In the case of Offshore platforms, EPA is recommending that emissions identified under the Minerals Management Services (MMS) GOADS (Gulfwide Offshore Activities Data System) be used for reporting, and the GOADS process be extended to platforms in other Federal regions (*i.e.,* California and Alaska) and all State waters. These alternative methodologies will provide similar or better coverage of vented and fugitive methane and carbon dioxide emissions in the petroleum and gas industry, while significantly reducing industry burden.

As described in the next section, EPA collected and evaluated cost data from multiple sources, and weighed the analysis prepared at initial proposal against the input received through public comments. In any analysis of this type, there will be variations in costs among facilities, and after thoroughly reviewing the available information, we have concluded that the costs developed for this supplemental proposed rule in each petroleum and gas industry segment appropriately reflects a "representative facility" in those segments.

2. Summary of Method Used To Estimate Compliance Costs

EPA estimated costs of complying with the rule for reporting fugitive and vented GHG emissions in each affected petroleum and gas industry facility, as well as emissions from stationary combustion sources at petroleum and gas industry facilities (for threshold and burden analysis only; stationary combustion is reported under Subpart C). This supplemental rulemaking proposes methodologies for reporting fugitive and vented emissions from oil and gas facilities. Once triggering the proposed rule, all of these facilities would also have to report emissions from stationary combustion. The costs of compliance for this proposed rule includes the costs associated with calculating and reporting fugitive and vented emissions, as well as the costs of any incremental combustion-related emissions that would be required to be reported by facilities (*i.e.,* combustion emissions that were not already required to be reported under the final MRR). The representative year of the analysis is 2006 and all annual costs were estimated using the 2006 population of emitting sources. 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 costs of complying with the rule will vary from one petroleum and gas industry segment and facility to another, depending on the types of emissions, the number of affected sources at the facility, existing monitoring, recordkeeping, and reporting activities at the facility, etc. The costs include labor costs for developing a plan, setting up records, collecting field data, performing monitoring, inputting field data into engineering models, recordkeeping, and reporting activities necessary to comply with the rule. For some facilities, costs include expenditures related to monitoring, recording, and reporting both process emissions of GHGs and emissions from stationary combustion. For other facilities (*e.g.,* LDCs), the only emissions of GHGs are process emissions. EPA's estimated costs of compliance are discussed in greater detail below:

Labor Costs. The costs of complying with and administering this rule include time of managers, technical, operational and administrative staff in the private sector. Staff hours are estimated for activities, including:

- Developing a plan: reporting entity management and technical staff hours to applicability to the rule, organize indoctrination of rule requirements, identify staffing assignments, train staff, schedule activities as required below.

• Setting up records: technical and field staff hours to develop data collection sheets and analytical model equations or linkages to input data into standardized models

• Collecting field data: technical and field staff hours to collect necessary site-specific data and input that data into the analytical input tables.

• Monitoring: staff hours to procure, install, operate and maintain emissions monitoring equipment, instruments and engineering analysis systems.

• Engineering models: technical staff hours to link and execute engineering emissions estimation models and analytical procedures and to organize output data as required for reporting emissions.

• Record keeping: staff hours required to organize, file and secure critical data and emissions quantification results as required for reporting and for documenting determinations of facilities exceeding and not exceeding reporting thresholds.

• Reporting: management and staff hours to organize data, perform quality assurance/quality control, inform key management personnel, and reporting it to EPA through electronic systems.

Staff activities and associated labor costs will vary from facility to facility and potentially vary over time where first year start-up costs are more significant and where site-specific emissions factors are developed every two or three years. 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 of monitoring equipment and any facility/process modification that may be required for installation and/or use of monitoring equipment. For example, the cost estimation method for large compressor seal emissions includes both purchase of a flow measurement instrument and installation of a measurement port in the vent piping where the end of the vent is inaccessible. Based on expert judgment, the engineering costs analyses annualized capital equipment costs with appropriate lifetime and interest rate assumptions. Cost recovery periods and interest rates vary by industry, but typically, one-time capital costs are amortized over a 10-year cost recovery period at a rate of seven percent.

B. What are the costs of the proposed rule?

1. Summary of Costs

For the cost analysis, EPA gathered existing data from EPA studies and publications, industry trade associations and publicly available data sources (*e.g.,* labor rates from the BLS) to characterize the processes, sources, sectors, facilities, and companies/entities affected. EPA also considered cost data submitted in public comments on the proposed rule. Costs were estimated on a per entity basis and then weighted by the number of entities affected at the 25,000 metric tons CO_2e threshold.

To develop the costs for the rule, EPA estimated the number of affected facilities in each source category, the number and types of process equipment at each facility, the number and types of processes that emit GHGs, process inputs and outputs (especially for monitoring procedures that involve a carbon mass balance), and the measurements that are already being made for reasons not associated with the rule (to allow only the incremental costs to be estimated). Many of the affected source categories, especially those that are the largest emitters of GHGs (*e.g.,* glycol dehydrators, petroleum stock tanks, gas processing plants) are subject to national emission standards and we use data generated in the development of these standards to estimate the number of sources affected by the proposed reporting rule.

Other components of the cost analysis included estimates of labor hours to perform specific activities, cost of labor, and cost of monitoring equipment. Estimates of labor hours were based on previous analyses of the costs of monitoring, reporting, and recordkeeping for other rules; information from the industry characterization on the number of units or process inputs and outputs to be monitored; and engineering judgment by industry and EPA industry experts and engineers. Labor costs were taken from the BLS and adjusted to account for overhead. Monitoring costs were generally based on cost algorithms or approaches that had been previously developed, reviewed, accepted as adequate, and used specifically to estimate the costs associated with various types of measurements and monitoring.

A detailed engineering analysis was conducted for each petroleum and gas industry segment of this proposed rule to develop unique unit costs. This analysis is documented in the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions under Subpart W Supplemental Rule (EPA–HQ–OAR–2009–0923). The Greenhouse Gas Emissions from the Petroleum and Natural Gas Industry: Background TSD (EPA–HQ–OAR–2009–0923) provides a discussion of the applicable engineering estimating and measurement technologies and any existing programs and practices. Incremental combustion-related emissions that would be required to be reported by facilities (as noted above) were estimated using Tier 1 factors from Subpart C of the Final MRR. Section 4 of the Economic Impact Analysis for the proposed rule contains a description of the engineering cost analysis.

Table W–7 of this preamble presents: the emissions covered under this proposed supplemental rule, the first year total costs and the first year cost per ton for process and combustion emissions, and these values for the subsequent years. EPA estimates that the total cost for process emissions in the first year is $56.0 million, and the total national annualized cost for subsequent years is $21.4 million (2006$). Of these costs, roughly 49.5 percent fall upon the onshore production segment in the first year, while 34.5 percent fall upon the gas transmission segment. Offshore production, which is largely covered by the MMS GOADS study data, is estimated to incur approximately 0.5 percent of costs every three or four years; other segments incurring relatively large shares of costs are gas processing (12.5 percent) and local distribution companies (3 percent). The reporting of incremental combustion related emission for all segments of the petroleum and natural gas industry are estimated to cost $3.9 million in both the first and subsequent years.

The threshold, in large part, determines the number of entities required to report GHG emissions and hence the costs of the rule. The number of entities excluded increases with higher thresholds. Table W–8 of this preamble provides the cost-effectiveness analysis for various thresholds examined. Two metrics are used to evaluate the cost-effectiveness of the emissions threshold. The first is the average cost per metric ton of emissions reported ($/metric ton CO_2e). The second metric for evaluating the threshold option is the incremental cost of reporting emissions. The incremental cost is calculated as the additional (incremental) cost per metric ton starting with the least stringent option and moving successively from one threshold option to the next. For more information about the first year capital costs (unamortized), project lifetime and

the amortized (annualized) costs for each petroleum and gas industry segment please refer to section 4 of the Economic Analysis for the proposed rule. Not all segments require capital expenditures but those that do are clearly documented in the Economic Impact Analysis for the proposed rule.

TABLE W–7—NATIONAL COST ESTIMATES FOR PETROLEUM AND NATURAL GAS SYSTEMS

[2006$]

Subpart W—petroleum and natural gas systems	NAICS	First year			Subsequent years		
		$million[1] 2006	Million $MtCO_2e$	$/ton	$million 2006	Million $MtCO_2e$	$/ton
Fugitive and Vented Emissions	211, 486	$56	272.0	$0.21	$21.4	272.0	$0.08
Combustion Emissions		3.9	79.1	0.05	3.9	79.1	0.05
Total Private Sector Emissions		59.9	351.1	0.17	25.3	351.1	0.07

TABLE W–8—THRESHOLD COST-EFFECTIVENESS ANALYSIS

[Subsequent year, 2006$]

Threshold (metric tons CO_2e)	Facilities required to report	Total costs (million $2006)	Downstream emissions reported ($MtCO_2e$/year)	Percentage of total downstream emissions reported	Average reporting cost ($/ton)	Incremental cost ($/metric ton) [1]
100,000	1,143	$13.66	273	64	$0.05	$0.05
25,000	3,037	25.30	351	83	0.08	0.13
10,000	4,884	38.62	380	90	0.10	0.23
1,000	15,057	97.18	415	98	0.23	0.46

[1] Cost per metric ton relative to the selected option.

C. What are the economic impacts of the proposed rule?

1. Summary of Economic Impacts

EPA prepared an economic impact analysis to evaluate the impacts of the rule on affected small to large reporting entities. In evaluating the various reporting options considered, EPA conducted a cost-effectiveness analysis, comparing the cost per metric ton of GHG emissions across reporting options. EPA used this information to identify the preferred options described in today's proposed rule.

To estimate the economic impacts of the rule, EPA first conducted a screening assessment, comparing the estimated total annualized compliance costs for the petroleum and gas industry, where industry is defined in terms of North American Industry Classification System (NAICS) code, with industry average revenues. Overall national costs of the rule are significant because there are a large number of affected entities, but per-entity costs are low due to large coverage of emissions from these entities. Average cost-to-sales ratios for establishments in the affected NAICS codes for all segments is less than 1 percent, except in the 1–20 employee range for the onshore petroleum and natural gas segment.

These low average cost-to-sales ratios indicate that the proposed 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 W–9 of this preamble summarizes cost-to-sales ratios for affected industries.

TABLE W–9—ESTIMATED COST-TO-SALES RATIOS FOR AFFECTED ENTITIES

[Year 1]

NAICS	NAICS description	Average cost per entity ($1,000/entity)	Average entity cost-to-sales ratio[1]
211	Crude Petroleum and Natural Gas Extraction	$24	0.11%
486210	Pipeline Transportation of Natural Gas	18	0.10%
221210	Natural Gas Distribution	11	0.05%

[1] This ratio reflects first year costs. Subsequent year costs will be slightly lower because they do not include initial start-up activities.

D. What are the impacts of the proposed rule on small businesses?

1. Summary of Impacts on Small Businesses

As required by the RFA and Small Business Regulatory Enforcement and Fairness ACT (SBREFA), EPA assessed the potential impacts of the rule on small entities (small businesses, governments, and non-profit organizations). (See Section IV.C of this preamble for definitions of small entities.)

EPA has determined the selected threshold maximizes the rule coverage with 83 percent of U.S. GHG emissions from the industry segments reported by approximately 3,037 reporters, while keeping reporting burden to a minimum. Furthermore, many industry stakeholders that EPA met with expressed support for a 25,000 metric ton CO_2e threshold because it sufficiently captures the majority of GHG emissions in the U.S., while excluding most of the smaller facilities and sources. We received many comments related to monitoring and reporting requirements in specific source categories, and made many changes in response to reduce burden on reporters. For information on these issues, refer to the discussion of each segment in this preamble.

EPA conducted a screening assessment comparing compliance costs to onshore petroleum and natural gas production 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 one percent.[9] 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 W–10 of this preamble.

TABLE W–10.—ESTIMATED COST-TO-SALES RATIOS FOR FIRST YEAR COSTS BY INDUSTRY AND ENTERPRISE SIZE[A]

Industry	NAICS	NAICS Description	SBA Size Standard (effective March 11, 2008)	Average cost per entity ($1,000/entity)	All enterprises	Owned by enterprises with:						
						<20 employees[f]	20 to 99 employees	100 to 499 employees	500 to 749 employees	<500 employees	750 to 999 employees	1,000 to 1,499 employees
Onshore petroleum and natural gas production; offshore petroleum and natural gas production; LNG storage; LNG import and export.	211	Crude Petroleum and Natural Gas Extraction.	500 employees.	$24	0.11%	1.83%	0.16%	0.07%	0.03%	0.65%	0.04%	0.03%
Onshore natural gas processing; onshore natural gas transmission; underground natural gas storage.	486210	Pipeline Transportation of Natural Gas.	7.5 million dollars.	18	0.10	0.14	0.47[b]	0.28[b]	.....	0.12	.....	.....
Natural gas distribution.	221210	Natural Gas Distribution.	7.5 million dollars.	11	0.05	0.22	0.02	0.05	0.09	0.06	0.02	0.02

[1] 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 SBREFA screening analyses.

[2] The Census Bureau has missing data ranges for this employee range. Hence the receipts are an underestimate of the true value. Therefore, the cost-to-sales ratio is a conservative estimate.

As shown, the cost-to-sales ratios are less than one percent for establishments owned by small businesses that EPA considers most likely to be covered by the reporting program, except the ratio for 1–20 employee range for crude petroleum and natural gas extraction, which is greater than 1 percent but less than 2 percent. The petroleum and natural gas industry has a large number of enterprises, the majority of them in the 1–20 employee range. However, a large fraction of production comes from large corporations and not those with less than 20 employee enterprises. The smaller enterprises in most cases deal with very small operations (such as a single family owning a few production wells) that are unlikely to cross even the 25,000 metric tons CO_2e threshold considered for the rule. An exception to such a scenario is a small (less than 20 employee) enterprise owning large operations but conducting nearly all of its operations through contractors. This is not an uncommon practice in the onshore petroleum and natural gas production segment. Such enterprises, however, are a very small group among the over 19,000 enterprises in the less than 20 employee category and EPA proposes to cover them in the rule.

EPA took a conservative approach with the model entity analysis. Although the appropriate SBA size definition should be applied at the parent company (enterprise) level, data limitations allowed us only to compute and compare ratios for a model establishment within several enterprise size ranges.

Although this rule will 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

[9] EPA's RFA guidance for rule writers suggests the "sales" test continues to be the preferred quantitative metric for economic impact screening analysis.

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 recommended a hybrid method for reporting, which provides flexibility to entities and helps minimize reporting costs.

E. What are the benefits of the proposed rule for society?

EPA examined the potential benefits of the proposed GHG reporting rule for petroleum and natural gas systems. The benefits of a reporting system are based on their relevance to policy making, transparency issues, and market efficiency. Benefits are very difficult to quantify and monetize. 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 for petroleum and natural gas systems 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 petroleum and natural gas systems GHG emissions to government will be realized in developing future GHG policies. For example, in the European Union'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.

As the primary constituent of natural gas, methane is also an important energy source. As a result, methane emissions reductions can provide significant economic and environmental benefits. EPA has been working in collaboration with oil and natural companies in the U.S. as part of the Natural Gas STAR Program since 1993. Through this collaborative partnership program, EPA has identified over 120 proven, cost effective technologies and practices to reduce methane emissions across operations in all of the major industry sectors—production, gathering and processing, transmission, and distribution. The proposed reporting rule will increase knowledge of the location and magnitude of significant methane emissions sources in the oil and gas industry which can result in cross-cutting benefits on domestic energy supply, industrial efficiency and safety, and revenue generation.

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.

Section VI of the RIA for the Final MRR summarizes the anticipated benefits of the finalized rule, which include providing the government with sound data on which to base future policies and providing industry and the public independently verified information documenting firms' environmental performance. While EPA has not quantified the benefits of the mandatory reporting rule, EPA believes that they are substantial and outweigh the estimated costs.

IV. 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 regulatory 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.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2376.01.

EPA plans to collect complete and accurate facility-level GHG emissions from the petroleum and natural gas industry. Accurate and timely information on GHG emissions is essential for informing future climate change policy decisions. Through data collected under this proposed rule, EPA will gain a better understanding of the relative emissions of different segments of the petroleum and natural gas industry 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 facilities within the petroleum and natural gas industry over time, particularly in response to policies and potential regulations. The data collected by this proposed rule will improve EPA's ability to formulate climate change policy options and to assess which segments of the petroleum and gas industry would be affected, and how these segments 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.[10]

The projected cost and hour burden for non-federal respondents is $37.8 million and 478,774 hours per year. The

[10] Although CBI determinations are usually made on a case-by-case basis, EPA has issued guidance in an earlier **Federal Register** notice on what constitutes emissions data that cannot be considered CBI (956 FR 7042–7043, February 21, 1991). As discussed in Section II.R of the Final MRR preamble, EPA is initiating a separate notice and comment process to make CBI determinations for the data collected under this rulemaking. EPA intends to issue this notice in early 2010, and will include in the notice the data proposed for collection in this rulemaking.

estimated average burden per response is 98.2 hours; the frequency of response is annual for all respondents that must comply with the proposed rule's reporting requirements; and the estimated average number of likely respondents per year is 3,038. 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 $5.3 million), a total operation and maintenance component (averaging $1.6 million per year), and a labor cost component (averaging $30.9 million per year).[11] Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number (EPA–HQ–OAR–2009–0923). Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 12, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by May 12, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (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 this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule include small businesses in the petroleum and natural gas industry, small governmental jurisdictions and small non-profits. We have determined that some small businesses will be affected because their production processes emit GHGs that must be reported.

The small entities directly regulated by this proposed rule include small businesses in the petroleum and gas industry, small governmental jurisdictions and small non-profits. We have determined that some small businesses will be affected because their production processes emit GHGs that must be reported.

For affected small entities, EPA conducted a screening assessment comparing compliance costs for affected industry segments to petroleum and gas-specific data on revenues for small businesses. This ratio constitutes a "sales" test that computes the annualized compliance costs of this proposed 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 compliance cost for the establishment/average establishment revenues).

As shown in Table W–10, the average ratio of annualized reporting program costs to receipts of establishments owned by model small enterprises was less than 1 percent for industries presumed likely to have small businesses covered by the reporting program. Although the costs to receipts for entities with 1–20 employees is over 1 percent, these facilities would likely not exceed the proposed 25,000 $mtCO_2e$ threshold, a threshold supported by many stakeholders as one that sufficiently captures the majority of GHG emissions while excluding small facilities. Further, 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 screening analysis thus indicates that the proposed rule will not have a significant economic impact on a substantial number of small entities. The screening assessment for small governments for the Final MRR compared the sum of average costs of compliance for combustion, local distribution companies, and landfills to average revenues for small governments. Even for a small government owning all three source types, the costs constitute less than 1 percent of average revenues for the smallest category of governments (those with fewer than 10,000 people).

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless took several steps to reduce the impact of this proposed rule on small entities. For example, EPA determined appropriate thresholds that reduce the number of small businesses reporting. In addition, EPA is proposing different monitoring methods for different emissions sources, requiring direct measurement only for selected sources. Also, EPA is proposing annual instead of more frequent reporting.

Through comprehensive outreach activities prior to proposal of the initial rule, EPA held approximately 100 meetings and/or conference calls with representatives of the primary audience groups, including numerous trade associations and industries in the petroleum and gas industry that include small business members. EPA's outreach activities prior to proposal of the initial rule are documented in the memorandum, "Summary of EPA Outreach Activities for Developing the Greenhouse Gas Reporting Rule," located in Docket No. EPA–HQ–OAR–2008–0508–053. After the initial proposal, EPA posted a guide for small businesses on the EPA GHG reporting rule Web site, along with a general fact sheet for the rule, information sheets for every source category, and an FAQ document. EPA also operated a hotline

[11] Burden is defined at 5 CFR 1320.3(b). These cost numbers differ from those shown elsewhere in the Economic Analysis because the ICR costs represent the average cost over the first three years of the proposed rule, but costs are reported elsewhere in the Economic Analysis for the first year of the proposed rule and for subsequent years of the proposed rule. In addition, the ICR focuses on respondent burden, while the Economic Analysis includes EPA Agency costs.

to answer questions about the proposed rule. We continued to meet with stakeholders and entered documentation of all meetings into the docket.

During rule implementation, EPA would maintain an "open door" policy for stakeholders to ask questions about the proposed rule or provide suggestions to EPA about the types of compliance assistance that would be useful to small businesses. EPA intends to develop a range of compliance assistance tools and materials and conduct extensive outreach for the proposed rule.

We have therefore concluded that today's proposed rule will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

The UMRA seeks to protect State, local, and Tribal governments from the imposition of unfunded Federal mandates. In addition, the Act seeks to strengthen the partnership between the Federal government and State, local, and Tribal governments and ensure that the Federal government covers the costs incurred during compliance with Federal mandates.

Title II of the UMRA of 1995, 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 segment. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private segment, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the Subpart W 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 segment in any one year. Expenditures associated with compliance, defined as the incremental costs beyond the existing regulations will not surpass $100 million in the aggregate in any year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies to facilities that directly emit greenhouse gases. It does not apply to governmental entities unless the government entity owns a facility in the petroleum and gas industry that directly emits greenhouse gases above threshold levels. In addition, this proposed rule does not impose any implementation responsibilities on State, local, or Tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impact on governments affected by the proposed rule is expected to be minimal.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, state or local 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, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This regulation would apply directly to petroleum and natural gas facilities that emit greenhouses gases. Although few facilities that would be subject to the rule are likely to be owned by tribal governments, EPA has sought opportunities to provide information to tribal governments and representatives during rule development. EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA sought opportunities to provide information to Tribal governments and representatives during development of the mandatory GHG reporting rule that was proposed in April 2009 and finalized in September 2009. Today's action is a supplemental proposal to that rule. In consultation with EPA's American Indian Environment Office, EPA's outreach plan included tribes. EPA conducted several conference calls with Tribal organizations during the proposal phase. For example, EPA staff provided information to tribes through conference calls with multiple Indian working groups and organizations at EPA that interact with tribes and through individual calls with two Tribal board members of TCR. In addition, EPA prepared a short article on the GHG reporting rule that appeared on the front page of a Tribal newsletter—Tribal Air News—that was distributed to EPA/OAQPS's network of Tribal organizations. EPA gave a presentation on various climate efforts, including the mandatory reporting rule, at the National Tribal Conference on Environmental Management on June 24–26, 2008. In addition, EPA had copies of a short information sheet distributed at a meeting of the National Tribal Caucus. See the "Summary of EPA Outreach Activities for Developing the GHG reporting rule," in Docket No. EPA–HQ–OAR–2008–0508–055 for a complete list of Tribal contacts. EPA

participated in a conference call with Tribal air coordinators in April 2009 and prepared a guidance sheet for Tribal governments on the proposed rule. It was posted on the MRR Web site and published in the Tribal Air Newsletter.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule 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 proposed rule is not likely to have any adverse energy effects. This proposed rule relates to monitoring, reporting and recordkeeping at petroleum and gas facilities that emit over 25,000 $mtCO_2e$ and does not impact energy supply, distribution or use. Therefore, we conclude that this proposed 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 (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. EPA provides the flexibility to use any one of the voluntary consensus standards from at least seven different voluntary consensus standards bodies, including the following: ASTM, ASME, ISO, Gas Processors Association, and American Gas Association. These voluntary consensus standards will help facilities monitor, report, and keep records of greenhouse gas emissions. No new test methods were developed for this proposed rule. Instead, from existing rules for source categories and voluntary greenhouse gas programs, EPA identified existing means of monitoring, reporting, and keeping records of greenhouse gas emissions. The existing methods (voluntary consensus standards) include a broad range of measurement techniques, including many for combustion sources such as methods to analyze fuel and measure its heating value; methods to measure gas or liquid flow; and methods to gauge and measure petroleum and petroleum products.

By incorporating voluntary consensus standards into this proposed rule, EPA is both meeting the requirements of the NTTAA and presenting multiple options and flexibility for measuring greenhouse gas emissions.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

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: March 22, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 98 as follows:

PART 98—MANDATORY GREENHOUSE GAS REPORTING

1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

2. Section 98.2 is amended by revising paragraph (a) introductory text to read as follows:

§ 98.2 Who must report?

(a) The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this part apply to the owners and operators of any facility that is located in the United States or under or attached to the Outer Continental Shelf (as defined in 43 U.S.C. 1331) and that meets the requirements of either paragraph (a)(1), (a)(2), or (a)(3) of this section; and any supplier that meets the requirements of paragraph (a)(4) of this section:

* * * * *

3. Section 98.6 is amended by adding the following definitions in alphabetical order and revising the definition of "United States" to read as follows:

§ 98.6 Definitions.

Absorbent circulation pump means a pump commonly powered by natural gas pressure that circulates the absorbent liquid between the absorbent regenerator and natural gas contactor.

* * * * *

Acid Gas means hydrogen sulfide (H_2S) and carbon dioxide (CO_2) contaminants that are separated from sour natural gas by an acid gas removal.

Acid Gas Removal unit (AGR) means a process unit that separates hydrogen sulfide and/or carbon dioxide from sour natural gas using liquid or solid absorbents or membrane separators.

Acid gas removal vent stack emissions mean the acid gas separated from the acid gas absorbing medium (*e.g.,* an amine solution) and released with methane and other light hydrocarbons to the atmosphere or a flare.

* * * * *

Air injected flare means a flare in which air is blown into the base of a flare stack to induce complete combustion of low Btu natural gas (*i.e.,*

high non-combustible component content).

* * * * *

Blowdown vent stack emissions mean natural gas released due to maintenance and/or blowdown operations including but not limited to compressor blowdown and emergency shut-down (ESD) system testing.

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Calibrated bag means a flexible, non-elastic, anti-static bag of a calibrated volume that can be affixed to a emitting source such that the emissions inflate the bag to its calibrated volume.

* * * * *

Centrifugal compressor means any equipment that increases the pressure of a process natural gas by centrifugal action, employing rotating movement of the driven shaft.

Centrifugal compressor dry seals mean a series of rings around the compressor shaft where it exits the compressor case that operates mechanically under the opposing forces to prevent natural gas from escaping to the atmosphere.

Centrifugal compressor dry seals emissions mean natural gas released from a dry seal vent pipe and/or the seal face around the rotating shaft where it exits one or both ends of the compressor case.

Centrifugal compressor wet seal degassing venting emissions means emissions that occur when the high-pressure oil barriers for centrifugal compressors are depressurized to release absorbed natural gas. High-pressure oil is used as a barrier against escaping gas in centrifugal compressor shafts. Very little gas escapes through the oil barrier, but under high pressure, considerably more gas is absorbed by the oil. The seal oil is purged of the absorbed gas (using heaters, flash tanks, and degassing techniques) and recirculated. The separated gas is commonly vented to the atmosphere.

* * * * *

Coal Bed Methane (CBM) means natural gas which is extracted from underground coal deposits or "beds."

* * * * *

Component, for the purposes of subpart W only, means but is not limited to each metal to metal joint or seal of non-welded connection separated by a compression gasket, screwed thread (with or without thread sealing compound), metal to metal compression, or fluid barrier through which natural gas or liquid can escape to the atmosphere.

Compressor means any machine for raising the pressure of a natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas.

* * * * *

Condensate means hydrocarbon and other liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at storage conditions, includes both water and hydrocarbon liquids.

* * * * *

Conventional wells mean gas wells in producing fields that do not employ hydraulic fracturing to produce commercially viable quantities of natural gas.

* * * * *

Dehydrator means a device in which a liquid absorbent (including but not limited to desiccant, ethylene glycol, diethylene glycol, or triethylene glycol) directly contacts a natural gas stream to absorb water vapor.

Dehydrator vent stack emissions means natural gas released from a natural gas dehydrator system absorbent (typically glycol) reboiler or regenerator, including stripping natural gas and motive natural gas used in absorbent circulation pumps.

* * * * *

De-methanizer means the natural gas processing unit that separates methane rich residue gas from the heavier hydrocarbons (*e.g.,* ethane, propane, butane, pentane-plus) in feed natural gas stream).

* * * * *

Desiccant means a material used in solid-bed dehydrators to remove water from raw natural gas by adsorption. Desiccants include activated alumina, palletized calcium chloride, lithium chloride and granular silica gel material. Wet natural gas is passed through a bed of the granular or pelletized solid adsorbent in these dehydrators. As the wet gas contacts the surface of the particles of desiccant material, water is adsorbed on the surface of these desiccant particles. Passing through the entire desiccant bed, almost all of the water is adsorbed onto the desiccant material, leaving the dry gas to exit the contactor.

* * * * *

E&P Tank means the most current version of an exploration and production field tank emissions equilibrium program that estimates flashing, working and standing losses of hydrocarbons, including methane, from produced crude oil and gas condensate. Equal or successors to E&P Tank Version 2.0 for Windows Software. Copyright (C) 1996–1999 by The American Petroleum Institute and The Gas Research Institute.

* * * * *

Engineering estimation, for purposes of subpart W, means an estimate of emissions based on engineering principles applied to measured and/or approximated physical parameters such as dimensions of containment, actual pressures, actual temperatures, and compositions.

Enhanced Oil Recovery (EOR) means the use of certain methods such as water flooding or gas injection into existing wells to increase the recovery of crude oil from a reservoir. In the context of this rule, EOR applies to injection of critical phase carbon dioxide into a crude oil reservoir to enhance the recovery of oil.

* * * * *

Field means standardized field names and codes of all oil and gas fields identified in the United States as defined by the Energy Information Administration Oil and Gas Field Code Master List.

* * * * *

Flare combustion means unburned hydrocarbons including CH_4, CO_2, N_2O emissions resulting from the incomplete combustion of gas in flares.

Flare combustion efficiency means the fraction of natural gas, on a volume or mole basis, that is combusted at the flare burner tip.

* * * * *

Fugitive emissions means those emissions which are unintentional and could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

Fugitive emissions detection means the process of identifying emissions from equipment, components, and other point sources.

Gas conditions mean the actual temperature, volume, and pressure of a gas sample.

* * * * *

Gas gathering/booster stations mean centralized stations where produced natural gas from individual wells is co-mingled, compressed for transport to processing plants, transmission and distribution systems, and other gathering/booster stations which co-mingle gas from multiple production gathering/booster stations. Such stations may include gas dehydration, gravity separation of liquids (both hydrocarbon and water), pipeline pig launchers and receivers, and gas powered pneumatic devices.

* * * * *

Gas to oil ratio (GOR) means the ratio of the volume of gas at standard

temperature and pressure that is produced from a volume of oil when depressurized to standard temperature and pressure.

* * * * *

High-Bleed Pneumatic Devices are automated flow control devices powered by pressurized natural gas and used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature. Part of the gas power stream which is regulated by the process condition flows to a valve actuator controller where it vents (bleeds) to the atmosphere at a rate in excess of six standard cubic feet per hour.

* * * * *

Liquefied natural gas (LNG) means natural gas (primarily methane) that has been liquefied by reducing its temperature to −260 degrees Fahrenheit at atmospheric pressure.

LNG boiloff gas means natural gas in the gaseous phase that vents from LNG storage tanks due to ambient heat leakage through the tank insulation and heat energy dissipated in the LNG by internal pumps.

Low-Bleed Pneumatic Devices mean automated flow control devices powered by pressurized natural gas and used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature. Part of the gas power stream which is regulated by the process condition flows to a valve actuator controller where it vents (bleeds) to the atmosphere at a rate equal to or less than six standard cubic feet per hour.

* * * * *

Natural gas driven pneumatic pump means a pump that uses pressurized natural gas to move a piston or diaphragm, which pumps liquids on the opposite side of the piston or diaphragm.

* * * * *

Offshore means seaward of the terrestrial borders of the United States, including waters subject to the ebb and flow of the tide, as well as adjacent bays, lakes or other normally standing waters, and extending to the outer boundaries of the jurisdiction and control of the United States under the Outer Continental Shelf Lands Act.

* * * * *

Onshore petroleum and natural gas production owner or operator means the entity who is the permitee to operate petroleum and natural gas wells on the state drilling permit or a state operating permit where no drilling permit is issued by the state, which operates an onshore petroleum and/or natural gas production facility (as described in § 98.230(b)(2). Where more than one entity are permitees on the state drilling permit, or operating permit where no drilling permit is issued by the state, the permitted entities for the joint facility must designate one entity to report all emissions from the joint facility.

* * * * *

Operating pressure means the containment pressure that characterizes the normal state of gas or liquid inside a particular process, pipeline, vessel or tank.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. § 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

Pump means a device used to raise pressure, drive, or increase flow of liquid streams in closed or open conduits.

Pump seals means any seal on a pump drive shaft used to keep methane and/or carbon dioxide containing light liquids from escaping the inside of a pump case to the atmosphere.

Pump seal emissions means hydrocarbon gas released from the seal face between the pump internal chamber and the atmosphere.

* * * * *

Reciprocating compressor means a piece of equipment that increases the pressure of a process natural gas by positive displacement, employing linear movement of a shaft driving a piston in a cylinder.

Reciprocating compressor rod packing means a series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere.

Re-condenser means heat exchangers that cool compressed boil-off gas to a temperature that will condense natural gas to a liquid.

* * * * *

Reservoir means a porous and permeable underground natural formation containing significant quantities of hydrocarbon liquids and/or gases. A reservoir is characterized by a single natural pressure system.

* * * * *

Sales oil means produced crude oil or condensate measured at the production lease automatic custody transfer (LACT) meter or custody transfer meter tank gauge.

* * * * *

Sour natural gas means natural gas that contains significant concentrations of hydrogen sulfide and/or carbon dioxide that exceed the concentrations specified for commercially saleable natural gas delivered from transmission and distribution pipelines.

* * * * *

Sweet Gas is natural gas with low concentrations of hydrogen sulfide (H_2S) and/or carbon dioxide (CO_2) that does not require (or has already had) acid gas treatment to meet pipeline corrosion-prevention specifications for transmission and distribution.

* * * * *

Transmission pipeline means high pressure cross country pipeline transporting sellable quality natural gas from production or natural gas processing to natural gas distribution pressure let-down, metering, regulating stations where the natural gas is typically odorized before delivery to customers.

* * * * *

Turbine meter means a flow meter in which a gas or liquid flow rate through the calibrated tube spins a turbine from which the spin rate is detected and calibrated to measure the fluid flow rate.

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Unconventional wells means gas well in producing fields that employ hydraulic fracturing to enhance gas production volumes.

* * * * *

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory or possession of the United States, as well as the territorial sea as defined by Presidential Proclamation No. 5928.

* * * * *

Vapor recovery system means any equipment located at the source of potential gas emissions to the atmosphere or to a flare, that is composed of piping, connections, and, if necessary, flow-inducing devices, and that is used for routing the gas back into the process as a product and/or fuel.

Vaporization unit means a process unit that performs controlled heat input to vaporize LNG to supply transmission and distribution pipelines or consumers with natural gas.

* * * * *

Vented emissions means intentional or designed releases of CH_4 or CO_2 containing natural gas or hydrocarbon gas (not including stationary combustion flue gas), including but not limited to process designed flow to the

atmosphere through seals or vent pipes, equipment blowdown for maintenance, and direct venting of gas used to power equipment (such as pneumatic devices).

* * * * *

Well completions means a process that allows for the flow of petroleum or natural gas from newly drilled wells to expel drilling and reservoir fluids and test the reservoir flow characteristics. This process includes high-rate back-flow of injected water and sand used to fracture and prop-open fractures in low permeability gas reservoirs.

Well workover means the performance of one or more of a variety of remedial operations on producing oil and gas wells to try to increase production. This process also includes high-rate back-flow of injected water and sand used to re-fracture and prop-open new fractures in existing low permeability gas reservoirs.

Wellhead means the piping, casing, tubing and connected valves protruding above the Earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve.

Wet natural gas means natural gas in which water vapor exceeds the concentration specified for commercially saleable natural gas delivered from transmission and distribution pipelines. This input stream to a natural gas dehydrator is referred to as "wet gas".

4. Section 98.7 is amended by adding paragraphs (k), (l), and (m) to read as follows:

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(k) The following material is available for purchase from the Gas Technology Institute, 1700 South Mount Prospect Road, Des Plaines, Illinois 60018, *http://www.gastechnology.org.*

(1) GRI–GLYCalc Version 4.0, IBR approved for § 98.233(e).

(2) [Reserved]

(l) The following material is available for purchase from IHS Standards Store, Jane's Information Group, Inc., 110 North Royal Street, Suite 200, Alexandria, Virginia 22314, *http://www.ihs.com.*

(1) E&P Tank Version 2.0, IBR approved for § 98.233(j) and § 98.236(c).

(2) [Reserved]

(m) The following material is available for purchase from the American Association of Petroleum Geologists, 1444 South Boulder Avenue, Tulsa, Oklahoma 74119, *www.aapg.org.*

(1) AAPG–CSD Geologic Provinces Code Map: AAPG Bulletin, Volume 75, Number 10 (October 1991), pages 1644–1651, IBR approved for § 98.230(b).

(2) [Reserved]

5. Add subpart W to read as follows:

Subpart W—Petroleum and Natural Gas Systems

Sec.

Subpart W—Petroleum and Natural Gas Systems

§ 98.230 Definition of the source category.

(a) This source category consists of the following:

(1) *Offshore petroleum and natural gas production.* Offshore petroleum and natural gas production is any platform structure, affixed temporarily or permanently to offshore submerged lands, that houses equipment to extract hydrocarbons from the ocean or lake floor and that transfers such hydrocarbons to storage, transport vessels, or onshore. In addition, offshore production includes secondary platform structures and storage tanks associated with the platform structure.

(2) *Onshore petroleum and natural gas production.* Onshore petroleum and natural gas production equipment means all structures associated with wells (including but not limited to compressors, generators, or storage facilities), piping (including but not limited to flowlines or intra-facility gathering lines), and portable non-self-propelled equipment (including but not limited to well drilling and completion equipment, workover equipment, gravity separation equipment, auxiliary non-transportation-related equipment, and leased, rented or contracted equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate). This also includes associated storage or measurement and all systems engaged in gathering produced gas from multiple wells, all EOR operations using CO_2, and all petroleum and natural gas production located on islands, artificial islands or structures connected by a causeway to land, an island, or artificial island.

(3) *Onshore natural gas processing plants.* Natural gas processing plants are designed to separate and recover natural gas liquids (NGLs) or other non-methane gases and liquids from a stream of produced natural gas to meet onshore natural gas transmission pipeline quality specifications through equipment performing one or more of the following processes: oil and condensate removal, water removal, separation of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or other processes, and also the capture of CO_2 separated from natural gas streams for delivery outside the facility. In addition, field gathering and/or boosting stations that gather and process natural gas from multiple wellheads, and compress and transport natural gas (including but not limited to flowlines or intra-facility gathering lines or compressors) as feed to the natural gas processing plants are considered a part of the processing plant. Gathering and boosting stations that send the natural gas to an onshore natural gas transmission compression facility, or natural gas distribution facility, or to an end user are considered stand alone natural gas processing facilities. All residue gas compression equipment operated by a processing plant, whether inside or outside the processing plant fence, are considered part of natural gas processing plant.

(4) *Onshore natural gas transmission compression.* Onshore natural gas transmission compression means any fixed combination of compressors that move natural gas at elevated pressure from production fields or natural gas processing facilities, in transmission pipelines, to natural gas distribution pipelines, or into storage. In addition, transmission compressor station includes equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

(5) *Underground natural gas storage.* Underground natural gas storage means subsurface storage, including but not limited to, depleted gas or oil reservoirs and salt dome caverns utilized for storing natural gas that has been transferred from its original location for the primary purpose of load balancing (the process of equalizing the receipt and delivery of natural gas); natural gas underground storage processes and operations (including, but not limited to, compression, dehydration and flow measurement); and all the wellheads connected to the compression units located at the facility.

(6) *Liquefied natural gas (LNG) storage.* LNG storage means onshore LNG storage vessels located above ground, equipment for liquefying natural gas, compressors to capture and re-liquefy boil-off-gas, re-condensers,

and vaporization units for re-gasification of the liquefied natural gas.

(7) *LNG import and export equipment.* LNG import equipment means all onshore or offshore equipment that receives imported LNG via ocean transport, stores LNG, re-gasifies LNG, and delivers re-gasified natural gas to a natural gas transmission or distribution system. LNG export equipment means all onshore or offshore equipment that receives natural gas, liquefies natural gas, stores LNG, and transfers the LNG via ocean transportation to any location, including locations in the United States.

(8) *Natural Gas Distribution.* Natural gas distribution means distribution pipelines (not interstate pipelines or intrastate pipelines) and metering and regulating stations, that physically deliver natural gas to end users.

(b) [Reserved]

§ 98.231 Reporting threshold.

(a) You must report GHG emissions from petroleum and natural gas systems if your facility as defined in § 98.230 meets the requirements of § 98.2(a)(2).

(b) For applying the threshold defined in § 98.2(a)(2), you must include combustion emissions from portable equipment that cannot move on roadways under its own power and drive train and that is stationed at a wellhead for more than 30 days in a reporting year, including drilling rigs, dehydrators, compressors, electrical generators, steam boilers, and heaters.

§ 98.232 GHGs to report.

(a) You must report CO_2 and CH_4 emissions from each industry segment specified in paragraph (b) through (i) of this section.

(b) For offshore petroleum and natural gas production, report emissions from all "stationary fugitive" and "stationary vented" sources as identified in the Minerals Management Service (MMS) Gulfwide Offshore Activity Data System (GOADS) study (2005 Gulfwide Emission Inventory Study MMS 2007–067).

(c) For onshore petroleum and natural gas production, report emissions from the following source types:

(1) Natural gas pneumatic high bleed device venting.

(2) Natural gas pneumatic low bleed device venting.

(3) Natural gas driven pneumatic pump venting.

(4) Well venting for liquids unloading.

(5) Gas well venting during conventional well completions.

(6) Gas well venting during unconventional well completions.

(7) Gas well venting during conventional well workovers.

(8) Gas well venting during unconventional well workovers.

(9) Gathering pipeline fugitives.

(10) Storage tanks.

(11) Reciprocating compressor rod packing venting.

(12) Well testing venting and flaring.

(13) Associated gas venting and flaring.

(14) Dehydrator vent stacks.

(15) Coal bed methane produced water emissions.

(16) EOR injection pump blowdown.

(17) Acid gas removal vent stack.

(18) Hydrocarbon liquids dissolved CO_2.

(19) Centrifugal compressor wet seal degassing venting.

(20) Produced water dissolved CO_2.

(21) Fugitive emissions from valves, connectors, open ended lines, pressure relief valves, compressor starter gas vents, pumps, flanges, and other fugitive sources (such as instruments, loading arms, pressure relief valves, stuffing boxes, compressor seals, dump lever arms, and breather caps for crude services).

(d) For onshore natural gas processing, report emissions from the following sources:

(1) Reciprocating compressor rod packing venting.

(2) Centrifugal compressor wet seal degassing venting.

(3) Storage tanks.

(4) Blowdown vent stacks.

(5) Dehydrator vent stacks.

(6) Acid gas removal vent stack.

(7) Flare stacks.

(8) Gathering pipeline fugitives.

(9) Fugitive emissions from: valves, connectors, open ended lines, pressure relief valves, meters, and centrifugal compressor dry seals.

(e) For onshore natural gas transmission compression, report emissions from the following sources:

(1) Reciprocating compressor rod packing venting.

(2) Centrifugal compressor wet seal degassing venting.

(3) Transmission storage tanks.

(4) Blowdown vent stacks.

(5) Natural gas pneumatic high bleed device venting.

(6) Natural gas pneumatic low bleed device venting.

(7) Fugitive emissions from connectors, block valves, control valves, compressor blowdown valves, pressure relief valves, orifice meters, other meters, regulators, and open ended lines.

(f) For underground natural gas storage, report emissions from the following sources:

(1) Reciprocating compressor rod packing venting.

(2) Centrifugal compressor wet seal degassing venting.

(3) Natural gas pneumatic high bleed device venting.

(4) Natural gas pneumatic low bleed device venting.

(5) Fugitive emissions from connectors, block valves, control valves, compressor blowdown valves, pressure relief valves, orifice meters, other meters, regulators, and open ended lines.

(g) For LNG storage, report emissions from the following sources:

(1) Reciprocating compressor rod packing venting.

(2) Centrifugal compressor wet seal degassing venting.

(3) Fugitive emissions from valves; pump seals; connectors; vapor recovery compressors, and other fugitive sources.

(h) LNG import and export equipment, report emissions from the following sources:

(1) Reciprocating compressor rod packing venting.

(2) Centrifugal compressor wet seal degassing venting.

(3) Blowdown vent stacks.

(4) Fugitive emissions from valves, pump seals, connectors, vapor recovery compressors, and other fugitive sources.

(i) For natural gas distribution, report emissions from the following sources:

(1) Above ground meter regulators and gate station fugitive emissions from connectors, block valves, control valves, pressure relief valves, orifice meters, other meters, regulators, and open ended lines.

(2) Below ground meter regulators and vault fugitives.

(3) Pipeline main fugitives.

(4) Service line fugitives.

(j) You must report the CO_2, CH_4, and N_2O emissions from each flare.

(k) 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 fuel combustion unit by following the requirements of subpart C.

(l) You must report under subpart PP of this part (Suppliers of Carbon Dioxide), CO_2 emissions captured and transferred off site by following the requirements of subpart PP.

§ 98.233 Calculating GHG emissions.

(a) *Natural gas pneumatic high bleed device venting.* Calculate emissions from a natural gas pneumatic high bleed flow control device venting as follows:

(1) Calculate vented emissions using manufacturer data.

(i) Obtain from the manufacturer specific pneumatic device model natural gas bleed rate during normal operation.

(ii) Calculate the natural gas emissions for each continuous bleed device using Equation W–1 of this section.

$$E_{s,n} = B_s * T \qquad \text{(Eq. W-1)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions, in cubic feet.

B_s = Natural gas driven pneumatic device bleed rate volume at standard conditions in cubic feet per minute, as provided by the manufacturer.

T = Amount of time in minutes that the pneumatic device has been operational through the reporting period.

(iii) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(2) If manufacturer data for a specific device is not available, then use data for a similar device model, size and operational characteristics to estimate emissions.

(b) *Natural gas pneumatic low bleed device venting.* Calculate emissions from natural gas pneumatic low continuous bleed device venting using Equation W–2 of this section.

$$Mass_{s,i} = Count * EF * GHG_i * Conv_i * 24 * 365 \qquad \text{(Eq. W-2)}$$

Where:

$Mass_{s,i}$ = Annual total mass GHG emissions in metric tons per year at standard conditions from all natural gas pneumatic low bleed device venting, for GHG i.

Count = Total number of natural gas pneumatic low bleed devices.

EF = Population emission factors for natural gas pneumatic low bleed device venting listed in Tables W–1, W–3, and W–4 of this subpart for onshore petroleum and natural gas production, onshore natural gas transmission, and underground natural gas storage facilities, respectively.

GHG i = For onshore petroleum and natural gas production facilities, concentration of GHG i, CH_4 or CO_2, in produced natural gas; for facilities listed in § 98.230(a)(3) through (a)(8), GHGi equals 1.

Convi = Conversion from standard cubic feet to metric tons CO_2e; 0.000404 for CH_4, and 0.00005189 for CO_2.

24 * 365 = Conversion to yearly emissions estimate.

(c) *Natural gas driven pneumatic pump venting.* Calculate emissions from natural gas driven pneumatic pump venting as follows:

(1) Calculate emissions using manufacturer data.

(i) Obtain from the manufacturer specific pump model natural gas emission (or manufacturer "gas consumption") per unit volume of liquid circulation rate at pump speeds and operating pressures.

(ii) Maintain a log of the amount of liquid pumped annually from individual pumps.

(iii) Calculate the natural gas emissions for each pump using Equation W–3 of this section.

$$E_{s,n} = F_s * V \qquad \text{(Eq. W-3)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions in cubic feet per year.

F_s = Natural gas driven pneumatic pump gas emission in "emission per volume of liquid pumped at operating pressure" in scf/gallon at standard conditions, as provided by the manufacturer.

V = Volume of liquid pumped annually in gallons/year.

(iv) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(2) If manufacturer data for a specific pump in Equation W–3 is not available, then use data for a similar pump model, size and operational characteristics to estimate emissions.

(d) *Acid gas removal (AGR) vent stacks.* For AGR (including but not limited to processes such as amine, membrane, molecular sieve or other absorbents and adsorbents), calculate emissions for CO_2 only (not CH_4) using Equation W–4 of this section.

$$E_{a,CO2} = \left(V_1 * \%Vol_1\right) - \left(V_2 * \%Vol_2\right) \qquad \text{(Eq. W-4)}$$

Where:

E_{a,CO_2} = Annual volumetric CO_2 emissions at ambient condition, in cubic feet per year.

V_1 = Metered total annual volume of natural gas flow into AGR unit in cubic feet per year at ambient condition.

$\%Vol_1$ = Volume weighted CO_2 content of natural gas into the AGR unit.

V_2 = Metered total annual volume of natural gas flow out of the AGR unit in cubic feet per year at ambient condition.

$\%Vol_2$ = Volume weighted CO_2 content of natural gas out of the AGR unit.

(1) If a continuous gas analyzer is installed, then the continuous gas analyzer results must be used. If continuous gas analyzer is not available, quarterly gas samples must be taken to determine $\%Vol_1$ and $\%Vol_2$ according to methods set forth in § 98.234(b).

(2) Calculate CO_2 volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(3) Mass CO_2 emissions shall be calculated from volumetric CO_2 emissions using calculations in paragraphs (u) and (v) of this section.

(e) *Dehydrator vent stacks.* For dehydrator vent stacks without vapor recovery or thermal control devices, calculate annual mass CH_4 and CO_2 emissions at standard temperature and pressure (STP) conditions using the simulation software package GRI–GLYCalc Version 4.0 (incorporated by reference, see § 98.7).

(1) A minimum of the following parameters must be used for characterizing emissions from dehydrators:

(i) Feed natural gas flow rate.

(ii) Feed natural gas water content.

(iii) Outlet natural gas water content.

(iv) Absorbent circulation pump type (natural gas pneumatic/air pneumatic/electric).

(v) Absorbent circulation rate.

(vi) Absorbent type: Including, but not limited to, triethylene glycol (TEG), diethylene glycol (DEG) or ethylene glycol (EG).

(vii) Use of stripping natural gas.

(viii) Use of flash tank separator (and disposition of recovered gas).

(ix) Hours operated.

(x) Wet natural gas temperature, pressure, and composition.

(2) Calculate annual emissions from dehydrator vent stacks to flares or regenerator fire-box/fire tubes as follows:

(i) Use the dehydrator vent stack volume and gas composition as determined in paragraph (e)(1) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine dehydrator vent stack emissions from the flare or regenerator combustion gas vent.

(3) Dehydrators that use desiccant shall calculate emissions from the amount of gas vented from the vessel every time it is depressurized for the desiccant refilling process using Equation W–5 of this section.

$$E_{s,n} = \frac{\left(H * D^2 * P * P_2 * \%G * 365 \text{days/yr}\right)}{\left(4 * P_1 * T * 1{,}000 \text{cf/Mcf}\right)} \qquad \text{(Eq. W-5)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions.
H = Height of the dehydrator vessel (ft).
D = Inside diameter of the vessel (ft).
P_1 = Atmospheric pressure (psia).
P_2 = Pressure of the gas (psia).
P = pi (3.14).
%G = Percent of packed vessel volume that is gas.
T = Time between refilling (days).

(i) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(f) *Well venting for liquids unloadings.*

(1) The emissions for well venting for liquids unloading shall be determined using either of the calculation methodologies described in paragraph (f)(1) of this section. The same calculation methodology must be used for the entire volume for the reporting year.

(i) *Calculation Methodology 1.* For each unique well tubing diameter and producing horizon/formation combination in each gas producing field where gas wells are vented to the atmosphere to expel liquids accumulated in the tubing, a recording flow meter shall be installed on the vent line used to vent gas from the well (*e.g.,* on the vent line off the wellhead separator or atmospheric storage tank) according to methods set forth in § 98.234(b). Calculate emissions from well venting for liquids unloading using Equation W–6 of this section.

$$E_{a,n} = T * FR \qquad \text{(Eq. W-6)}$$

Where:

$E_{a,n}$ = Annual natural gas emissions at ambient conditions in cubic feet.
T = Cumulative amount of time in hours of well venting during the year.
FR = Flow Rate in cubic feet per hour, under ambient conditions as required in paragraph (f)(1)(i)(A), (f)(1)(i)(B) and (f)(1)(i)(C) of this section.

Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section. Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(A) The average flow rate per minute of venting is calculated for each unique tubing diameter and producing horizon/formation combination in each producing field.

(B) This factor is applied to all wells in the field that have the same tubing diameter and producing horizon/formation combination, multiplied by the number of minutes of venting from all wells of the same tubing diameter and producing horizon/formation combination in that field.

(C) A new emission factor is calculated every other year for each reporting field and horizon.

(ii) *Calculation Methodology 2.* Calculate emissions from each well venting for liquids unloading using Equation W–7 of this section.

$$E_{s,n} = \left\{\left(0.37 \times 10^{-3}\right) * CD^2 * WD * SP * V\right\} + \{SFR * HR\} \qquad \text{(Eq. W-7)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions, in cubic feet/year.
0.37×10^{-3} = {pi(3.14)/4}/{(14.7*144) psia converted to pounds per square feet}
CD = Casing diameter (inches).
WD = Well depth (feet).
SP = Shut-in pressure (psig).
V = Number of vents per year.
SFR = Sales flow rate of gas well in cubic feet per hour.
HR = Hours that the well was left open to the atmosphere during unloading.

(A) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(B) [Reserved]

(g) *Gas well venting during unconventional well completions and workovers.* Calculate emissions from gas unconventional well venting during well completions and workovers from hydraulic fracturing using Equation W–8 of this section. Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section. Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

$$E_{a,n} = T * FR \qquad \text{(Eq. W-8)}$$

Where:

$E_{a,n}$ = Annual natural gas vented emissions at ambient conditions in cubic feet.
T = Cumulative amount of time in hours of well venting during the year.
FR = Flow Rate in cubic feet per hour, under ambient conditions, as required in paragraph (g)(1) of this section.

(1) The flow rate for gas well venting during well completions and workovers from hydraulic fracturing shall be determined using either of the calculation methodologies described in this paragraph (g)(1). The same calculation methodology must be used for the entire volume for the reporting year.

(i) *Calculation methodology 1.* For one well completion in each gas producing field and for one well workover in each gas producing field, a recording flow meter shall be installed on the vent line during each well unloading event according to methods set forth in § 98.234(b).

(A) The average flow rate in cubic feet per minute of venting is calculated for one well completion in each field and for one well workover in each field.

(B) The respective flow rates are applied to all well completions in the field and to all well workovers in the field, multiplied by the number of minutes of venting of all well completions and workovers, respectively, in that field.

(C) New flow rates for completions and workovers are calculated every other year for each reporting field and horizon.

(ii) *Calculation Methodology 2.* For one well completion in each gas producing field and for one well workover in each gas producing field, record the pressures measured before and after the well choke according to methods set forth in § 98.234(b).

(A) The average flow rate in cubic feet per minute of venting across the choke is calculated for one well completion in each field and for one well workover in each field.

(B) The respective flow rates are applied to all well completions in the field and to all well workovers in the field, multiplied by the number of minutes of venting of all well completions and workovers in that field.

(C) New flow rates for completions and workovers are calculated every other year for each reporting field and horizon.

(iii) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(iv) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(2) Calculate annual emissions from gas well venting during well completions and workovers to flares as follows:

(i) Use the gas well venting volume during well completions and workovers as determined in paragraph (g)(1) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine gas well venting during well completions and workovers emissions from the flare.

(h) *Gas well venting during conventional well completions and workovers.* Calculate emissions from each gas well venting during conventional well completions and workovers using Equation W–9 of this section:

$$E_{a,n} = V * T \qquad \text{(Eq. W-9)}$$

Where:

$E_{a,n}$ = Annual emissions in cubic feet at ambient conditions from gas well venting during conventional well completions or workovers.

V = Daily gas production rate in cubic feet per minute.

T = Cumulative amount of time of well venting in minutes during the year.

(i) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(ii) Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(iii) *Blowdown vent stacks.* Calculate blowdown vent stack emissions as follows:

(1) Calculate the total volume (including, but not limited to, pipelines, compressor case or cylinders, manifolds, suction and discharge bottles and vessels) between isolation valves.

(2) Retain logs of the number of blowdowns for each equipment type.

(3) Calculate the total annual venting emissions using Equation W–10 of this section:

$$E_{a,n} = N * V_v \qquad \text{(Eq. W-10)}$$

Where:

$E_{a,n}$ = Annual natural gas venting emissions at ambient conditions from blowdowns in cubic feet.

N = Number of blowdowns for the equipment in reporting year.

V_v = Total volume of blowdown equipment chambers (including, but not limited to, pipelines, compressors and vessels) between isolation valves in cubic feet.

(4) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(5) Calculate both CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(j) *Onshore production and processing storage tanks.* For emissions from atmospheric pressure storage tanks receiving produced liquids from onshore petroleum and natural gas production facilities (including stationary liquid storage not owned or operated by the reporter) and onshore natural gas processing facilities, calculate annual CH_4 and CO_2 emissions using the latest software package for E&P Tank (incorporated by reference, see § 98.7).

(1) A minimum of the following parameters must be used to characterize emissions from liquid transfer to atmospheric pressure storage tanks.

(i) Separator oil composition.

(ii) Separator temperature.

(iii) Separator pressure.

(iv) Sales oil API gravity.

(v) Sales oil production rate.

(vi) Sales oil Reid vapor pressure.

(vii) Ambient air temperature.

(viii) Ambient air pressure.

(2) Determine if the storage tank has vapor recovery or thermal control devices.

(i) Adjust the emissions estimated using E&P Tank (incorporated by reference, see § 98.7) downward by the magnitude of emissions captured using a vapor recovery system for beneficial use.

(ii) [Reserved]

(3) Calculate emissions from liquids sent to atmospheric storage tanks vented to flares as follows:

(i) Use the storage tank emissions volume and gas composition as determined in this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine storage tank emissions from the flare.

(4) If liquids are sent to atmospheric storage tanks where the tank emissions are not represented by the equilibrium conditions of the liquid in a gas-liquid separator and calculated by E&P Tank (incorporate by reference, see § 98.7), then emissions shall be calculated as follows:

(i) Use the storage tank emissions as determined in this section.

(ii) Multiply the emissions by 3.87 for sales oil less than 45 API gravity.

(iii) Multiply the emissions by 5.37 for sales oil equal to or greater than 45 API gravity.

(k) *Transmission storage tanks.* For storage tanks without vapor recovery or thermal control devices in onshore natural gas transmission compression facilities calculate annual emissions as follows:

(1) Monitor tank vapor vent stack for emissions using an optical gas imaging instrument according to methods set forth in § 98.234(a)(1) for a duration of 5 minutes.

(2) If the tank vapors are continuous then use a meter to measure tank vapors.

(i) Use a meter, such as, but not limited to a turbine meter, to estimate tank vapor volumes according to methods set forth in § 98.234(b).

(ii) Use the appropriate gas composition in paragraph (u)(2)(iii) of this section.

(3) Calculate emissions from storage tanks to flares as follows:

(i) Use the storage tank emissions volume and gas composition as determined in paragraph (j)(1) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine storage tank emissions from the flare.

(l) Well testing venting and flaring. Calculate well testing venting and flaring emissions as follows:

(1) Determine the gas to oil ratio (GOR) of the hydrocarbon production from each well tested.

(i) If GOR is not available then use an appropriate standard method published by a consensus-based standards organization to determine GOR.

(ii) [Reserved]

(2) Estimate venting emissions using Equation W–11 of this section.

$$E_{a,n} = GOR * FR * D \qquad \text{(Eq. W-11)}$$

Where:

$E_{a,n}$ = Annual volumetric natural gas emissions from well testing in cubic feet under ambient conditions.

GOR = Gas to oil ratio in cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities.

FR = Flow rate in barrels of oil per day for the well being tested.

D = Number of days during the year, the well is tested.

(3) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(4) Calculate both CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(5) Calculate emissions from well testing to flares as follows:

(i) Use the well testing emissions volume and gas composition as determined in paragraphs (l)(1) through (3) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine well testing emissions from the flare.

(m) *Associated gas venting and flaring.* Calculate associated gas venting and flaring emissions as follows:

(1) Determine the GOR ratio of the hydrocarbon production from each well whose associated natural gas is vented or flared.

(i) If GOR is not available then use an appropriate standard method published by a consensus-based standards organization to determine GOR.

(i) [Reserved]

(2) Estimate venting emissions using the Equation W–12 of this section.

$$E_{a,n} = GOR * V \qquad \text{(Eq. W-12)}$$

Where:

$E_{a,n}$ = Annual volumetric natural gas emissions from associated gas venting under ambient conditions, in cubic feet.

GOR = Gas to oil ratio in cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities.

V = Total volume of oil produced in barrels in the reporting year.

(3) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(4) Calculate both CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(5) Calculate emissions from associated natural gas to flares as follows:

(i) Use the associated natural gas volume and gas composition as determined in paragraphs (m)(1) through (3) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine associated gas emissions from the flare.

(n) *Flare stacks.* Calculate emissions from a flare stack as follows:

(1) If you have a continuous flow measurement device on the flare, you must use the measured flow volumes to calculate the flare gas emissions. If you do not have a continuous flow measurement device on the flare, you can install a flow measuring device on the flare or use engineering calculations, company records, or similar estimates of volumetric flare gas flow.

(2) If you have a continuous gas composition analyzer on gas to the flare, you must use these compositions in calculating emissions. If you do not have a continuous gas composition analyzer on gas to the flare, you must use the appropriate gas compositions for each stream of hydrocarbons going to the flare as follows:

(i) When the stream going to the flare is natural gas, use the GHG mole percent in feed natural gas for all streams upstream of the de-methanizer and GHG mole percent in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead for onshore natural gas processing facilities.

(ii) When the stream going to the flare is a hydrocarbon product stream, such as ethane or butane, then use a representative composition from the source for the stream.

(3) Determine flare combustion efficiency from manufacturer. If not available, assume that flare combustion efficiency is 98 percent.

(4) Calculate GHG volumetric emissions at actual conditions using Equations W–13, W–14, and W–15 of this section.

$$E_{a,i}(\textit{un-combusted}) = V_a * (1-\eta) * X_i \qquad \text{(Eq. W-13)}$$

$$E_{a,CO_2}(\textit{combusted}) = \sum_j \eta * V_a * Y_j * R_j \qquad \text{(Eq. W-14)}$$

$$E_{a,i}(\textit{total}) = E_{a,i}(\textit{combusted}) + E_{a,i}(\textit{un-combusted}) \qquad \text{(Eq. W-15)}$$

Where:

$E_{a,i}$ (un-combusted) = Contribution of annual uncombusted GHG i emissions from flare stack in cubic feet, under ambient conditions.

E_{a,CO_2} (combusted) = Contribution of annual emissions from combustion from flare stack in cubic feet, under ambient conditions.

$E_{a,I}$ (total) = Total annual emissions from flare stack in cubic feet, under ambient conditions.

V_a = Volume of natural gas sent to flare in cubic feet, during the year.

η = Percent of natural gas combusted by flare (default is 98 percent).

X_i = Concentration of GHG i in gas to the flare.

Y_j = Concentration of natural gas hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes plus).

R_j = Number of carbon atoms in the natural gas hydrocarbon constituent j; 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes plus).

(5) Calculate GHG volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(6) Calculate both CH_4 and CO_2 mass emissions from volumetric CH_4 and CO_2 emissions using calculation in paragraph (v) of this section.

(7) Calculate N_2O emissions using the emission factors for Gas Flares listed in Table W–8 of this subpart.

(8) This emissions source excludes any emissions calculated under other emissions sources in § 98.233.

(o) *Centrifugal compressor wet seal degassing vents.* Calculate emissions from centrifugal compressor wet seal degassing vents as follows:

(1) For each centrifugal compressor determine the volume of vapors from wet seal oil degassing tank sent to an atmospheric vent or flare using a temporary or permanent flow measurement meter such as, but not limited to, a vane anemometer according to methods set forth in § 98.234(b).

(2) Estimate annual emissions using meter flow measurement using Equation W–16 of this section.

$$E_{a,i} = MT * T * M_i * (1 - B) \qquad \text{(Eq. W-16)}$$

Where:

$E_{a,i}$ = Annual GHG i (either CH_4 or CO_2) volumetric emissions at ambient conditions.

MT = Meter reading of gas emissions per unit time.

T = Total time the compressor associated with the wet seal(s) is operational in the reporting year.

M_i = Mole percent of GHG i in the degassing vent gas; use the appropriate gas compositions in paragraph (u)(2) of this section.

B = Percentage of centrifugal compressor wet seal degassing vent gas sent to vapor recovery or fuel gas or other beneficial use as determined by keeping logs of the number of operating hours for the vapor recovery system and the amount of vent gas that is directed to the fuel gas system.

(3) Calculate CH_4 and CO_2 volumetric emissions at standard conditions using paragraph (t) of this section.

(4) Calculate both CH_4 and CO_2 mass emissions from volumetric emissions using calculations in paragraph (v) of this section.

(5) Calculate emissions from degassing vent vapors to flares as follows:

(i) Use the degassing vent vapor volume and gas composition as determined in paragraphs (o)(1) through (3) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine degassing vent vapor emissions from the flare.

(p) *Reciprocating compressor rod packing venting.* Calculate annual CH_4 and CO_2 emissions from each reciprocating compressor rod packing venting as follows:

(1) Estimate annual emissions using a meter flow measurement using Equation W–17 of this section.

$$E_{a,i} = MT * T * M_i \qquad \text{(Eq. W-17)}$$

$E_{a,i}$ = Annual GHG i (either CH_4 or CO_2) volumetric emissions at ambient conditions.

MT = Meter volumetric reading of gas emissions per unit time, under ambient conditions.

T = Total time the compressor associated with the venting is operational in the reporting year.

M_i = Mole percent of GHG i in the vent gas; use the appropriate gas compositions in paragraph (u)(2) of this section.

(2) If the rod packing case is connected to an open ended vent line then use one of the following two methods to calculate emissions.

(i) Measure emissions from all vents (including emissions manifolded to common vents) including rod packing, unit isolation valves, and blowdown valves using bagging according to methods set forth in § 98.234(c).

(ii) Use a temporary meter such as, but not limited to, a vane anemometer or a permanent meter such as, but not limited to, an orifice meter to measure emissions from all vents (including emissions manifolded to a common vent) including rod packing vents, unit isolation valves, and blowdown valves according to methods set forth in § 98.234(b).

(3) If the rod packing case is not equipped with a vent line use the following method to estimate emissions:

(i) You must use the methods described in § 98.234(a) to conduct annual leak detection of fugitive emissions from the packing case into an open distance piece, or from the compressor crank case breather cap or vent with a closed distance piece.

(ii) Measure emissions using a high flow sampler, or calibrated bag, or appropriate meter according to methods set forth in § 98.234(d).

(4) Conduct one measurement for each compressor in each of the operational modes that occurs during a reporting period:

(i) Operating.

(ii) Standby pressurized.

(iii) Not operating, depressurized.

(5) Calculate CH_4 and CO_2 volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(6) Estimate CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using the calculations in paragraphs (u) and (v) of this section.

(q) *Leak detection and leaker emission factors.* You must use the methods described in § 98.234(a) to conduct an annual leak detection of fugitive emissions from all sources listed in § 98.232(d)(9), (e)(7), (f)(5), (g)(3), (h)(4), and (i)(1). This paragraph (q) applies to emissions sources in streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. If fugitive emissions are detected for sources listed in this paragraph, calculate emissions using Equation W–18 of this section for each source with fugitive emissions.

$$E_{s,i} = Count * EF * GHG_i * T \qquad \text{(Eq. W-18)}$$

Where:

$E_{s,i}$ = Annual total volumetric GHG emissions at standard conditions from each fugitive source.

Count = Total number of this type of emission source found to be leaking.

EF = Leaker emission factor for specific sources listed in Table W–2 through Table W–7 of this subpart.

GHG_i = For onshore natural gas processing facilities, concentration of GHG_i, CH_4 or CO_2, in the total hydrocarbon of the feed natural gas; for other facilities listed in § 98.230(a)(3) through (a)(8), GHG_i equals 1.

T = Total time the specific source associated with the fugitive emission was operational in the reporting year, in hours.

(1) Calculate GHG mass emissions in carbon dioxide equivalent at standard conditions using calculations in paragraph (v) of this section.

(2) Onshore natural gas processing facilities shall use the appropriate default leaker emission factors listed in Table W–2 of this subpart for fugitive emissions detected from valves; connectors; open ended lines; pressure relief valves; meters; and centrifugal compressor dry seals.

(3) Onshore natural gas transmission compression facilities shall use the appropriate default leaker emission factors listed in Table W–3 of this subpart for fugitive emissions detected from connectors; block valves; control valves; compressor blowdown valves; pressure relief valves; orifice meters; other meters; regulators; and open ended lines.

(4) Underground natural gas storage facilities for storage stations shall use the appropriate default leaker emission factors listed in Table W–4 of this subpart for fugitive emissions detected from connectors; block valves; control valves; compressor blowdown valves; pressure relief valves; orifice meters; other meters; regulators; and open ended lines.

(5) LNG storage facilities shall use the appropriate default leaker emission factors listed in Table W–5 of this subpart for fugitive emissions detected from valves; pump seals; connectors; and other.

(6) LNG import and export facilities shall use the appropriate default leaker emission factors listed in Table W–6 of this subpart for fugitive emissions detected from valves; pump seals; connectors; and other.

(7) Natural gas distribution facilities for above ground meter regulator and gate stations shall use the appropriate default leaker emission factors listed in Table W–7 of this subpart for fugitive emissions detected from connectors; block valves; control valves; pressure relief valves; orifice meters; other meters; regulators; and open ended lines.

(r) *Population count and emission factors.* This paragraph applies to emissions sources listed in § 98.232(c)(2), (c)(9), (c)(15), (c)(21), (d)(8), (e)(6), (f)(4), (f)(5), (g)(3), (h)(4), (i)(2), (i)(3) and (i)(4), on streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. Calculate emissions from all sources listed in this paragraph using Equation W–19 of this section.

$$E_{s,i} = Count * EF * GHG_i * T \qquad \text{(Eq. W-19)}$$

$E_{s,i}$ = Annual total volumetric GHG emissions at standard conditions from each fugitive source.

Count = Total number of this type of emission source at the facility.

EF = Population emission factor for specific sources listed in Table W–1 through Table W–7 of this subpart.

GHG_i = for onshore petroleum and natural gas production facilities and onshore natural gas processing facilities, concentration of GHG i, CH_4 or CO_2, in produced natural gas or feed natural gas; for other facilities listed in § 98.230 (b)(3) through (b)(8),GHG_i equals 1.

T = Total time the specific source associated with the fugitive emission was operational in the reporting year, in hours.

(1) Calculate both CH_4 and CO_2 mass emissions from volumetric emissions using calculations in paragraph (v) of this section.

(2) Onshore petroleum and natural gas production facilities shall use the appropriate default population emission factors listed in Table W–1 of this subpart for fugitive emissions from valves; connectors; open ended lines; pressure relief valves; compressor starter gas vent; pump; flanges; other; and CBM well water production. Where facilities conduct EOR operations the emissions factor listed in Table W–1 shall be used to estimate all streams of gases, including recycle CO_2 stream. In cases where the stream is almost all CO_2, the emissions factors in Table W–1 shall be assumed to be for CO_2 instead of natural gas.

(3) Onshore natural gas processing facilities shall use the appropriate default population emission factor listed in Table W–2 of this subpart for fugitive emissions from gathering pipelines.

(4) Underground natural gas storage facilities for storage wellheads shall use the appropriate default population emission factors listed in Table W–4 of this subpart for fugitive emissions from connectors; valves; pressure relief valves; and open ended lines.

(5) LNG storage facilities shall use the appropriate default population emission factors listed in Table W–5 of this subpart for fugitive emissions from vapor recovery compressors.

(6) LNG import and export facilities shall use the appropriate default population emission factor listed in Table W–6 of this subpart for fugitive emissions from vapor recovery compressors.

(7) Natural gas distribution facilities shall use the appropriate default population emission factors listed in Table W–7 of this subpart for fugitive emissions from below grade M&R stations; gathering pipelines; mains; and services.

(s) *Offshore petroleum and natural gas production facilities in both state and federal waters.* Report GHG emissions from all "stationary fugitive" and "stationary vented" sources as identified in the Minerals Management Service (MMS) Gulfwide Offshore Activity Data System (GOADS) study (2005 Gulfwide Emission Inventory Study MMS 2007–067) for each platform.

(1) MMS GOADS Reporters. Offshore production facilities currently reporting under the MMS GOADS program will report the same annual emissions as calculated by GOADS under paragraph (s) of this section.

(i) For the first reporting year, report the latest available emissions from GOADS.

(ii) In subsequent reporting years when GOADS is updated reporters shall report the new emissions that are made available from the latest GOADS software.

(ii) For each reporting year that does not overlap with the GOADS reporting year, report the last reported GOADS emissions with emissions adjusted based on the operating time for each platform.

(iii) If MMS discontinues or delays their GOADS survey by more than 4 years, then Platform operators shall collect monthly activity data every 4 years from platform sources in accordance with the latest version of the MMS GOADS program instructions, beginning in the year that the GOADS survey would have been conducted, and annual emissions shall be calculated using the latest available MMS GOADS emission factors and methods.

(2) Non-MMS GOADS Reporters. Offshore production facilities not reporting under the MMS GOADS program shall collect monthly activity data from platform sources for the first reporting year in accordance with the latest MMS GOADS program instructions. Annual emissions shall be calculated using the latest MMS GOADS emission factors and methods.

(i) In subsequent reporting years, facilities not reporting under GOADS shall follow the data collection cycle as GOADS in collecting new activity data monthly to estimate emissions and report emissions.

(ii) For each reporting year that does not overlap with the GOADS reporting year, report the last reported emissions data with emissions adjusted based on the operating time for each platform.

(iii) If MMS discontinues or delays their GOADS survey by more than 4 years, then Platform operators shall collect monthly activity data every 4 years from platform sources in accordance with the latest version of the MMS GOADS program instructions, and annual emissions shall be calculated using currently available MMS GOADS emission factors and methods.

(t) *Volumetric emissions.* Calculate volumetric emissions at standard conditions as specified in paragraphs (t)(1) or (2) of this section.

(1) Calculate natural gas volumetric emissions at standard conditions by converting ambient temperature and pressure of natural gas emissions to standard temperature and pressure natural gas using Equation W–20 of this section.

$$E_{s,n} = \frac{E_{a,n} * (460 + T_s) * P_a}{(460 + T_a) * P_s} \quad \text{(Eq. W-20)}$$

Where:

$E_{s,n}$ = Natural gas volumetric emissions at standard temperature and pressure (STP) conditions.

$E_{a,n}$ = Natural gas volumetric emissions at ambient conditions.

T_s = Temperature at standard conditions. (°F).

T_a = Temperature at actual emission conditions. (°F).

P_s = Absolute pressure at standard conditions (inches of Hg).

P_a = Absolute pressure at ambient conditions (inches of Hg).

(2) Calculate GHG volumetric emissions at standard conditions by converting ambient temperature and pressure of GHG emissions to standard temperature and pressure using Equation W–21 of this section.

$$E_{s,i} = \frac{E_{a,i} * (460 + T_s) * P_a}{(460 + T_a) * P_s} \quad \text{(Eq. W-21)}$$

Where:

$E_{s,i}$ = GHG i volumetric emissions at standard temperature and pressure (STP) conditions.

$E_{a,i}$ = GHG i volumetric emissions at actual conditions.

T_s = Temperature at standard conditions. (°F).

T_a = Temperature at actual emission conditions. (°F).

P_s = Absolute pressure at standard conditions (inches of Hg).

P_a = Absolute pressure at ambient conditions (inches of Hg).

(u) *GHG volumetric emissions.* Calculate GHG volumetric emissions at standard conditions as specified in paragraphs (u)(1) and (2) of this section.

(1) Estimate CH_4 and CO_2 emissions from natural gas emissions using Equation W–22 of this section.

$$E_{s,i} = E_{s,n} * M_i \quad \text{(Eq. W-22)}$$

Where:

$E_{s,i}$ = GHG i (either CH_4 or CO_2) volumetric emissions at standard conditions.

$E_{s,n}$ = Natural gas volumetric emissions at standard conditions.

M_i = Mole percent of GHG i in the natural gas.

(2) For Equation W–22 of this section, the mole percent, M_i, shall be the annual average mole percent for each facility, as specified in paragraphs (u)(2)(i) through (vii) of this section.

(i) GHG mole percent in produced natural gas for onshore petroleum and natural gas production facilities. If you have a continuous gas composition analyzer for produced natural gas, you must use these values in calculating emissions. If you do not have a continuous gas composition analyzer, then quarterly samples must be taken according to methods set forth in § 98.234(b).

(ii) GHG mole percent in feed natural gas for all emissions sources upstream of the de-methanizer and GHG mole percent in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead for onshore natural gas processing facilities. If you have a continuous gas composition analyzer on feed natural gas, you must use these values in calculating emissions. If you do not have a continuous gas composition analyzer, then quarterly samples must be taken according to methods set forth in § 98.234(b).

(iii) GHG mole percent in transmission pipeline natural gas that passes through the facility for onshore natural gas transmission compression facilities.

(iv) GHG mole percent in natural gas stored in underground natural gas storage facilities.

(v) GHG mole percent in natural gas stored in LNG storage facilities.

(vi) GHG mole percent in natural gas stored in LNG import and export facilities.

(vii) GHG mole percent in local distribution pipeline natural gas that passes through the facility for natural gas distribution facilities.

(v) *GHG mass emissions.* Calculate GHG mass emissions in carbon dioxide equivalent at standard conditions by converting the GHG volumetric emissions into mass emissions using Equation W–23 of this section.

$$Mass_{s,i} = E_{s,i} * \rho_i * GWP * 10^{-3} \quad \text{(Eq. W-23)}$$

Where:

$Mass_{s,i}$ = GHG i (either CH_4 or CO_2) mass emissions at standard conditions in metric tons CO_2e.

$E_{s,i}$ = GHG i (either CH_4 or CO_2) volumetric emissions at standard conditions, in cubic feet.

ρ_i = Density of GHG i, 0.053 kg/ft^3 for CO_2 and 0.0193 kg/ft^3 for CH_4.

GWP = Global warming potential, 1 for CO_2 and 21 for CH_4.

(w) *EOR injection pump blowdown.* Calculate pump blowdown emissions as follows:

(1) Calculate the total volume in cubic feet (including, but not limited to, pipelines, compressors and vessels) between isolation valves.

(2) Retain logs of the number of blowdowns per reporting period.

(3) Calculate the total annual venting emissions using Equation W–24 of this section:

$$Mass_{c,i} = N * V_v * R_c * GHG_i * 10^{-3} \quad \text{(Eq. W-24)}$$

Where:

$Mass_{c,i}$ = Annual EOR injection gas venting emissions in metric tons at critical conditions "c" from blowdowns.

N = Number of blowdowns for the equipment in reporting year.

V_v = Total volume in cubic feet of blowdown equipment chambers (including, but not limited to, pipelines, compressors, manifolds and vessels) between isolation valves.

R_c = Density of critical phase EOR injection gas in kg/ft^3. Use an appropriate standard method published by a consensus-based standards organization to determine density of super critical EOR injection gas.

GHG_i = Mass fraction of GHG_i in critical phase injection gas.

(x) *Hydrocarbon liquids dissolved CO_2.* Calculate dissolved CO_2 in hydrocarbon liquids as follows:

(1) Determine the amount of CO_2 retained in hydrocarbon liquids after flashing in tankage at STP conditions. Quarterly samples must be taken according to methods set forth in § 98.234(b) to determine retention of CO_2 in hydrocarbon liquids immediately downstream of the storage tank. Use the average of the quarterly analysis for the reporting period.

(2) Estimate emissions using Equation W–25 of this section.

$$Mass_{s,\,CO2} = S_{h1} * V_{h1} \qquad \text{(Eq. W-25)}$$

Where:

$Mass_{s,\,CO2}$ = Annual CO_2 emissions from CO_2 retained in hydrocarbon liquids beyond tankage, in metric tons.

S_{hl} = Amount of CO_2 retained in hydrocarbon liquids in metric tons per barrel, under standard conditions.

V_{hl} = Total volume of hydrocarbon liquids produced in barrels in the reporting year.

(y) *Produced water dissolved CO_2.* Calculate dissolved CO_2 in produced water as follows:

(1) Determine the amount of CO_2 retained in produced water at STP conditions. Quarterly samples must be taken according to methods set forth in § 98.234(b) to determine retention of CO_2 in produced water immediately downstream of the separator where hydrocarbon liquids and produced water are separated. Use the average of the quarterly analysis for the reporting period.

(2) Estimate emissions using the Equation W–26 of this section.

$$Mass,\ CO2 = Spw * Vpw \qquad \text{(Eq. W-26)}$$

Where:

$Mass_{s,\,CO2}$ = Annual CO_2 emissions from CO_2 retained in produced water beyond tankage, in metric tons.

S_{pw} = Amount of CO_2 retained in produced water in metric tons per barrel, under standard conditions.

V_{pw} = Total volume of produced water produced in barrels in the reporting year.

(3) EOR operations that route produced water from separation directly to re-injection into the hydrocarbon reservoir in a closed loop system without any leakage to the atmosphere are exempt from paragraph (y) of this section.

(z) *Portable equipment combustion emissions.* Calculate emissions from portable equipment using the Tier 1 methodology described in subpart C of this part (General Stationary Fuel Combustion Sources).

§ 98.234 Monitoring and QA/QC requirements.

(a) You must use the method described as follows to conduct annual leak detection of fugitive emissions from all source types listed in § 98.233(p)(3)(i) and (q) in operation or on standby mode that occur during a reporting period.

(1) *Optical gas imaging instrument.* Use an optical gas imaging instrument for fugitive emissions detection in accordance with 40 CFR part 60, subpart A, § 60.18(i)(1) and (2) *Alternative work practice for monitoring equipment leaks.* In addition, you must operate the optical gas imaging instrument to image the source types required by this proposed reporting rule in accordance with the instrument manufacturer's operating parameters.

(2) [Reserved]

(b) All flow meters, composition analyzers and pressure gauges that are used to provide data for the GHG emissions calculations shall use measurement methods, maintenance practices, and calibration methods, prior to the first reporting year and in each subsequent reporting year using an appropriate standard method published by a consensus standards organization such as, but not limited to, ASTM International, American National Standards Institute (ANSI), and American Petroleum Institute (API). If a consensus based standard is not available, you must use manufacturer instructions to calibrate the meters, analyzers, and pressure gauges.

(c) Use calibrated bags (also known as vent bags) only where the emissions are at near-atmospheric pressures such that it is safe to handle and can capture all the emissions, below the maximum temperature specified by the vent bag manufacturer, and the entire emissions volume can be encompassed for measurement.

(1) Hold the bag in place enclosing the emissions source to capture the entire emissions and record the time required for completely filling the bag. If the bag inflates in less than one second, assume one second inflation time.

(2) Perform three measurements of the time required to fill the bag, report the emissions as the average of the three readings.

(3) Estimate natural gas volumetric emissions at standard conditions using calculations in § 98.233(t).

(4) Estimate CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using the calculations in § 98.233(u) and (v).

(d) Use a high volume sampler to measure emissions within the capacity of the instrument.

(1) A technician following manufacturer instructions shall conduct measurements, including equipment manufacturer operating procedures and measurement methodologies relevant to using a high volume sampler, including, but not limited to, positioning the instrument for complete capture of the fugitive emissions without creating backpressure on the source.

(2) If the high volume sampler, along with all attachments available from the manufacturer, is not able to capture all the emissions from the source then you shall use anti-static wraps or other aids to capture all emissions without violating operating requirements as provided in the instrument manufacturer's manual.

(3) Estimate CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using the calculations in § 98.233(u) and (v).

(4) Calibrate the instrument at 2.5 percent methane with 97.5 percent air and 100 percent CH_4 by using calibrated gas samples and by following manufacturer's instructions for calibration.

§ 98.235 Procedures for estimating missing data.

A complete record of all estimated and/or measured parameters used in the GHG emissions calculations is required. If data are lost or an error occurs during annual emissions estimation or measurements, you must repeat the estimation or measurement activity for those sources as soon as possible, including in the subsequent reporting year if missing data are not discovered until after December 31 of the reporting year, until valid data for reporting is obtained. Data developed and/or collected in a subsequent reporting year to substitute for missing data cannot be used for that subsequent year's emissions estimation. Where missing

data procedures are used for the previous year, at least 30 days must separate emissions estimation or measurements for the previous year and emissions estimation or measurements for the current year of data collection.

§ 98.236 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain reported emissions as specified in this section.

(a) Report annual emissions separately for each of the industry segment listed in paragraphs (a) (1) through (8) of this section. For each segment, report emissions from each source type in the aggregate, unless specified otherwise. For example, an underground natural gas storage operation with multiple reciprocating compressors must report emissions from all reciprocating compressors as an aggregate number.

(1) Onshore petroleum and natural gas production.

(2) Offshore petroleum and natural gas production.

(3) Onshore natural gas processing.

(4) Onshore natural gas transmission compression.

(5) Underground natural gas storage.

(6) LNG storage.

(7) LNG import and export.

(8) Natural gas distribution. Report each source in the aggregate for pipelines and for Metering and Regulating (M&R) stations.

(b) Report emissions separately for standby equipment.

(c) Report activity data for each aggregated source type as follows:

(1) Count of natural gas pneumatic high bleed devices.

(2) Count of natural gas pneumatic low bleed devices.

(3) Count of natural gas driven pneumatic pumps.

(4) For each acid gas removal unit report the following:

(i) Total volume of natural gas flow into the acid gas removal unit.

(ii) Total volume of natural gas flow out of the acid gas removal unit.

(iii) Volume weighted CO_2 content of natural gas into the acid gas removal unit.

(5) For each dehydrator unit report the following:

(i) Glycol dehydrators:

(A) Glycol dehydrator feed natural gas flow rate.

(B) Glycol dehydrator absorbent circulation pump type.

(C) Glycol dehydrator absorbent circulation rate.

(D) Whether stripper gas is used in glycol dehydrator.

(E) Whether a flash tank separator is used in glycol dehydrator.

(ii) Desiccant dehydrators:

(A) The number of desiccant dehydrators operated.

(B) [Reserved]

(6) Count of wells vented to the atmosphere for liquids unloading for each field in the basin.

(7) Count of wells venting during well completions for each field in the basin.

(i) Number of conventional completions.

(ii) Number of completions involving hydraulic fracturing.

(8) Count of wells venting during well workovers for each field in the basin.

(i) Number of conventional well workovers involving well venting to the atmosphere.

(ii) Number of unconventional well workovers involving well venting to the atmosphere.

(9) For each compressor blowdown vent stack report the following for each compressor:

(i) Type of compressor whether reciprocating or centrifugal.

(ii) Compressor capacity in horse powers.

(iii) Volume of gas between isolation valves.

(iv) Number of blowdowns per year.

(10) For each estimate of gas emitted from liquids sent to atmospheric tank using E&P Tank report the following:

(i) Immediate upstream separator temperature and pressure.

(ii) Sales oil API gravity.

(iii) Estimate of individual tank or tank battery capacity in barrels.

(iv) Oil, hydrocarbon condensate and water sent to tank(s) in barrels.

(v) Control measure: Either vapor recovery system or flaring of tank vapors.

(11) For tank emissions identified using optical gas imaging instrument per § 98.234(a), report the following for each tank:

(i) Immediate upstream separator temperature and pressure.

(ii) Sales oil API gravity.

(iii) Tank capacity in barrels.

(iv) Tank throughput in barrels.

(v) Control measure: Either vapor recovery system or flaring of tank vapors.

(vi) Optical gas imagining instrument used.

(vii) Meter used for measuring emissions.

(viii) List of emissions sources routed to the tank.

(12) For well testing report the following for each field in the basin:

(i) Number of wells tested in reporting period.

(ii) Average gas to oil ratio for each field.

(iii) Average flow rate during testing for each field.

(iv) Average number of days the well is tested.

(v) Whether the hydrocarbons produced during testing are vented or flared.

(13) For associated natural gas venting report the following for each field in the basin:

(i) Number of wells venting or flaring associated natural gas in reporting period.

(ii) Average gas to oil ratio for each field.

(iii) Average volume of oil produced per well per field.

(iv) Whether the associated natural gas is vented or flared.

(14) For flare stacks report the following for each flare:

(i) Whether flare has a continuous flow monitor.

(ii) If using engineering estimation methods, identify sources of emissions going to the flare.

(iii) Whether flare has a continuous gas analyzer.

(iv) Identify proportion of total natural gas to pure hydrocarbon stream being sent to the flare annually for the reporting period.

(v) Flare combustion efficiency.

(15) For well venting for liquids unloading report the following by field, basin, and well tubing size:

(i) Number of wells being unloaded for liquids in reporting year.

(ii) Average number of unloading(s) per well per reporting year.

(iii) Average volume of natural gas produced per well per reporting year during liquids unloading.

(16) For well completions and workovers report the following for each field in the basin:

(i) Number of wells completed (worked over) in reporting year.

(ii) Average number of days required for completion (workover).

(iii) Average volume of natural gas produced per well per reporting year during well completion (workover).

(17) For compressor wet seal degassing vents report the following for each degassing vent:

(i) Number of wet seals connected to the degassing vent.

(ii) Number of compressors whose wet seals are connected to the degassing vent.

(iii) Total throughput of compressors whose wet seals are connected to the degassing vent.

(iv) Type of meter used for making measurements.

(v) Whether emissions estimate is based on a continuous or one time measurement.

(vi) Total time the compressor(s) associated with the degassing vent stack

is operating. Sum the hours of operation if multiple compressors are connected to the vent stack.

(vii) Proportion of vent gas recovered for fuel gas or sent to a flare.

(18) For reciprocating compressor rod packing report the following per rod packing:

(i) Total throughput of the reciprocating compressor whose rod packing emissions is being reported.

(ii) Total time in hours the reciprocating compressor is in operating mode.

(iii) Whether or not the rod packing case is connected to an open ended line.

(iv) If rod packing is connected to an open ended line, report type of device used for measurement emissions.

(v) If rod packing is not connected to an open ended vent line, report the locations from where the emissions from the rod packing are detected.

(19) For fugitive emissions sources using emission factors for estimating emissions report the following:

(i) Component count for each fugitive emissions source.

(ii) CH_4 and CO_2 in produced natural gas for onshore petroleum and natural gas production.

(20) For EOR injection pump blowdown report the following per pump:

(i) Pump capacity.

(ii) Volume of gas between isolation valves.

(iii) Number of blowdowns per year.

(iv) Supercritical phase EOR injection gas density.

(21) For hydrocarbon liquids dissolved CO_2 report the following for each field in the basin:

(i) Volume of crude oil produced.

(ii) [Reserved]

(22) For produced water dissolved CO_2 report the following for each field in the basin:

(i) Volume of produced water produced.

(ii) [Reserved]

(d) Minimum, maximum and average throughput for each operation listed in paragraphs (a)(1) through (a)(8) of this section.

(e) For offshore petroleum and natural gas production facilities, the number of connected wells, and whether the wells are producing oil, gas, or both.

(f) Report emissions separately for portable equipment for the following source types: drilling rigs, dehydrators, compressors, electrical generators, steam boilers, and heaters.

(1) Aggregate emissions by source type.

(2) Report count of each source type.

§ 98.237 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the following records:

(a) Dates on which measurements were conducted.

(b) Results of all emissions detected and measurements.

(c) Calibration reports for detection and measurement instruments used.

(d) Inputs and outputs of calculations or emissions computer model runs used for engineering estimation of emissions.

§ 98.238 Definitions.

Except as provided below, all terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

Natural gas distribution facility means the distribution pipelines, metering stations, and regulating stations that are operated by a Local Distribution Company (LDC) that is regulated as a separate operating company by a public utility commission or that are operated as an independent municipally-owned distribution system.

Offshore petroleum and natural gas production facility means each platform structure and all associated equipment as defined in paragraph (a)(1) of this section. All production equipment that is connected via causeways or walkways are one facility.

Onshore petroleum and natural gas production facility means all petroleum or natural gas equipment associated with all petroleum or natural gas production wells under common ownership or common control by an onshore petroleum and natural gas production owner or operator located in a single hydrocarbon basin as defined by the American Association of Petroleum Geologists which is assigned a three digit Geologic Province Code. Where an operating entity holds more than one permit in a basin, then all onshore petroleum and natural gas production equipment relating to all permits in their name in the basin is one onshore petroleum and natural gas production facility.

Separator means a vessel in which streams of multiple phases are gravity separated into individual streams of single phase.

TABLE W–1 OF SUBPART W—DEFAULT WHOLE GAS EMISSION FACTORS FOR ONSHORE PRODUCTION

Onshore production	Emission Factor (scf/hour/component)
Population Emission Factors—All Components, Gas Service	
Valve	0.08
Connector	0.01
Open-ended Line	0.04
Pressure Relief Valve	0.17
Low-Bleed Pneumatic Device Vents	2.75
Gathering Pipelines [1]	2.81
CBM Well Water Production [2]	0.11
Population Emission Factors—All Components, Light Crude Service [3]	
Valve	0.04
Connector	0.01
Open-ended Line	0.04
Pump	0.01
Other [5]	0.24
Population Emission Factors—All Components, Heavy Crude Service [4]	
Valve	0.001
Flange	0.001
Connector (other)	0.0004
Open-ended Line	0.01
Other [5]	0.003

[1] Emission Factor is in units of "scf/hour/mile".

[2] Emission Factor is in units of "scf methane/gallon", in this case the operating factor is "gallons/year" and do not multiply by methane content.

[3] Hydrocarbon liquids greater than or equal to 20*API are considered "light crude".
[4] Hydrocarbon liquids less than 20*API are considered "heavy crude".
[5] "Others" category includes instruments, loading arms, pressure relief valves, stuffing boxes, compressor seals, dump lever arms, and vents.

TABLE W–2 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR PROCESSING

Processing	Before de-methanizer emission factor (scf/hour/component)	After de-methanizer emission factor (scf/hour/component)
Leaker Emission Factors—Reciprocating Compressor Components, Gas Service		
Valve	15.88	18.09
Connector	4.31	9.10
Open-ended Line	17.90	10.29
Pressure Relief Valve	2.01	30.46
Meter	0.02	48.29
Leaker Emission Factors—Centrifugal Compressor Components, Gas Service		
Valve	0.67	2.51
Connector	2.33	3.14
Open-ended Line	17.90	16.17
Dry Seal	105	105
Leaker Emission Factors—Other Components, Gas Service		
Valve		6.42
Connector		5.71
Open-ended Line		11.27
Pressure Relief Valve		2.01
Meter		2.93
Population Emission Factors—Other Components, Gas Service		
Gathering Pipelines [1]		2.81

[1] Emission Factor is in units of "scf/hour/mile".

TABLE W–3 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR TRANSMISSION

Transmission	Emission Factor (scf/hour/component)
Leaker Emission Factors—All Components, Gas Service	
Connector	2.7
Block Valve	10.4
Control Valve	3.4
Compressor Blowdown Valve	543.5
Pressure Relief Valve	37.2
Orifice Meter	14.3
Other Meter	0.1
Regulator	9.8
Open-ended Line	21.5
Population Emission Factors—Other Components, Gas Service	
Low-Bleed Pneumatic Device Vents	2.57

TABLE W–4 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR UNDERGROUND STORAGE

Underground storage	Emission Factor (scf/hour/component)
Leaker Emission Factors—Storage Station, Gas Service	
Connector	0.96
Block Valve	2.02
Control Valve	3.94
Compressor Blowdown Valve	66.15
Pressure Relief Valve	19.80
Orifice Meter	0.46

TABLE W–4 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR UNDERGROUND STORAGE—Continued

Underground storage	Emission Factor (scf/hour/component)
Other Meter	0.01
Regulator	1.03
Open-ended Line	6.01
Population Emission Factors—Storage Wellheads, Gas Service	
Connector	0.01
Valve	0.10
Pressure Relief Valve	0.17
Open-ended Line	0.03
Population Emission Factors—Other Components, Gas Service	
Low-Bleed Pneumatic Device Vents	2.57

TABLE W–5 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR LIQUEFIED NATURAL GAS (LNG) STORAGE

LNG storage	Emission Factor (scf/hour/component)
Leaker Emission Factors—LNG Storage Components, LNG Service	
Valve	1.19
Pump Seal	4.00
Connector	0.34
Other[1]	1.77
Population Emission Factors—LNG Storage Compressor, Gas Service	
Vapor Recovery Compressor	6.81

[1] "other" equipment type should be applied for any equipment type other than connectors, pumps, or valves.

TABLE W–6 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR LNG TERMINALS

LNG terminals	Emission Factor (scf/hour/component)
Leaker Emission Factors—LNG Terminals Components, LNG Service	
Valve	1.19
Pump Seal	4.00
Connector	0.34
Other	1.77
Population Emission Factors—LNG Terminals Compressor, Gas Service	
Vapor Recovery Compressor	6.81

TABLE W–7 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR DISTRIBUTION

Distribution	Emission Factor (scf/hour/component)
Leaker Emission Factors—Above Grade M&R Stations Components, Gas Service	
Connector	1.69
Block Valve	0.557
Control Valve	9.34
Pressure Relief Valve	0.270
Orifice Meter	0.212
Regulator	0.772
Open-ended Line	26.131
Population Emission Factors—Below Grade M&R Stations Components, Gas Service[1]	
Below Grade M&R Station, Inlet Pressure > 300 psig	1.30

TABLE W–7 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR DISTRIBUTION—Continued

Distribution	Emission Factor (scf/hour/component)
Below Grade M&R Station, Inlet Pressure 100 to 300 psig	0.20
Below Grade M&R Station, Inlet Pressure < 100 psig	0.10
Population Emission Factors—Distribution Mains, Gas Service [2]	
Unprotected Steel	12.58
Protected Steel	0.35
Plastic	1.13
Cast Iron	27.25
Population Emission Factors—Distribution Services, Gas Service [2]	
Unprotected Steel	0.19
Protected Steel	0.02
Plastic	0.001
Copper	0.03

[1] Emission Factor is in units of "scf/hour/station"
[2] Emission Factor is in units of "scf/hour/service"

TABLE W–8 OF SUBPART W—DEFAULT NITROUS OXIDE EMISSION FACTORS FOR GAS FLARING

Gas Flaring	Emission Factor (metric tons/MMscf gas production or receipts)
Population Emission Factors—Gas Flaring	
Gas Production	5.90E–07
Sweet Gas Processing	7.10E–07
Sour Gas Processing	1.50E–06
Conventional Oil Production [1]	1.00E–04
Heavy Oil Production [2]	7.30E–05

[1] Emission Factor is in units of "metric tons/barrel conventional oil production"
[2] Emission Factor is in units of "metric tons/barrel heavy oil production"

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April 12, 2010

Part IV

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0927; FRL–9130–7]

RIN 2060–AQ00

Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is revising and supplementing its initial proposed actions to require reporting of fluorinated greenhouse gas (fluorinated GHG) emissions from certain source categories. Specifically, EPA is revising and supplementing its initial proposal to require reporting of fluorinated GHG emissions from electronics manufacturing, production of fluorinated gases, and use of electrical transmission and distribution equipment. EPA is also proposing to require such reporting from manufacture or refurbishment of electrical equipment and import and export of pre-charged equipment and closed cell foams. This proposed rule would not require control of greenhouse gases; rather it would require only that sources above certain threshold levels monitor and report emissions.

DATES: Comments must be received on or before June 11, 2010. There will be a public hearing from 9 a.m. to 12 noon on April 20, 2010 at 1310 L St., NW., Room 152, Washington, DC 20005.

ADDRESSES: Submit your comments, identified by docket ID EPA–HQ–OAR–2009–0927 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHGReportingFGHG@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center, Attention Docket OAR–2009–0927, Mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, Attention Docket OAR–2009–0927, 1301 Constitution Avenue, NW., Washington, DC 20004. 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–OAR–2009–0927. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, 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 telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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 contact the Greenhouse Gas Reporting Rule e-mail: *ghgmrr@epa.gov.* To obtain information about the public hearings or to register to speak at the hearings, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail *GHGReportingRule@epa.gov.*

As indicated above, although EPA previously proposed a version of some parts of this rule, that proposal has not become final. This proposal partly supplements and partly replaces that initial proposal. Comments on the initial proposal will be considered only to the extent they remain relevant. To ensure that their comments on newly proposed or re-proposed provisions are considered, parties should submit or re-submit them at this time.

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."). This is a proposed regulation. If finalized, these regulations would affect owners or operators of electronics manufacturing facilities, fluorinated gas production facilities, electric power systems, and electrical equipment manufacturing facilities, as well as importers and exporters of pre-charged equipment and closed-cell foams. Regulated categories and entities would include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
	334419	MEMS manufacturing facilities.
Fluorinated GHG Production	325120	Industrial gases manufacturing facilities.
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household Appliance Stores.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.

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. Table 1 lists the types of facilities that EPA is now aware could be potentially affected by the reporting requirements. Other types of facilities and companies 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 and the relevant criteria in the proposed subparts related to electronics manufacturing facilities, fluorinated gas production facilities, electrical equipment use, electrical equipment manufacturing or refurbishment facilities, and importers and exporters of pre-charged equipment and closed-cell foams. 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 that would be affected by the proposed rule have GHG emissions from multiple source categories listed in 40 CFR part 98 or in this proposed rule. Table 2 of this preamble has been developed as a guide to help potential reporters in the source categories subject to the proposed rule identify the source categories (by subpart) that they may need to (1) consider in their facility applicability determination, and/or (2) include in their reporting. The table should only be seen as a guide. Additional subparts in 40 CFR part 98 may be relevant for a given reporter. Similarly, not all listed subparts are relevant for all reporters.

TABLE 2—SOURCE CATEGORIES AND RELEVANT SUBPARTS

Source category (and main applicable subpart)	Subparts recommended for review to determine applicability
Electricity Generation	Electrical Equipment Use.
Electronics Manufacturing	General Stationary Fuel Combustion.
Fluorinated GHG Production	General Stationary Fuel Combustion. Suppliers of Industrial Greenhouse Gases.
Electrical Equipment Use	General Stationary Fuel Combustion.
Imports and Exports of Fluorinated GHGs Inside Pre-charged Equipment and Closed-Cell Foams.	Suppliers of Industrial Greenhouse Gases.
	Sulfur Hexafluoride and PFCs from Electrical Equipment Manufacture and Refurbishment.
Electrical Equipment Manufacture or Refurbishment	General Stationary Fuel Combustion
	Imports and Exports of Fluorinated GHGs Inside Pre-charged Equipment and Closed-Cell Foams.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ASTM American Society for Testing and Materials
BAMM Best Available Monitoring Methods
CAA Clean Air Act
CARB California Air Resources Board
CBI confidential business information
CFC chlorofluorocarbon
CFR Code of Federal Regulations
CO_2 carbon dioxide
CO_2e CO_2-equivalent
EIA Economic Impact Analysis
EO Executive Order
EPA U.S. Environmental Protection Agency
FERC Federal Energy Regulatory Commission
F–GHG fluorinated greenhouse gas
FTIR fourier transform infrared (spectroscopy)
FID flame ionization detector
GC gas chromatography
GHG greenhouse gas
GWP global warming potential
HCFC hydrochlorofluorocarbon
HFC hydrofluorocarbon
HFE hydrofluoroether
HTF heat transfer fluid
ICR information collection request
IPCC Intergovernmental Panel on Climate Change
kg kilograms
LCD liquid crystal displays
MEMS microelectromechanical devices
$MMTCO_2e$ million metric tons carbon dioxide equivalent
MRR mandatory greenhouse gas reporting rule
MS mass spectrometry
N_2O nitrous oxide
NACAA National Association of Clean Air Agencies
NAICS North American Industry Classification System
NERC North American Energy Reliability Corporation
NESHAP National Emissions Standard for Hazardous Air Pollutants
NF_3 nitrogen trifluoride

NMR nuclear magnetic resonance
NSPS New Source Performance Standards
OMB Office of Management and Budget
PFC perfluorocarbon
PSD Prevention of Significant Deterioration
PV photovoltaic cells
QA quality assurance
QA/QC quality assurance/quality control
R&D research and development
RFA Regulatory Flexibility Act
RGGI Regional Greenhouse Gas Initiative
RIA Regulatory Impact Analysis
SSM startup, shutdown, and malfunction
SF_6 sulfur hexafluoride
TCR The Climate Registry
TSD technical support document
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VOC volatile organic compound(s)
WCI Western Climate Initiative

Table of Contents

I. Background

A. Organization of This Preamble

This preamble is broken into several large sections, as detailed above in the Table of Contents. The paragraphs below describe the layout of the preamble and provide a brief summary of each section.

The first section of this preamble contains the basic background information about the origin of this proposed rule, including a brief discussion of the initial proposed requirements for electronics, fluorinated gas production, and use of electrical transmission and distribution equipment. This section also discusses EPA's use of our legal authority under the CAA to collect the proposed data, and the benefits of collecting the data.

The second section of this preamble provides a brief summary of, and rationale for, the key design elements on which EPA is seeking comment today for each subpart. Depending on the subpart, this section may include EPA's rationale for (i) the definition of the source category, (ii) selection of reporting threshold, (iii) selection of proposed reporting and monitoring methods, (iv) selection of procedures for estimating missing data, (v) selection of data reporting requirements, and (vi) selection of records that must be retained. EPA describes the proposed options for each design element, as well as the other options considered. Throughout this discussion, EPA highlights specific issues on which we solicit comment. Please refer to the specific source category of interest for more details.

The third section provides the summary of the cost impacts, economic impacts, and benefits of this proposed rule from the Economic Analysis. Finally, the last section discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on the Proposed Rule

The Final Mandatory GHG Reporting Rule (Final MRR), (40 CFR part 98) was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260). The Final MRR, which became effective on December 29, 2009, included reporting of GHGs from the facilities and suppliers that EPA determined should be included to appropriately respond to the direction in the 2008 Consolidated Appropriations Act.[1] These source categories capture approximately 85 percent of U.S. GHG emissions through reporting by direct emitters as well as suppliers of fossil fuels and industrial gases.

In the April 2009 proposed mandatory GHG reporting rule, the electronics, fluorinated GHG production, and electrical equipment use source categories were included as subparts I, L, and DD. In addition, EPA requested comment on requiring reporting under subpart OO of the quantities of fluorinated GHGs imported and exported inside pre-charged equipment and foams. EPA received a number of lengthy, detailed comments regarding proposed subparts I and L, several comments regarding the definition of "facility" under subpart DD, and several comments regarding a reporting requirement for imports and exports of fluorinated GHGs contained inside pre-charged equipment and foams. These comments, which are described in more detail in the discussions of the individual source categories below, raised concerns about the costs and technical feasibility of implementing subparts I and L as initially proposed, requested clarification of how "facility" should be interpreted under subpart DD, and both favored and opposed a requirement to report imports of fluorinated GHGs contained in imported and exported pre-charged equipment and closed-cell foams.

EPA recognized the concerns raised by stakeholders, and decided not to finalize subparts I, L, and DD with the Final MRR, but instead to re-propose significant pieces of these subparts. For subparts I and L this proposal incorporates a number of changes including, but not limited to, the addition of different methodologies that provide improved emissions coverage at a lower cost burden to facilities as compared to the initial proposal. Where aspects of the initial proposals for subparts I and L are retained in this proposal, such as in the basic mass-balance methodology for subpart L (as an option for some facilities) and in many of the equations for subpart I, today's proposal adds more flexibility in how and how frequently the underlying data are gathered. In addition, EPA is proposing requirements to report emissions from manufacture or refurbishment of electrical equipment and to report the quantities of fluorinated GHGs imported and exported inside pre-charged equipment and foams.

We believe the monitoring approaches proposed in this action, which combine direct measurement and facility-specific calculations, effectively balance

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

accuracy and costs, and that they are warranted even though the rule does not contain any emissions reduction requirements. As we stated in the Final MRR, the data collected by the rule are expected to be used in analyzing and developing a range of potential CAA GHG policies and programs. A consistent and accurate data set is crucial to serve this intended purpose.

Under this proposed rule, facilities not already reporting but required to report under this rule would begin data collection in 2011 following the methods outlined in the proposed rule and would submit data to EPA by March 31, 2012. As is the case under the Final MRR, facilities would have the option to use Best Available Monitoring Methods (BAMM) for the first quarter of the first reporting year for the source categories included in this proposed rule. Thus, for these source categories, facilities could use BAMM through March 31, 2011.

C. Legal Authority

EPA is proposing this rule under its existing CAA authority, specifically authorities provided in CAA section 114. As discussed further below and in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Legal Issues" (available in EPA–HQ–OAR–2008–0508), EPA is not citing the FY 2008 Consolidated Appropriations Act as the statutory basis for this action. While that law required that EPA spend no less than $3.5 million on a rule requiring the mandatory reporting of GHG emissions, it is the CAA, not the Appropriations Act, that EPA is citing as the authority to gather the information proposed by this rule.

As stated in the Final MRR, CAA section 114 provides EPA broad authority to require the information proposed by this rule because such data would inform and are relevant to EPA's carrying out a wide variety of CAA provisions. As discussed in the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, 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 notes that while climate change legislation approved by the U.S. House of Representatives, and pending in the U.S. Senate, would provide EPA additional authority for a GHG registry similar to this proposed rule, and would do so for purposes of that pending legislation, this proposed rule is authorized by, and the information being gathered by this proposed rule is relevant to implementing, the existing CAA. EPA expects, however, that the information collected by this proposed rule would also prove useful to legislative efforts to address GHG emissions.

For further information about EPA's legal authority, *see* the proposed and Final MRR.

D. Relationship to Other Federal, State and Regional Programs

In developing this proposed rule, EPA reviewed monitoring methods included in international guidance (*e.g.,* Intergovernmental Panel on Climate Change), as well as Federal voluntary programs (*e.g.,* EPA PFC Reduction/ Climate Partnership for the Semiconductor Industry and the U.S. Department of Energy Voluntary Reporting of Greenhouse Gases Program (1605(b) of the Energy Policy Act), corporate protocols (*e.g.,* World Resources Institute and World Business Council for Sustainable Development GHG Protocol) and industry guidance (*e.g.,* 2006 ISMI Guideline for Environmental Characterization of Semiconductor Process Equipment).

EPA also reviewed State reporting programs (*e.g.,* California and New Mexico) and Regional partnerships (*e.g.,* Regional Greenhouse Gas Initiative, Western Climate Initiative, The Climate Registry). These are important programs that not only led the way in reporting of GHG emissions before the Federal government acted but also assist in quantifying the GHG reductions achieved by various policies. Many of these programs collect different or additional data as compared to this proposed rule. For example, State programs may establish lower thresholds for reporting, request information on areas not addressed in EPA's reporting rule, or include different data elements to support other programs (*e.g.,* offsets). For further discussion on the relationship of this proposed rule to other programs, please refer to the preamble to the Final MRR.

II. Summary of and Rationale for the Reporting, Recordkeeping and Verification Requirements for Specific Source Categories

A. Electronics Manufacturing

1. Overview of Reporting Requirements

Electronics manufacturing includes, but is not limited to, the manufacture of semiconductors, liquid crystal displays (LCDs), micro-electro-mechanical systems (MEMS), and photovoltaic cells (PV). The electronics industry uses multiple long-lived fluorinated greenhouse gases (fluorinated GHGs) such as perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3), as well as nitrous oxide (N_2O). This proposed rule would apply to electronics manufacturing facilities where emissions from electronics manufacturing processes such as plasma etching, chemical vapor deposition, chamber cleaning, and heat transfer fluid use as well as stationary fuel combustion units equal or exceed 25,000 metric tons of CO_2e per year.[2] In this action, we are proposing methods to estimate emissions from cleaning and etching for semiconductor, LCD, MEMS, and PV manufacture and also methods for estimating N_2O emissions from chemical vapor deposition and other manufacturing processes such as chamber cleaning. We are also clarifying methods for estimating emissions from heat transfer fluids. And lastly, we are proposing methods for reporting controlled emissions from abatement systems.

2. Major Changes Since Initial Rule Proposed

In the initial proposal for electronics manufacturing, we included the following provisions for reporting emissions from electronics manufacture: (1) A capacity-based threshold for semiconductors, LCDs, and MEMS facilities and an emissions-based threshold for PV facilities; (2) methods for estimating fluorinated GHG emissions from etching and cleaning; (3) methods for estimating N_2O emissions during etching and cleaning; (4) methods for verifying destruction or removal efficiency (DRE) of abatement systems; and (5) methods for estimating emissions from heat transfer fluids.

As noted in the preamble to the Final MRR, we received a number of lengthy, detailed comments regarding the electronics manufacturing subpart. In total, we received comments from approximately 10 entities on the proposed rule regarding electronics manufacture. The commenters generally opposed the proposed reporting requirements for large semiconductor facilities and stated that excessive monitoring and reporting were required. For example, commenters asserted that they do not currently collect the data required to report using an IPCC Tier 3

[2] As discussed further below, EPA is proposing that uncontrolled emissions be used for purposes of determining whether a facility's emissions are equal to or greater than 25,000 $mtCO_2e$.

approach, and that to collect such data would entail significant burden and capital costs. In most cases, commenters provided alternative approaches to each of the reporting requirements.

We have carefully reviewed the comments, issues, and suggestions raised by stakeholders regarding electronics manufacturing. In response, we are revising our initial proposal and are proposing the following reporting provisions for electronics manufacture: (1) A single emissions-based reporting threshold for all semiconductor, LCD, MEMS, and PV facilities; (2) modified methods for estimating emissions from cleaning and etching activities for semiconductor facilities and other electronics facilities including those that manufacture LCDs, MEMS, and PVs; (3) modified methods for estimating facility N_2O emissions; (4) clarified methods for estimating emissions from heat transfer fluids; and (5) revised methods for reporting controlled emissions from abatement systems.

In the paragraphs below, we summarize the main provisions included in the initial proposal for reporting emissions from electronics manufacturing and we briefly summarize the major changes that are being proposed today. For more detailed information on the initial proposal, *see* the electronics manufacturing section of EPA's proposed MRR (74 FR 16448, April 10, 2009).

Reporting Threshold. In the initial proposal, we proposed a capacity-based threshold, requiring those facilities with emissions equal to or greater than the thresholds to report their GHG emissions. We proposed production capacity-based thresholds of 1,080 m^2, 1,020 m^2, and 236,000 m^2 of substrate for semiconductor, MEMS, and LCD manufacturing facilities, respectively. The capacity-based threshold proposed were equivalent to 25,000 $mtCO_2e$ using the IPCC 2006 Tier 1 default factors and assumed no abatement. Where IPCC 2006 Tier 1 default emission factors were unavailable (*i.e.,* MEMS), the emission factor was estimated based on relevant IPCC Tier 1 emission factors for semiconductor production. Due to a lack of information on use and emissions of fluorinated GHGs for PV manufacture, we proposed an emissions-based threshold of 25,000 $mtCO_2e$ for those facilities. We proposed to use a capacity-based threshold based on the published capacities of facilities, as opposed to an emissions-based threshold, where possible, because we believed that it simplified the applicability determination.

Several commenters stated that the proposed capacity-based threshold created ambiguity. For example, one commenter noted that it was unclear how production capacity was defined as actual manufacturing levels could fluctuate year by year. In response to these comments, we are now proposing a single emissions-based threshold equal to or greater than 25,000 metric tons of CO_2e per year for electronics manufacturing facilities. We have concluded that a single emissions-based threshold will simplify the applicability determination and that by applying the method for determining whether the threshold is met, a facility will be able to quickly determine whether they must report under this rule.

Estimating Emissions from Cleaning and Etching Processes. With respect to estimating emissions from chamber cleaning and etching, in our initial proposal, we outlined two different methods; one method for relatively large semiconductor facilities, and another method for all other semiconductor facilities and LCD, MEMS, and PV facilities required to report. We defined large semiconductor facilities as those facilities with annual capacities of greater than 10,500 m^2 silicon (equivalent to 29 out of 175 total semiconductor manufacturing facilities). For large semiconductor facilities we proposed an approach based on the IPCC Tier 3 method that required the use of company-specific data for (1) gas consumption, (2) gas utilization,[3] (3) by-product formation [4], and (4) DRE for all emissions abatement processes at the facility. As we stated in the initial proposal, we had concluded that large semiconductor facilities were already using Tier 3 methods and/or had the necessary data readily available either in-house or from suppliers to apply the highest Tier method. For smaller semiconductor facilities and LCD, MEMS, and PV facilities, we proposed an approach based on the IPCC Tier 2b method, which required using default emission factors for process utilization, by-product formation, and site-specific DRE measurements.

[3] For purposes of electronics manufacturing, we are using the term "gas utilization" to describe the fraction of input N_2O or fluorinated GHG converted to other substances during the etching, deposition, and/or chamber/wafer cleaning processes. Gas utilization is expressed as a rate or factor for specific manufacturing processes. "Utilization" should not be confused with "use;" "use" refers to gas consumption or the quantity of gas fed into process at an electronics manufacturing facility.

[4] For purposes of electronics manufacturing, "by-product formation" is the quantity of fluorinated GHGs created during electronics manufacturing processes. Fluorinated GHG by-products may also be formed by abatement devices.

Comments received in response to our initial proposal stated that the 2006 IPCC Tier 3 method would be overly burdensome for semiconductor manufacturers and that process-specific emission factors do not exist for many tools and processes. The commenters noted that most semiconductor facilities do not track gas consumption by tool or process-type and that currently, only one large semiconductor company uses the Tier 3 method. Generally, commenters requested the use of the 2006 IPCC Tier 2b method.

In response to these comments, we are now proposing the use of a "Refined Method" for estimating these emissions from semiconductor facilities. Our revised methodology includes a simpler approach to estimating emissions from cleaning and etching as compared to the Tier 3 method that was initially proposed for larger semiconductor facilities. To this end, we estimate that our proposed methodology will result in a reduction in burden compared to the Tier 3 method for those facilities previously defined as large semiconductor facilities, and an improvement in accuracy of the emissions estimate as compared to the 2006 IPCC Tier 2b method. Furthermore, since we anticipate that all semiconductor facilities already have, or have ready access to, the information required by this proposed methodology, we are also proposing to require all semiconductor facilities required to report to estimate emissions using the Refined Method. We have concluded the method we are proposing is the most appropriate method taking into account both the cost to the reporter as well as accuracy of emissions achieved.

For LCD, MEMS, and PV facilities, in this action we are proposing to require an approach based on a slightly modified 2006 IPCC Tier 2b method which would include (1) gas-and facility-specific heel factors (consistent with the requirements we are proposing for semiconductor facilities), (2) gas consumption apportioned to 2006 IPCC Tier 2b process categories (*i.e.* clean and etch), (3) default factors consistent with the 2006 IPCC Tier 2b factors, and (4) methods for reporting controlled emissions from abatement systems (as proposed below). The main difference between the method proposed in this revised proposal and in the initial proposal is the addition of a gas-and facility-specific heel factor to determine overall gas consumption. We did not receive any comments on the Tier 2b method that we proposed for LCD, MEMS, and PV facilities in our initial proposal. We are proposing to add the requirement of gas-and-facility specific

heel factors based on comments received from semiconductor facilities in response to the initial proposal. It is our understanding that LCD, MEMS, and PV facilities have the data required to develop a gas-and-facility specific heel factors and that it can be implemented with minimal burden.

Estimating Facility N_2O Emissions. In our initial proposal, our approach required that facilities estimate annual N_2O emissions using a simple mass-balance method. This method assumed that all N_2O consumed is emitted (*i.e.,* not converted or destroyed). We also requested comment on utilization factors for N_2O as well as on data on N_2O by-product formation.

In response to our initial proposal, we received comments that clarified that N_2O is used primarily in the chemical vapor deposition process. Commenters opposed our proposed method for estimating N_2O emissions, which assumed 100 percent N_2O used is emitted, and asserted that semiconductor facilities should be permitted to use measured N_2O emission factors where these factors were measured using methods consistent with the December 2006 International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (2006 ISMI Guidelines). Commenters also noted that facilities that have not developed N_2O emission factors should be allowed to use a default emission factor of 60 percent, reflecting N_2O utilization of 40 percent.[5] Lastly, commenters asserted that those companies that have a measured DRE for N_2O abatement be allowed to apply these DREs in the emission estimates.

We are now proposing two methods for estimating N_2O emissions from electronics manufacturing: one for estimating N_2O emissions from chemical vapor deposition and another for estimating N_2O emissions from all other manufacturing processes such as chamber cleaning.

Reporting Controlled Emissions From Abatement Systems. The emissions estimation method originally proposed accounted for destruction by abatement systems only if facilities verified the performance of their systems using one of two methods. In particular, we proposed to require that the DRE be verified by either (1) measurement by the facility using the methods described in EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing (EPA's DRE Protocol), or (2) purchase by the facility of abatement systems that were tested by a third party using a standard protocol such as EPA's DRE Protocol.

We also proposed to require that facilities use the systems within the manufacturer's specified system lifetime, operate the system within the manufacturer specific limits for the gas mix and exhaust flow rate intended for the fluorinated GHG destruction, and maintain the equipment according to the manufacturer's guidelines.

In response to the initial proposal, commenters were generally opposed to EPA's initial approach for measuring DRE, noting that according to the *Results of the ISMI ESH Technology Center Greenhouse Gas Facility Survey,* less than one percent of installed abatement systems have been properly tested using the draft EPA Protocol and that generally, facilities use the IPCC default factors or manufacturer-supplied measurements. In addition, commenters were also opposed to EPA's proposed requirement that facilities rely on manufacturer-specified system lifetime as properly maintained and serviced abatement systems can last beyond the manufactures' specified lifetime. For purposes of this reporting rule, we are now proposing that facilities that wish to document and report fluorinated GHG and N_2O emissions reflecting the use of abatement systems adhere to a method that would require (1) documentation to certify that the abatement device is installed, operated, and maintained according to manufacturers' specifications, (2) accounting for the system's uptime, and (3) either certification that the abatement system is specifically designed for fluorinated GHG and N_2O abatement and the use of EPA default DRE value, or directly and properly measured DRE (*i.e.,* in accordance with EPA DRE Protocol) confirming abatement system's performance.

Estimating Emissions from Heat Transfer Fluids. To estimate the emissions from heat transfer fluids we proposed to require that electronics manufacturers use the 2006 IPCC Tier 2 approach, which is based on a mass-balance method. As we stated in the initial proposal, the 2006 IPCC Tier 2 approach uses company-specific data and accounts for differences among facilities' heat transfer fluids, leak rates, and service practices.

In comments we received on our initial proposal, it was noted that our proposed method for estimating emissions from heat transfer fluids would require companies to compile a detailed inventory of all fluorinated heat transfer equipment and its nameplate capacity. Comments stated that such a mass balance approach would be overly burdensome.

In evaluating these comments, we believe that there was some confusion regarding our intended method. As a result, we are not changing the broad outlines of our initial proposal, but we are clarifying required data elements.

3. Definition of the Source Category

The electronics industry uses multiple long-lived fluorinated GHGs such as PFCs, HFCs, SF_6, and NF_3, as well as N_2O, during manufacturing of semiconductors, LCDs, MEMS, and PV. We understand that there are other electronics manufacturers such as those facilities that manufacture light-emitting diodes (LEDs) and disk readers that use fluorinated GHGs in similar manufacturing processes as semiconductors. As a result, we are seeking information on fluorinated GHG and N_2O emissions associated with the manufacture of these products and also comment on whether to include them as part of the electronics manufacturing source category. It is our intent to include these other sources as part of the electronics manufacturing source category in the final rule where their emissions meet or exceed our proposed threshold of 25,000 $mtCO_2e$.

Fluorinated GHGs are used for plasma etching of silicon materials, cleaning deposition tool chambers, and wafer cleaning. N_2O is also used in depositing certain films and chamber cleaning. Additionally, electronics manufacturing employs fluorinated GHGs (typically liquids at ambient temperature) as heat transfer fluids. The most common fluorinated GHGs in use for these purposes are CHF_3 (HFC–23), CF_4, C_2F_6, NF_3, SF_6 and Fluorinert™ and Galden® heat transfer fluids; other compounds such as perfluoropropane (C_3F_8) and perfluorocyclobutane (c-C_4F_8) are also used in smaller quantities (EPA, 2008a). Table 3 of this preamble presents fluorinated GHGs typically used during manufacture of electronics devices.

[5] The 40% utilization rate (60% emission factor) was identified based on a survey of industry conducted by ISMI and provided in comments in response to the initial proposal.

TABLE 3—EXAMPLES OF FLUORINATED GHGS USED BY THE ELECTRONICS INDUSTRY

Product type	Fluorinated GHGs used during manufacture
Electronics (*e.g.,* Semiconductor, MEMS, LCD, PV)	CF_4, C_2F_6, C_3F_8, c-C_4F_8, c-C_4F_8O, C_4F_6, C_5F_8, CHF_3, CH_2F_2, NF_3, SF_6, and Heat Transfer Fluids (CF3–(O–CF(CF3)–CF2)n-(O–CF2)m-O–CF3, CnF2n+2, CnF2n+1(O)CmF2m+1, CnF2nO, (CnF2n+1)3N) [a]

[a] IPCC Guidelines do not specify the fluorinated GHGs used for MEMS production. Literature reviews revealed that among others CF_4, SF_6, and the Bosch process (consisting of alternating steps of SF_6 and c-C_4F_8) are used to manufacture MEMS. For further information, *see* the Electronics Manufacturing TSD in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

Description of Electronics Manufacturing Processes and Activities. Fluorinated GHG and N_2O emissions result from the following electronics processes and activities:

(1) Plasma etching;
(2) Chemical vapor deposition;
(3) Chamber cleaning;
(4) Wafer cleaning; and
(5) Heat transfer fluid use.

Plasma etching, essential to fabricating intricate, nanometer size features in contemporary electronic devices, is the removal of solid material from a substrate surface with gaseous reactants, in plasma, to produce gaseous products, which are then pumped away and disposed. Unless abated, unreacted fluorinated reactants or fluorinated GHG by-products from etching are emitted into the atmosphere.

Typical fluorinated GHG etching reagents, used either individually or in combination, are CF_4, CHF_3, C_2F_6 and c–C_4F_8 for silicon dioxide and nitride films; CF_4, NF_3 and SF_6 for polysilicon films; and CHF_3 for aluminum and SF_6 for tungsten films. A typical fluorinated GHG by-product from etching processes is CF_4; in some instances C_2F_6 may also be formed.

Deposition is a fundamental step in the fabrication of a variety of electronic devices. During deposition, layers of dielectric, barrier, or electrically conductive films are deposited or grown on a wafer or other substrate. Chemical vapor deposition enables the deposition of dielectric or metal films. During the chemical vapor deposition process, gases that contain atoms of the material to be deposited react on the wafer surface to form a thin film of solid material. Films deposited by chemical vapor deposition may be silicon oxide, single-layer crystal epitaxial silicon, amorphous silicon, silicon nitride, dielectric anti-reflective coatings, low k dielectric, aluminum, titanium, titanium nitride, polysilicon, tungsten, refractory metals or silicides. Nitrous oxide may be the oxidizer of choice during deposition of silicon oxide films.

Chambers used for depositing polysilicon, dielectric and metal films are cleaned periodically using fluorinated GHGs, N_2O, and other gases. During the cleaning cycle, the gas is converted to fluorine atoms in plasma, which etches away residual silicon-containing material from chamber walls, electrodes, and chamber hardware. Undissociated fluorinated gases and other fluorinated and non-fluorinated products pass from the chamber to waste streams and, unless emissions control systems are employed, into the atmosphere.

Typical fluorinated GHGs used for chamber cleaning are NF_3, C_2F_6 and C_3F_8. N_2O may also be used to reduce particle formation during chamber cleaning. As with etching films, fluorinated GHG by-products may be formed during chamber cleaning, typically CF_4.

During wafer processing, any residual photoresist material can be removed through an ashing process, which consists of placing partially processed wafers in an oxygen plasma to which CF_4 may be added. The edges of wafers (the bevel) may require additional cleaning to remove yield-reducing residual material. Bevel cleaning may also use a plasma process with fluorinated gas chemistry. In both of these wafer cleaning processes, unused fluorinated GHGs are emitted unless abated.

Fluorinated GHG liquids (at ambient temperature) such as fully fluorinated linear, branched or cyclic alkanes, ethers, tertiary amines and aminoethers, and mixtures thereof are used as heat transfer fluids at several semiconductor facilities to cool process equipment, control temperature during device testing, and solder semiconductor devices to circuit boards. The fluorinated heat transfer fluid's high vapor pressures can lead to evaporative losses during use.[6]

Our understanding is that heat transfer fluids are widely used within semiconductor manufacturing. We are seeking comment on the extent of use and annual replacement quantities of heat transfer fluids in other electronics sectors, such as their use for cooling or cleaning during LCD manufacture.

[6] Electronics Manufacturing TSD (EPA–HQ–OAR–2009–0927); 2006 IPCC Guidelines.

Total U.S. Emissions From Electronics Manufacturing. Emissions of fluorinated GHGs from 216 electronics facilities were estimated to be 6.1 million metric tons CO_2e in 2006. Below is a breakdown of emissions by electronics product type.

Semiconductors. Emissions of fluorinated GHGs, including heat transfer fluids, from 175 semiconductor facilities were estimated to be 5.9 million metric tons CO_2e in 2006. Of the total estimated semiconductor emissions, 5.4 million metric tons CO_2e are from etching/chamber cleaning and 0.5 million metric tons CO_2e are from heat transfer fluid usage.

MEMS. Emissions of fluorinated GHGs from 12 MEMS facilities were estimated to be 0.1 million metric tons CO_2e in 2006.

LCDs. Emissions of fluorinated GHGs from 9 LCD facilities were estimated to be 0.02 million metric tons CO_2e in 2006.

PV. Emissions of fluorinated GHGs from 20 PV facilities were estimated to be 0.07 million metric tons CO_2e in 2006. We request comment on the number and capacity of PV facilities that employ thin film technologies (*i.e.,* amorphous silicon) and other PV manufacturing facilities in the United States using fluorinated GHGs.

For additional background information on the electronics industry, refer to the Electronics Manufacturing Technical Support Document (TSD) in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

4. Threshold for Reporting

For facilities that manufacture semiconductors, LCD, MEMS, and PV, we are proposing an emissions-based threshold of 25,000 $mtCO_2e$. Consistent with other sections of the Final MRR, EPA is proposing that for the purposes of determining whether a facility emits amounts equal to or greater than 25,000 $mtCO_2e$, a facility must include emissions from all source categories for which methods are provided in the rule. For purposes of the threshold determination under subpart I, we are proposing two different methods, depending on whether the facility

manufacturers semiconductors, MEMS, LCDs or PVs (*see* proposed section 98.91). It is important to note that these methods are only for determining whether a facility exceeds the threshold; the proposed methods required for monitoring and reporting emissions data are presented in section 5 below.

To determine whether a manufacturer falls above or below the proposed 25,000 $mtCO_2e$ threshold, we are proposing that semiconductor, MEMS, and LCD facilities use gas specific emission factors assuming 100 percent manufacturing capacity to calculate annual metric tons of emissions in CO_2 equivalents. Because we understand that heat transfer fluids are widely used within semiconductor manufacturing, we are proposing that semiconductor manufacturers add 10 percent of total clean and etch emissions at a facility to their estimate. For applicability purposes, we propose that manufacturing capacity means the facility's full planned design capacity.

The gas specific emission factors we are proposing to use for threshold applicability for semiconductors and LCD facilities are consistent with the 2006 IPCC Tier 1 emission factors. For MEMS, because there are no IPCC factors available, we are assuming that SF_6 accounts for 100 percent of the sector's total emissions. The emission factor we are proposing for threshold applicability is based on the assumption that the MEMS SF_6 emission factor is equivalent to the IPCC Tier 1 SF_6 emission factor for semiconductors, scaled up by a factor of 5.[7]

We are proposing that PV facilities multiply annual fluorinated GHG purchases or consumption by the gas-appropriate 100-year GWPs, as defined in Table A–1 of subpart A of part 98, to calculate annual metric tons of emissions in CO_2 equivalents. None of these calculations would account for emission abatement systems.

We are proposing to require an emissions estimating method that does not account for destruction by abatement systems because actual emissions from facilities employing abatement systems may exceed estimates when based on the manufacturers' rated DREs of the equipment and may therefore exceed the 25,000 $mtCO_2e$ threshold without the knowledge of the facility operators. When abatement equipment is used, electronics manufacturers often estimate their emissions using the manufacturer-supplied DRE for the system. However, an abatement system may fail to achieve its rated DRE either because it was not installed properly, is not being properly operated and maintained, or because the DRE value itself was incorrectly measured due to a failure to properly account for the effects of dilution. For example, reported DREs for CF_4 can be overstated by as much as a factor of 20 to 50, and the corresponding figure for C_2F_6 can be overstated by a factor of up to 10 because of failure to properly account for dilution (Burton, 2007).

In our analysis of the emissions thresholds, we considered thresholds of 1,000 $mtCO_2e$, 10,000 $mtCO_2e$, 25,000 $mtCO_2e$, and 100,000 $mtCO_2e$ per year. To estimate the number of semiconductor facilities that would have to report under each of the various thresholds, we estimated emissions for each facility in the U.S. by using IPCC Tier 1 emission factors. These emissions estimates were then evaluated to determine how many facilities would meet the various thresholds. To estimate the collective emissions from the facilities that would have to report under the various thresholds, we used information from EPA's PFC Reduction/Climate Partnership for Semiconductors and the EPA PFC Emissions Vintaging Model.

To estimate the number of LCD and PV facilities that would have to report under the various thresholds, as well as the collective emissions from these facilities, we used IPCC Tier 1 emission factors. Because IPCC emission factors for MEMS are not available, the number of facilities that would have to report and the collective emissions from these facilities were determined using an emission factor based on a relevant IPCC Tier 1 emission factor for semiconductor production.[8] All of our analyses assumed no abatement.

Table 4 of this preamble shows emissions and facilities that would be captured by the respective emissions thresholds.

TABLE 4—THRESHOLD ANALYSIS FOR ELECTRONICS INDUSTRY

Emission threshold level metric tons CO_2e/yr	Total national emissions	Total number of facilities	Emissions covered		Facilities covered	
			metric tons CO_2e/yr	Percent	Facilities	Percent
1,000	5,984,463	216	5,962,091	99.6	165	76
10,000	5,984,463	216	5,813,200	97	114	53
25,000	5,984,463	216	5,622,570	94	94	44
100,000	5,984,463	216	4,737,622	79	55	26

We selected the 25,000 $mtCO_2e$ per year threshold because it maximizes emissions reporting, while excluding small facilities that do not contribute significantly to the overall GHG emissions.

Table 5 of this preamble shows the estimated emissions and number of facilities that would report for each type of source under the proposed emissions-based thresholds.

TABLE 5—SUMMARY OF RULE APPLICABILITY UNDER THE PROPOSED THRESHOLDS

Emissions source	Threshold	Total national facilities	Total emissions of source (metric tons CO_2e)	Emissions covered		Facilities covered	
				metric tons CO_2e/yr	Percent	Facilities	Percent
Semi-conductors	25,000 Mt CO_2 Eq.	175	5,741,676	5,492,066	96	91	52

[7] For a more detailed explanation of MEMS default factor, please refer to the Electronics Manufacturing TSD (EPA–HQ–OAR–2009–0927).

[8] For a more detailed explanation of MEMS default emission factor, please refer to the Electronics Manufacturing TSD (EPA–HQ–OAR–2009–0927).

TABLE 5—SUMMARY OF RULE APPLICABILITY UNDER THE PROPOSED THRESHOLDS—Continued

Emissions source	Threshold	Total national facilities	Total emissions of source (metric tons CO_2e)	Emissions covered		Facilities covered	
				metric tons CO_2e/yr	Percent	Facilities	Percent
MEMS	25,000 Mt CO_2 Eq.	12	146,115	96,164	66	2	17
LCD	25,000 Mt CO_2 Eq.	9	23,632	0	0	0	0
PV	25,000 Mt CO_2 Eq.	20	73,039	34,340	47	1	5

The proposed emissions-based thresholds are estimated to include approximately 50 percent of semiconductor facilities and between approximately 5 percent and 17 percent of the facilities manufacturing PV and MEMS, respectively. At the same time, the thresholds are expected to cover nearly 96 percent of fluorinated GHG emissions from semiconductor facilities, 66 percent of fluorinated GHG emissions from facilities manufacturing MEMS, and 47 percent of fluorinated GHG emissions from facilities manufacturing PV. Combined, these emissions are estimated to account for close to 94 percent of fluorinated GHG emissions from the electronics industry as a whole.

Based on our current analysis, facilities manufacturing LCDs are not expected to meet the proposed threshold. In addition, only 2 MEMS facilities and 1 PV facility are expected to be covered. The data and information that we currently have on MEMS, LCD, and PV manufacturing, however, is limited and incomplete. We are including these sectors because they have similar fluorinated GHG and N_2O use and manufacturing processes as those of semiconductor manufacturing and they are high growth sectors. We estimate that emissions from MEMS, LCD, and PV may be higher than our data show currently and we expect them to increase in the future.

For additional background information on the threshold analysis, refer to the Electronics Manufacturing TSD. For specific information on costs, including unamortized first year capital expenditures, please refer to the EIA and the EIA cost appendix.

5. Selection of Proposed Monitoring Methods

We are proposing methods to monitor and estimate fluorinated GHG and N_2O emissions from semiconductor, LCD, MEMS, and PV manufacture. The proposed methods discussed below include the following: (a) Estimating emissions from cleaning and etching processes; (b) estimating facility N_2O emissions; (c) estimating emissions from heat transfer fluids; and (d) reporting controlled emissions from abatement equipment. The methods described and proposed in this section are for estimating emissions that would be required to be reported under this subpart (*see* proposed sections 98.93 and 98.94). It is important to note that these methods differ from those proposed in the section above which are for determining applicability of the subpart.

a. Methods for Estimating Emissions From Cleaning and Etching Processes

We are proposing different methods for estimating fluorinated GHG emissions from etching and cleaning based on whether the facility is a semiconductor manufacturer or an LCD, MEMS, or PV manufacturer.

Method for Semiconductor Facilities. Under this proposal, all semiconductor manufacturers that have emissions equal to or greater than 25,000 mtCO_2e would be required to estimate and report emissions from etching and cleaning using one of two approaches. First, we are proposing an approach, hereinafter referred to as the "Refined Method," that is based on:

(1) Gas consumption as calculated using the facility's purchase records, inventory, and gas- and facility-specific heel factors,

(2) Facility-specific methods for apportioning gas consumption by process category [9] using indicators of GHG-using activity (*e.g.,* wafer passes),

(3) Emission factors for utilization and by-product formation rates based on refined process categories (*e.g.,* categories with more specificity than the simpler cleaning and etching categories listed in the 2006 IPCC Guidelines), and

(4) Methods for reporting controlled emissions (as proposed below).

Alternatively, we are proposing to permit those facilities that have monitoring infrastructure or the necessary data to estimate emissions obtained through recipe-specific measurements to report their emissions using their data by following an approach consistent with the 2006 IPCC Tier 3 method. In addition, for those semiconductor manufacturers that fabricate electronic devices on wafers of measuring greater than 300 mm in diameter, we are proposing to require that they estimate and report their emissions using recipe-specific measurements and follow an approach consistent with the IPCC Tier 3 method. Each of these approaches is discussed below.

Refined Method.

The Refined Method would apply to all covered semiconductor facilities and would not make a distinction between relatively large and other facilities. In the paragraphs below, we discuss in detail each one of the components we are proposing to require under this approach.

Gas consumption as calculated using the facility's purchase records, inventory, and gas- and facility-specific heel factors. Notwithstanding the definition of "heel" in subpart A of this rule,[10] we are proposing that for purposes of electronics manufacturing that a heel means, "the amount of gas that remains in a gas cylinder or container after it is discharged or off-loaded (this may vary by cylinder or container type and facility)." We are not planning to use the subpart A definition because it contains a default value of 10 percent. In this action, we are proposing to require facilities to calculate gas- and facility-specific heel factors rather than using a default value.

As part of determining each facility's overall usage of each gas for a reporting period, we are proposing that a facility use their purchase records, inventory, and gas- and facility-specific heel factors. More specifically, for each cylinder/container type for each gas used, we are proposing that semiconductor facilities be required to base their heel factors on the residual

[9] For purposes of electronic manufacturing, "process category" is a set of similar manufacturing steps, performed for the same purpose, associated with substrate (*e.g.,* wafer) processing during device manufacture for which fluorinated GHG and N_2O emissions and fluorinated GHG and N_2O usages are calculated and reported.

[10] Pursuant to subpart A of the Final MRR, "heel" means the amount of gas that remains in a shipping container after it is discharged or off-loaded (that is no more than ten percent of the volume of the container).

weight or pressure of the gas cylinder or container that a facility uses to change out that cylinder/container. This is common practice in the industry and is typically referred to as the "trigger point for change out." These points, one for each gas and cylinder/container type, together with the initial container mass or pressure, are used to calculate the unused gas for each container, which when expressed as a fraction of the initial amount in the container is the "heel" (or unused fraction of the container). This gas- and facility-specific heel factor would then be applied to each container for that gas to determine the net amount of that gas used at a facility. In cases where the "trigger point for change out" used at a facility differs by more than one percentage point from that used to calculate the previous gas-specific heel factor, we propose that the gas- and facility-specific heel factor must be recalculated.

Currently most semiconductor facilities rely upon the IPCC default heel factor of 10 percent and apply that value to each cylinder/container. Based on information provided in an industry study of facility-specific, gas-specific heel factors, the heel factor in a given facility for individual cylinders/containers can vary from 3 percent to 25 percent. Given this variation, we conclude that gas- and facility-specific heel factors would provide improved accuracy in emissions estimates over the use of the IPCC default heel factor.

We understand that there are exceptional circumstances when facilities do not always change cylinders/containers exactly when they reach the targeted residual weight or pressure. In those instances, which we expect are infrequent, we are proposing that the cylinder/container must be weighed or the pressure measured using a pressure gauge; as opposed to using the facility-wide gas-specific heel factor as part of determining the net amount of gas used at a facility. We are proposing to define an exceptional circumstance as one which the cylinder/container is changed at a residual mass or pressure that differs by more than 20 percent from the "trigger point for change out." We request comment on the frequency of these exceptional circumstances and also the percentage difference (*i.e.* 20 percent) for which we are proposing to require that the exceptional cylinder/container be weighed or the pressure measured.

When taking an annual inventory, we understand that multiple cylinders/containers are in service. We request comment on the significance of accounting for the quantity of fluorinated GHGs or N_2O remaining in cylinders/containers in service at the end of the reporting period. We also request comment and detailed information on other methods and technologies (*i.e.* other than purchase records) that facilities may be using for determining annual gas consumption (*e.g.,* recorded data from an automated gas inventory system).

We are proposing that all flowmeters, weigh scales, pressure gauges, and thermometers used to measure quantities that are monitored or used in calculations in this proposal have an accuracy and precision of 1 percent of full scale or better. We request comment on this requirement including alternative accuracy and precision requirements and detailed information about why particular instruments can not meet the proposed 1 percent standard.

Apportioning gas consumption to process categories. Estimating facility emissions requires apportioning annual facility-wide gas consumption across a facility's emitting process categories by way of applying facility-specific apportioning factors. A facility's uncontrolled emissions are the product of that apportioned gas consumption and the corresponding emission factor. To determine the share of each gas used by each process category, we are proposing to require that semiconductor facilities use a quantifiable indicator (or metric) of gas usage activity. More specifically, we are proposing facilities track wafer passes as an indicator of activity with which to apportion the facility's gas consumption. Wafer passes is a count of the number of times a silicon wafer is processed for a specific process category. The total number of wafer passes over a reporting year is the number of wafer passes per tool times the number of operational process tools during the reporting year.

To illustrate a case where wafer passes is used as a facility-specific engineering model, consider a facility that uses NF_3 for chamber cleaning with remote plasma systems and for etching polysilicon and oxide films. With knowledge of the NF_3-specfic heel and the number of NF_3 containers used, the facility knows the amount of NF_3 consumed. To estimate emissions, the facility must now apportion NF_3 usage between the chamber cleaning and oxide and polysilicon etching processes. To do this it might use the total number of wafer passes through each and every NF_3-cleaning system together with the time and nominal (not measured actual) gas flow rate for each and every NF_3-cleaning system and the corresponding figures for oxide and polysilicon etch processes to arrive at the proportion of NF_3 used for cleaning chambers and etching oxide and polysilicon films. Once developed, these apportioning factors would be used to estimate NF_3 gas usage for the cleaning and etching process categories proposed in our method. This example is illustrated further in Table 6 of this preamble.

TABLE 6—ILLUSTRATIVE CALCULATION FOR NF_3 EXAMPLE AT ONE FACILITY

Gas type—annual usage, kg.	Process category	Apportioning factor	Process category gas usage, kg.
NF_3—56,286 kg	RPS Chamber Cleaning	82%	46,202
	Polysilicon Etch	17%	9,561
	Oxide Etch	1%	523

Annual gas usage presented is the modeled usage not the nominal usage.

We request comment on using wafer passes as an appropriate quantifiable indicator of activity, and on our description and example of how it would be used.

We recognize that facilities may use other types of quantifiable indicators of gas-usage activity data to develop facility-specific engineering models to estimate gas consumption. We may include additional indicators as options in the final rule if they are quantifiable and if we receive adequate information regarding how they were developed and how they are used, including descriptions, examples, and any additional information that may be necessary to understand how such indicators of activity would be developed and used in a facility-specific engineering model to apportion annual

facility-wide gas usage across a facility's emitting process categories. The use of engineering judgment, for example, is not based on a quantitative metric and would not be considered an acceptable quantifiable indicator of gas usage. We also request comment on the use of a representative sampling method for tracking activity indicators such as wafer passes that may be used in the engineering model.

In many cases, EPA anticipates that the development of apportioning factors will result in a facility-wide consumption estimates that are independent of the estimates calculated using purchase records, inventory, and facility-specific heel factors. In such cases, we propose that facilities report these consumption estimates.

Emission factors for refined process categories. We are proposing that semiconductor facilities estimate their emissions using a specific set of process categories. Our proposed method would simplify the reporting requirements as compared to the 2006 IPCC Tier 3 method by lowering the number of emitting process categories from up to 455 per facility down to a fixed figure of approximately nine. Our goal in establishing the process categories is to account for most of the variability in emission factors across processes while limiting the total number of process categories whose gas usage must be tracked by semiconductor facilities.

Under this approach, we are proposing to require reporting of fluorinated GHG emissions for the following nine emitting process categories: four subcategories for wafer patterning (etching), three subcategories for chamber cleaning, and two subcategories for wafer cleaning. The nine process categories we are proposing account for distinct and widely-used manufacturing activities during production of discrete, logic and memory devices. We anticipate that these nine categories effectively capture current and projected processes and the differences in emission factors across various semiconductor manufacturing technologies.

Our proposed definitions of these nine emitting categories are:

Wafer patterning subcategories:

Oxide etch means any process using fluorinated GHG reagents to selectively remove SiO_2, SiO_x-based or fully organic-based thin-film material that has been deposited on a wafer during semiconductor device manufacturing.

Nitride etch means any process using fluorinated GHG reagents to selectively remove SiN, SiON, Si_3N_4, SiC, SiCO, SiCN, *etc.* (represented by the general chemical formula, $Si_wO_xN_yX_z$ where w,x,y and z are zero or integers and X can be some other element such as carbon) that has been deposited on a wafer during semiconductor manufacturing.

Silicon etch also often called *polysilicon etch* means any process using fluorinated GHG reagents to selectively remove silicon during semiconductor manufacturing.

Metal etch means any process using fluorinated GHG reagents associated with removing metal films (such as aluminum or tungsten) that have been deposited on a wafer during semiconductor manufacturing.

Chamber cleaning subcategories:

In situ plasma means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent that is dissociated into its cleaning constituents by a plasma generated inside the chamber where the film was produced.

Remote plasma system means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent dissociated by a remotely located (*e.g.,* upstream) plasma source.

In situ thermal means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent that is thermally dissociated into its cleaning constituents inside the chamber where the thin-film (or thin films) was (were) produced.

Wafer cleaning subcategories:

Bevel cleaning means any process using fluorinated GHG reagents with plasma to clean the edges of wafers during semiconductor manufacture.

Ashing means any process using fluorinated GHG reagents with plasma to remove photoresist materials during wafer manufacture.

We request comment on the nine process categories we are proposing, their definitions as specified above, and whether they clearly define a specific process without ambiguity. In addition we request comment on whether the categories should be further refined to better capture the variability in emission rates among fluorinated GHG using manufacturing activities (*e.g.,* whether any additional categories should be added or whether the proposed categories should be combined, and the definition of those categories).

Under this approach of defining a specific set of process categories, we are also considering additional patterning and chamber cleaning subcategories. The alternative patterning subcategories, which may replace or complement the four thin-film based subcategories defined previously, are: contact etch, self-alignment contact etch, gate etch, deep trench etch, isolation trench etch, through silicon vias and regular vias. Each of these subcategories represents a specific feature achieved through etching (instead of subcategories based on the type of thin film etched).

Alternative chamber cleaning categories may distinguish between the types of films being removed from the chamber during cleaning. These might include distinguishing between chambers coated with tungsten and silicon-based films, or distinguishing between thin-film deposition equipment manufacturers. We request comment on these additional process categories and whether or not we should include alternative process categories in addition to the nine process categories that we are proposing. We also request comment on other methods of categorizing processes and detailed information on those categories.

We are proposing nine process categories differentiated by production technology generation (*i.e.,* wafer size). For each of the proposed nine process categories, we are proposing to establish a default emission factor within a range of values presented in Tables I–6, I–7, I–8 of subpart I. Within each process category, factors account for (1) the mass fraction of the input gas that is utilized during (*i.e.,* not emitted from) the process and (2) the mass of each fluorinated GHG by-product formed as a fraction of the mass of the dominant fluorinated GHG input gas used.[11] EPA is proposing a range of values for each default emission factor because the Agency has not yet received sufficient data to select a specific value within each range.

To develop the proposed ranges for each emission factor, EPA requested from semiconductor device manufacturers and equipment suppliers, information on utilization and by-product formation rates and details on the associated measurement approach (*e.g.,* measured in accordance with the 2006 ISMI Guidelines). EPA evaluated the data received as well as the standard deviations provided in Table 6.9 from Chapter 3 of the 2006 IPCC Guidelines. For additional information on how the ranges were developed, please refer to the Electronics Manufacturing TSD (EPA–HQ–OAR–2009–0927).

In a final rule, EPA intends to publish default emission factors for gas utilization and by-product formation rates for each process category,

[11] In the case of mixtures of fluorinated GHGs, the "dominant" fluorinated GHG constitutes the largest mass of gas used for that process.

differentiating amongst 150 mm, 200 mm and 300 mm wafer technology to the extent feasible. To this end, EPA requests additional utilization and by-product formation rates and supporting information on how they were developed. More specifically, EPA requests emission factors and by-product formation rates and information including but not limited to the specific measurement method used (*e.g.,* measurement using the 2006 ISMI Guidelines), the date of measurement, achievement of fluorine mass balance, associated standard deviations of measured factors, the relevant emissions process types and categories (for the patterning/etching process type noting both film type and etched feature where applicable), substrate size (*i.e.,* 150 mm, 200 mm, or 300 mm), the number of wafers used in the measurement study, and the equipment manufacturer name and model number where not considered confidential.

Using additional data received, EPA intends to develop default emission factors for each process category using a method of aggregation similar to the 2006 IPCC factor development methodology.[12] Where available emission factor data are very limited or produce highly uncertain average factors, EPA may develop emissions factors that are conservative and less likely to underestimate actual emissions. If additional data are received in a timely fashion, EPA may develop draft emission factors prior to issuance of the final rule and will determine an appropriate way to promptly and clearly inform the regulated community. We welcome comments on such draft emission factors, recognizing that depending on when the emission factors are made available, such comments could be submitted after the close of the formal comment period. We will make every effort to consider such comments, including late comments, to the extent practicable in the development of the final rule.

In developing emission factors for the final rule, EPA is also considering developing weighted average emission factors, for each wafer technology, with the weights based on the market penetration rates of process recipes used in current device manufacturing practices.[13] Such weighted emission factors, if possible, may better represent actual emissions from installed manufacturing equipment and operating processes. We request comment on using a weighting scheme and detailed information on how it would be developed and implemented.

The uncertainties associated with the 2006 IPCC Tier 2b method are associated with aggregating, for each gas, all usage into just two process categories (*i.e.,* etching and chamber cleaning) and all wafer technologies (*i.e.,* 150 mm, 200 mm, and 300 mm wafer sizes) into one, and giving equal weights to all process recipes. A method based on refined processes categories keeps those processes separate, which reflects actual device manufacturing practices and as a result, produces a more representative and accurate emissions estimate.

As an alternative, we are also considering an approach where each facility would develop for themselves or acquire from process equipment manufacturers emission factors (*i.e.,* gas utilization and by-product formation rates) for the nine process categories. Under this approach, we would require the gas utilization and by-product formation rates to be developed using the 2006 ISMI Guidelines. Facilities would be required to construct and apply averages for each process category. One advantage of this approach is that these facility-specific emission factors would be expected to be more representative of the particular processes at that facility than the default emission factors. On the other hand, we estimate the burden associated with each facility developing its own emission factors would be greater compared to using the factors published by EPA. We request comment on this approach.

We recognize that given the dynamic manufacturing processes by the industry, updates to the process categories and emission factors may be necessary. We request comment on the frequency with which those should be updated.

We estimate that our Refined Method will result in a reduction in burden for the large semiconductor facilities (annual capacities greater than 10,000 m^2 silicon) and an increase in accuracy as compared to the IPCC Tier 2b method. We estimate the uncertainty from using a set of refined process categories to be roughly one-half the uncertainty of the Tier 2b method, assuming similar methods for apportioning gas usage for each method. For the Tier 2b method the fluorinated GHG consuming processes used during semiconductor production are collapsed into just two categories, resulting in considerable variability for each category. For the Refined Method there are nine fluorinated GHG-using categories, resulting in less variability, on average, per category. Please refer to the Electronics Manufacturing TSD for a more detailed discussion of our uncertainty analysis.

For the relatively smaller semiconductor facilities (annual production of less than 10,500 m^2 of silicon) we estimate an increase in burden as compared to our initial proposal where we required the use of the 2006 IPCC Tier 2b method; however, we anticipate that these facilities have the necessary data available to comply. The increase in burden for estimating emissions using the Refined Method, as opposed to the IPCC Tier 2b method, can be attributed to the increased level of effort to distinguish between nine refined process categories in comparison to two broad clean and etch categories, respectively.

Recipe-specific measurements. As an alternative to the Refined Method where EPA default factors would be used, we are also proposing to permit those facilities that have monitoring infrastructure or the necessary data to estimate emissions obtained through recipe-specific measurements to report their emissions using their data (*see* proposed sections in 98.93 98.94(d)). This approach, consistent with the 2006 IPCC Tier 3 method, is based on (1) gas consumption as calculated using the facility's purchase records, inventory, and gas-and facility-specific heel factors (as described above), (2) facility-specific methods for apportioning gas consumption by individual process using indicators of GHG-using activity, (3) recipe-specific gas utilization and by-product formation factors, and also (4) methods for reporting controlled emissions from abatement devices (as proposed below). Under this approach, gas utilization and by-product formation rates would be required to be developed using the 2006 ISMI Guidelines for all fluorinated GHG-using process types at that facility.

According to information provided by one of the commenters in response to our initial proposal, only one company currently estimates their emissions using an approach consistent with the Tier 3 method. Nevertheless, if a facility is using a method that provides more accurate data, then we believe that they should be permitted to use such method. We request comment on the number of companies that are currently

[12] For additional information on the 2006 IPCC factor development methodology, *see Emission Factors for Semiconductor Manufacturing: Sources, Methods, and Results* (February 2006) available in the docket (EPA–HQ–OAR–2009–0927).

[13] *Note,* in the creation of the IPCC factors, sufficient information was not available to weigh each general process type (*i.e.,* etch and clean categories for the IPCC Tier 2b method).

or expecting to in the near future, report their emissions using this method.

We are also proposing to require semiconductor manufacturers that fabricate devices on wafers measuring larger than 300 mm in diameter to estimate their emissions based on an approach consistent with the IPCC Tier 3 method and gas- and facility-specific heel factors for estimating and reporting GHG emissions. Under this approach, gas utilization and by-product formation rates would be required to be developed using the 2006 ISMI Guidelines for all fluorinated GHG using process types at that facility. We understand the industry's conversion to 450 mm is expected to begin in 2011 or shortly thereafter. We are proposing this requirement because we estimate that this method that uses recipe-specific gas utilization and by-product formation factors results in the most accurate facility-specific emission estimate. By including this requirement for only the 450 mm or larger wafers in this proposal, we anticipate a reduction in burden as compared to requiring existing large semiconductor facilities to estimate their emissions using an approach consistent with the IPCC Tier 3 method for the smaller sized wafers as well (*i.e.* 300 mm and smaller). We anticipate a reduction in burden because emission factors (*i.e.* gas utilization and by-product formation rates) can be developed over a number of years as semiconductor manufacturers begin to transition to 450 mm tools and develop the estimating and reporting infrastructure. The commissioning process for new tools is an ideal opportunity for emission factor development and/or verification. We request comment on requiring semiconductor manufacturers that fabricate electronic devices on wafers of diameter 450 mm or larger to estimate their emissions based on an approach consistent with the IPCC Tier 3 method.

During the development of this proposal, the 2006 International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment was revised and republished (December 2009). We request comment on requiring the use of the revised version of the ISMI Guidelines to measure emission factors as opposed to the 2006 version of the ISMI Guidelines, and also information on emission factors (including utilization by-product formation rates) measured using the revised ISMI Guidelines.

Method for LCD, MEMS, and PV Facilities. In this action for LCD, MEMS, and PV facilities, we are proposing an approach based on a slightly modified 2006 IPCC Tier 2b method which would include (1) gas consumption calculated using the facility's purchase records, inventory, and gas- and facility-specific heel factors (as described above for semiconductor manufacturing facilities), (2) gas consumption apportioned to 2006 IPCC Tier 2b broad process categories, clean and etch, (3) default emission factors consistent with the 2006 IPCC Tier 2b factors, and (4) methods for reporting controlled emissions from abatement equipment (as proposed below).

The method proposed to develop the gas- and facility-specific heel factors for LCD, MEMS, and PV facilities is the same as proposed for semiconductor facilities including the provisions for exceptional circumstances. Although we don't have complete information on how LCD, MEMS, and PV facilities are currently estimating their emissions from manufacture and how they are currently accounting for heels, their gas use and manufacturing processes are similar to that of semiconductor manufacturing. As a result, we have concluded these facilities have the data required to develop a gas- and facility-specific heel factors and this method can be implemented with minimal burden. Similar to the semiconductor manufacturing case, the use of a gas- and facility-specific heel factor is expected to result in improved accuracy when compared to the IPCC's 10 percent default factor. We request comment on our proposal to require LCD, MEMS, and PV facilities to use gas- and facility-specific heel factors and our understanding that these facilities have the data to develop such a factor with minimal burden.

Under this approach consistent with the 2006 IPCC Tier 2b method, we propose that LCD, MEMS, and PV manufacturing facilities use the calculated mass of gas consumed and apportion this amount to the simplified process categories (*i.e.* etch and chemical vapor deposition chamber cleaning.) The associated emission factors including utilization and by-product formation rates, would then be used to calculate uncontrolled fluorinated GHG emissions. The emission factors being proposed are consistent with the 2006 IPCC default values. For MEMS manufacturing, where an IPCC default value does not exist, we propose the use of factors consistent with the 2006 IPCC Tier 2b factors for semiconductor manufacturing. We selected these factors because we understand MEMS manufacturing is silicon wafer-based and uses processes similar to those found in semiconductor manufacturing.

Additionally, we are proposing that LCD, MEMS, and PV manufacturing facilities abide by the requirements proposed for reporting controlled emissions from abatement systems as proposed below.

We are requesting information on emissions and emission factors from LCD, MEMS, and PV manufacturing. We are requesting such information as a means to verify that the Tier 2b emission factors for each of the manufacturing types are reflective of current fluorinated GHG emitting processes. Based on new information we receive, we may consider updating the emission factors in the final rule.

We expect that LCD, MEMS, and PV manufacturers may also use engineering models and quantifiable indicators (*e.g.,* substrate-area based) of manufacturing activity for apportioning gas consumption by process category similar to the approach described for semiconductors above (*e.g.,* wafer passes). We request detailed information on those indicators, how they were developed, and how they are used in a facility-specific engineering model to apportion annual facility-wide gas usage across a facility's emitting process categories.

We request comment on permitting those LCD, MEMS, and PV manufacturing facilities that have monitoring infrastructure or the necessary data to estimate emissions obtained through recipe-specific measurements to report their emissions using their data by following an approach consistent with the 2006 IPCC Tier 3 method.

Review of Existing Reporting Programs and Methodologies and Consideration of Alternative Methods. EPA considered various methods for estimating emissions from etching and cleaning processes for electronics manufacturing facilities including the 2006 IPCC Tier 1, 2a, 2b, and Tier 3 method as well as a Tier 2b/3 hybrid which would apply Tier 3 to the most heavily used fluorinated GHGs in all facilities. For a detailed description of our evaluation of these options, please *see* the Electronics Manufacturing section of the initial Mandatory Reporting Rule (74 FR 16499).

For this proposal, to estimate emissions from all semiconductor manufacturing facilities, we are also considering the alternative of a modified Tier 2b method (our preferred option for other electronics manufacturers) which would require the use of the 2006 IPCC Tier 2b default factors and gas- and facility-specific data on heels and gas

use by process category. This approach would be based on a modified version of the 2006 IPCC Tier 2b method for estimating emissions and would require semiconductor facilities to report emissions using (1) gas consumption as calculated using the facility's purchase records, inventory, and gas- and facility-specific heel factors (as described above), (2) facility-specific methods for apportioning gas usage by process category using indicators of activity (as described above, *e.g.,* wafer pass), (3) IPCC Tier 2b emission factors, and (4) methods for reporting controlled emissions using our proposed approach discussed below. We request comment on this approach.

As an alternative to the Refined Method, we are also considering requiring all semiconductor manufacturing facilities to estimate their emissions using an approach consistent with the IPCC Tier 3 method based on (1) gas consumption as calculated using the facility's purchase records, inventory, and gas- and facility-specific heel factors, (2) facility-specific methods for apportioning gas consumption by individual process using indicators of GHG-using activity, (3) recipe-specific gas utilization and by-product formation factors, and also (4) methods for reporting controlled emissions from abatement devices (as proposed below). Under this approach, facilities would be required to develop gas utilization and by-product formation rates using the 2006 ISMI Guidelines for all fluorinated GHG-using process types at that facility. We request comment on this approach.

Another option we are considering is to evaluate emissions from electronics manufacturing using continuous emission monitoring system(s) (CEMS). Under this approach, facilities would be required to install and operate CEMS to measure process emissions. A typical electronics manufacturing facility may have many individual process tools that influence emissions. Process tool exhaust is managed within the facility using stainless steel plumbing and ductwork. Due to the complexity of the manufacturing layout, CEMS would be attached either to every tool or to one or more final exhaust points (*e.g.,* scrubber stacks). One possible option is to use Fourier Transform Infrared Spectrometers (FTIRs) in scrubber stacks to measure facility emissions. FTIR spectroscopy is presently used to conduct short-term fluorinated GHG emission measurements from single tools. EPA requests comment on the use of CEMS at electronics manufacturing facilities. We also request data and other information evaluating the use of CEMS in electronics facilities to determine fluorinated GHG and N_2O emissions.

(b) Method for Estimating N_2O Emissions

We are proposing that electronics manufacturers estimate N_2O emissions from chemical vapor deposition processes and all other electronics manufacturing processes such as chamber cleaning, and that they estimate those emissions using the following proposed methods.

To estimate N_2O emissions from chemical vapor deposition we are proposing the use of a facility-specific emission factor based on facility measurements of N_2O utilization for chemical vapor deposition, using 2006 ISMI Guidelines. Under this approach, we propose to permit the facility to apply the average N_2O utilization emission factor to all N_2O using chemical vapor deposition recipes. In cases where a facility has not developed a facility-specific N_2O utilization factor for chemical vapor deposition processes, we are proposing a default value in the range of 0 to 40 percent. We are taking comment on this range due to a lack of information for N_2O utilization for chemical vapor deposition processes.

In comments received in response to our initial proposal, industry provided information to support a N_2O utilization factor of 40 percent, primarily in 300 mm chemical vapor deposition processes. Taking the industry-provided 40 percent utilization into account, we propose to select a N_2O utilization factor in the range from 0 to 40 percent. In the industry's survey, the measured utilization factors are largely from newer 300 mm manufacturing equipment. We do not expect these data fairly represent the entire population of all N_2O processes and installed equipment, many of which are older tools. In addition, the industry comments did not fully identify the specific processes from which the average N_2O utilization factor was calculated. For these reasons, and because we understand that N_2O is most commonly used for chemical vapor deposition as opposed to other processes, we are proposing to establish a default value within a range of values with 40 percent as the upper bound and 0 percent as the lower bound to be conservative, reducing potential for underestimating emissions.

To estimate N_2O emissions from all other manufacturing processes (*e.g.,* chamber cleaning), we are proposing either a facility-specific utilization factor based on measurements using 2006 ISMI Guidelines, or applying a default utilization factor of 0 percent which assumes N_2O is not converted or destroyed during the manufacturing process. We are proposing this method due to a lack of information regarding other processes for which N_2O is used and N_2O utilization data in those processes.

We request comment on values within the range that we are proposing to estimate N_2O emissions from chemical vapor deposition processes and our approach for estimating N_2O emissions from all other manufacturing processes. We also request additional information on N_2O uses and N_2O utilization in electronics manufacturing processes. More specifically, we request N_2O emission factors and detailed supporting information including but not limited to the specific measurement method used, date of measurement, standard deviation of measured factors, identification of manufacturing process or process category, substrate size, and equipment manufacturer name and model number where not considered confidential.

In addition, we request comment on using wafer passes or other appropriate quantifiable indictors of activity for apportioning N_2O consumption to chemical vapor deposition and other manufacturing processes.

We are proposing that as part of determining annual facility N_2O emissions, if a facility employs abatement systems and it wishes to report N_2O emission reductions due to these systems it must adhere to the methods for reporting controlled emissions included in this proposal.

(c) Method for Estimating Emissions of Heat Transfer Fluids

To estimate the emissions of heat transfer fluids, we propose that electronics manufacturers use the 2006 IPCC Tier 2b approach, which is a mass-balance approach. We are not changing the broad outlines of our initial proposal; however, we are clarifying required data elements.

In evaluating the comments we received, we understand that there was some confusion regarding our intended method. The proposed method required data on the total nameplate capacity [14] of equipment that "is installed during the reporting year." We intended "installed during the reporting year" to mean newly installed during the period,

[14] Nameplate capacity means the full and proper charge of gas specified by the equipment manufacturer to achieve the equipment's specified performance. The nameplate capacity is typically indicated on the equipment's nameplate; it is not necessarily the actual charge, which may be influenced by leakage and other emissions.

not in place from the beginning of that period. To eliminate confusion, we are clarifying that facilities are required to provide the total nameplate capacity (charge) of equipment that is "newly installed" during the reporting year. We anticipate that facilities will find it straightforward to track the nameplate capacities of equipment that is newly installed or retired during the reporting year.

In addition, we are also clarifying that a facility may only subtract the amount of fluorinated heat transfer fluids sent off site if the heat transfer fluids are properly recovered, stored, and sent off site for verifiable recycling or destruction during the reporting year. We are adding this clarification because we understand that facilities may be recovering, storing, and removing from their facility, fluorinated heat transfer fluids in a manner that does not effectively prevent the substance(s) from evaporating to the atmosphere. In such cases, the users of the chemicals would be required to account for these emissions using the mass-balance calculation provided.

As we stated in our initial proposal, in developing our proposal for estimating heat transfer fluid emissions, we reviewed both the IPCC Tier 1 and IPCC Tier 2 approaches. The Tier 1 approach for heat transfer fluid emissions is based on the utilization capacity of the semiconductor facility multiplied by a default emission factor. Although the Tier 1 approach has the advantages of simplicity, it is less accurate than the Tier 2 approach according to the 2006 IPCC Guidelines. The IPCC Tier 2 approach uses company-specific data and accounts for differences among facilities' heat transfer fluids (which vary in their GWPs), leak rates, and service practices. It has an uncertainty on the order of ±20 percent at the 95 percent confidence interval according to the 2006 IPCC Guidelines.

(d) Method for Reporting Controlled Emissions From Abatement Systems

For this proposed rule, we are defining DRE as the efficiency of a control system designed to destroy or remove fluorinated GHGs, N_2O, or both. The DRE is equal to one minus the ratio of the mass of all relevant GHGs exiting the emission abatement system to the mass of GHGs entering the emission abatement system. When fluorinated GHGs are formed in an abatement system, DRE is expressed as one minus the ratio of amounts of exiting GHGs to the amounts entering the system in units of CO_2-equivalents. In addition, we are clarifying facilities may account for all abatement systems (*e.g.,* multi-chamber POU, central devices) provided that they abide by the requirements below.

We are proposing to use the term destruction or removal efficiency (DRE) as opposed to "destruction efficiency" or "destruction," terms that are already defined in subpart A of the Final MRR. We are proposing to use DRE because it is the term generally used by the electronics manufacturing industry. Furthermore, in addition to capturing the destruction of materials in the exhaust, the term also captures materials in the exhaust that are recycled or captured for reuse.

For purposes of this reporting rule, we propose that facilities that wish to document and report fluorinated GHG and N_2O emissions reflecting the use of abatement systems adhere to a method that would require: (1) Documentation to certify that the abatement system is installed, operated, and maintained in accordance with manufacturers' specifications, (2) accounting for the system's uptime,[15] and (3) either certification that the abatement system is specifically designed for fluorinated GHG and N_2O abatement and the use of an EPA default DRE value, or direct, proper DRE measurement to confirm the performance of the abatement system. Proper DRE measurement means measured in accordance with EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing (EPA's DRE Protocol). EPA's DRE Protocol is available for review in the docket (EPA–HQ–OAR–2009–0927). Our proposed approach is depicted as a decision tree in Figure 1 of this preamble.

The proposed approach requires annual certification to ensure that abatement systems for which controlled emissions are reported are installed, operating, and maintained according to manufacturers' specifications. Our approach would also require that any DRE used in reporting emissions be based on an EPA default DRE value or on recent on-site measurements and actual uptime of the system, accounting for system redundancy. When process tools are equipped with multiple abatement systems designed for fluorinated GHGs and N_2O, the facility may account for the combined uptime for the specific calculation of controlled emissions. Each one of these components is discussed in detail in the paragraphs below. We anticipate this method for reporting controlled emissions will ensure that abatement systems have been properly installed, operated and maintained during each reporting period and that best available measured DRE values are used to estimate and report emissions.

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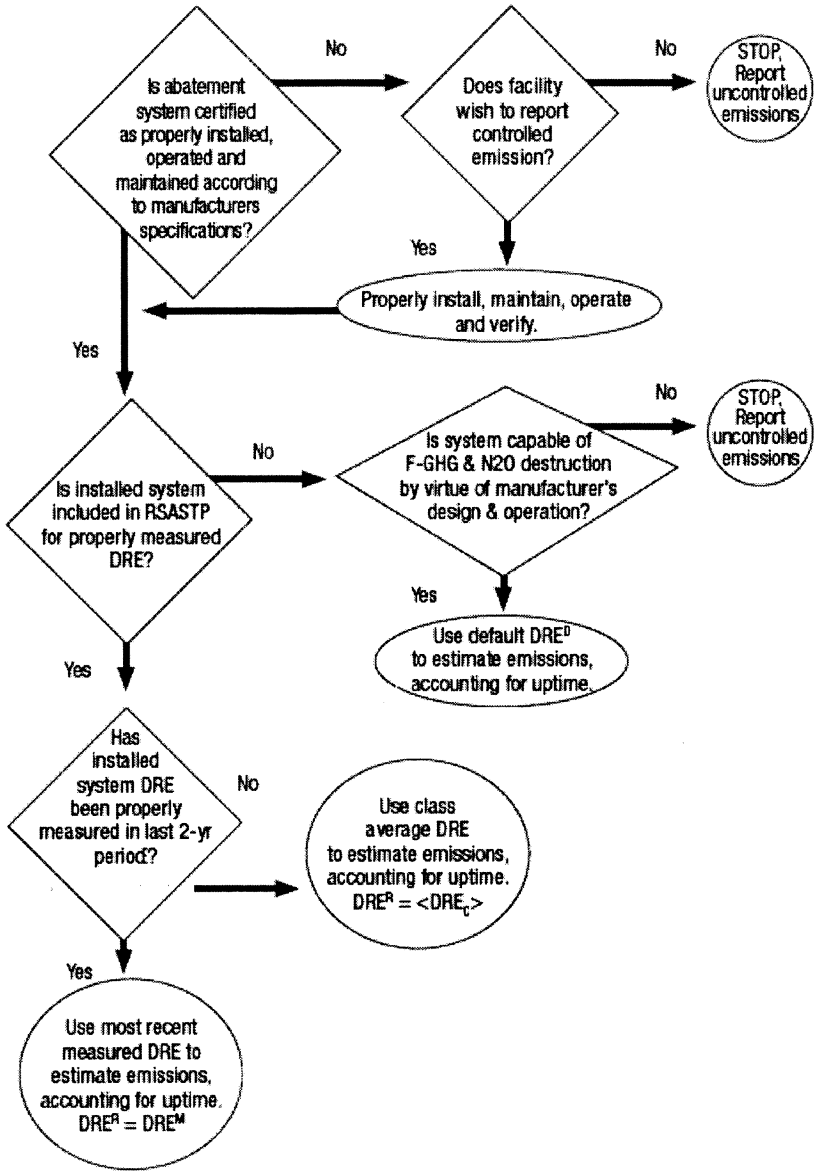
[15] Uptime means the total time during the reporting year when the abatement system for which controlled emissions will be reported was properly installed, operated, and maintained.

Figure 1. DRE Verification Decision Tree.



Notes:
DRE^D EPA default DRE
DRE^R DRE used when reporting emissions
DRE^M Properly measured DRE
$<DRE_c>$ Class average DRE
RSASTP Random sampling abatement system testing program

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Proper Installation, Operation, and Maintenance. We are proposing that all facilities that use abatement systems and would like to reflect these emissions reductions in their annual emissions estimations be required to document and certify the abatement equipment's proper installation, operation, and maintenance. There are many manufacturers, and for each manufacturer multiple models, that are marketed as fluorinated GHG-destruction capable (Beu, 2005). While some abatement systems may be capable of destroying some fluorinated GHGs, they may not be effective in abating CF_4 (Beu, 2005), which in some processes can constitute 10 percent—20 percent (by volume) of fluorinated GHG exhaust composition (EPA, 2006). It appears that this variability may be partially attributable to installation as well as operating and maintenance practices although variations in how destruction is measured may also contribute to this variability (Beu, 2005). Evidence indicates abatement devices must be properly installed to ensure achievement of the manufacturer's design goals. For this reason, we propose devices be installed in

accordance with manufacturers' specifications.

In terms of operation and maintenance, we also propose to require that abatement systems be operated and maintained in accordance with the manufacturers' specifications. It is well known across the industry that abatement system performance varies greatly depending on a variety of abatement device and process parameters such as temperature, flow and exhaust composition (Beu, 2005, EPA 2006, 2007)). Our proposed requirement that abatement systems be operated and maintained in accordance with manufacturers' specifications is intended to ensure best performance.

We understand that many times a facility may have an independent quality assurance expert certify the installation, operation, and maintenance of abatement equipment. We are considering the inclusion in the final rule, a requirement for annual, on-site independent inspections of abatement system installation, operation, and maintenance, which could include a review of records and physical inspection of installed equipment. We request comment on whether to require an independent quality assurance audit/inspection for abatement system installation, operation, and maintenance.

Accounting for Abatement System Uptime. We are proposing that facilities account for abatement systems' uptime to report controlled emissions. Uptime is the total time during the reporting year when the abatement systems for which controlled emissions are being reporting was properly installed, operated, and maintained. Uptime is calculated as the sum of time during the reporting period that an abatement system is in a standby, productive, and engineering state as described in SEMI Standard E10–0304, Specification for Definition and Measurement of Equipment Reliability, Availability, and Maintainability (2004). Abatement system uptime is expressed as the sum of an abatement system's operational productive, standby, and engineering times divided by the total operations time of its associated manufacturing tool. For example, the time during which a system is in by-pass mode, undergoing maintenance, or not operating with O_2-flow (in the case of a CF_4 combustion system) is not included in uptime. An exception to this is time during which exhaust flows are passed through a redundant abatement system that is in the same abatement system class (discussed below) as the primary abatement system. Such time may be included in the uptime of the primary system.

We are proposing this requirement because we anticipate accounting for uptime (*i.e.,* tracking incidents when abatement systems may be "bypassed" or otherwise not in service) will produce a more accurate emissions estimate. We request comment on our proposal to account for and report the uptime of abatement systems. We also request detailed information on how uptime may be monitored and calculated.

EPA Default DRE Value. In addition to certifying that an abatement system is installed, operated, and maintained according to manufacturers' specifications, and accounting for the system's uptime, the first approach we are proposing includes the following two key elements: (1) Certification that the abatement system is specifically designed for fluorinated GHG and N_2O abatement, and (2) an EPA default DRE value. By applying the EPA default DRE value, the facility is not required to measure the DRE of their abatement system(s). We are proposing the use of a default DRE value of 60 percent if the facility certifies that the abatement systems for which this value is applied are specifically designed for fluorinated GHG and N_2O abatement.

To develop the default DRE of 60 percent, we reviewed the individual DREs measured under our in-fab DRE measurement program and selected those that constituted discrete values [16] for systems that had been properly installed, operated and maintained. Of the data from the DRE measurement program, those that met the stated criteria were values for CF_4. We calculated the mean and the lower one sided tolerance interval of the (CF_4) DRE data set. This yielded an understated, default DRE, reducing the likelihood that the DRE of any particular system will be either overestimated or greatly underestimated. For additional information on how the EPA default DRE was developed, please refer to the Electronics Manufacturing TSD.

While we are now proposing the use of an EPA default DRE value, consistent with our initial proposal we are not planning to permit use of the 2006 IPCC default factors or the manufacturer's DRE values. We are not permitting their use because once installed, abatement equipment may fail to achieve the default or a supplier's claimed DRE. DRE performance claimed by equipment suppliers and upon which the 2006 IPCC default factors were based may have been incorrectly measured due to a failure to account for the effects of dilution (*e.g.,* CF_4 can be off by as much as a factor of 20 to 50 and C_2F_6 can be off by a factor of up to 10 [Burton, 2007].) This understanding is supported by industry assessments as presented in Beu, 2005.

We are permitting the use of our default DRE value because we estimate that it strikes an appropriate balance between being conservative and being representative where equipment is properly operated and maintained. Our default DRE value was calculated using data from measurements assured to properly account for the effects of dilution. In addition, the tested systems were properly installed, operated, and maintained.

We request comment on our proposed default DRE value, and additional data and supporting documentation on DREs from studies that have been conducted on properly installed, operated, and maintained abatement systems and consistent with EPA's DRE Protocol.

Proper Measurement of the Abatement DRE. The second proposed approach for quantifying, documenting, and reporting controlled emissions from abatement systems, described below, would require proper measurement of the abatement system DRE in addition to documentation to certify that the abatement system is installed, operated, and maintained in accordance with manufacturers' specifications, and accounting for uptime.

Consistent with our initial proposal, this second proposed method permits facilities to account for destruction if the abatement system performance is measured and verified using EPA's DRE Protocol. To measure DRE, we propose requiring facilities to conduct annual sampling through a random sampling abatement system testing program (RSASTP), spanning all abatement classes using the methods outlined in EPA's DRE Protocol. "Class" refers to a category of abatement systems grouped by manufacturer model number(s) and by gas for which the system is used to abate, including N_2O and CF_4 direct and by-product formation, and all other fluorinated GHG gas direct and by-product formation.[17] "Classes" may also include any other abatement systems for which the reporting facility wishes to report controlled emissions provided that class is identified. For each class, the representative or average DRE

[16] Using data available from the in-fab DRE measurement program, we selected discrete numbers rather than the lower bound (*e.g.,* ≥ 99%).

[17] CF_4 is a very stable chemical and especially difficult to effectively destroy. It may be used as an input gas and generated as a byproduct of other fluorinated GHG process reactions.

factors would then be applied to the yet unmeasured abatement devices of that class.

An annual representative sample as part of the RSASTP would consist of three or 20 percent of installed abatement systems, whichever is greater, for each class each year, measuring the DRE for a different three or 20 percent set of systems each year. Where 20 percent of total abatement systems do not equal a whole number, the number of systems to be tested would be rounded up to the nearest integer (*e.g.,* 16 abatement devices, 20 percent of which equals 3.2; therefore, four abatement systems would be measured each year). Using the RSASTP and our rounding convention, all systems in each class would be tested within a five-year period. EPA is seeking comment on the required frequency of abatement system performance measurement.

When reporting controlled emissions from manufacturing, we propose that the facility either use the measured DRE or, in those instances where an individual abatement system has not yet undergone proper DRE testing, a simple average of the measured DREs for systems of that class would be used. If redundant abatement systems were used during periods of maintenance or repair, then we propose that the measured or average DRE for that system's class would be used. In any of these cases, the DRE used to report emissions would be adjusted to account for the actual uptime of the system. For example, if the uptime for a device is 98 percent over the reporting period, then the measured DRE (or class average of measured DREs when a system has not yet been measured) would be multiplied by 0.98.

Under the RSASTP, all systems in each class would be tested within a five-year period, after which the process would be repeated as long as controlled emissions were reported. There are two reasons for requiring the DRE to be measured for each abatement device over a time period and by specific class. Some fluorinated GHGs, particularly CF_4, are harder to destroy than others; thus, the performance of abatement systems with one fluorinated GHG cannot necessarily be assumed to apply to other fluorinated GHGs.[18] Second, even if abatement systems rely on the same operating principle (*e.g.,* thermal oxidation) and are used on the same gases, their performance can vary depending on their operation and maintenance.[19] Moreover, maintenance that is adequate for abatement systems in some applications may not be adequate for abatement systems in others (*e.g.,* those that handle high volumes of etched or cleaned material, which can be deposited inside abatement equipment and clog lines). This argues for gradually testing all of the abatement systems within a class, and for retesting individual abatement systems over time.

We request comment on the method proposed for proper measurement of DRE at a facility and the proposed RSASTP for abatement systems by class.

6. Selection of Procedures for Estimating Missing Data

In general, it is not expected that data to estimate emissions from electronics manufacturing would be missing; gas consumption data and indicators of activity data (*e.g.,* wafer passes) is collected as business as usual. For this reason, we are not proposing procedures for estimating missing data from emissions from cleaning, etching or deposition processes. Because our proposal includes an EPA default DRE value for estimating and reporting controlled emissions, we propose that no missing data procedures would apply.

When estimating heat transfer fluid emissions during electronics manufacture, the use of the mass-balance approach requires facilities to correct records for all inputs. Should the facility be missing records for a given input, heat transfer fluid emissions may be estimated using the arithmetic average of the emission rates for the year immediately preceding the period of missing data and the months immediately following the period of missing data. Alternatively it may be possible that the heat transfer fluid supplier has information in their records for the facility.

7. Selection of Data Reporting Requirements

We are proposing that owners and operators be required to report fluorinated GHG and N_2O emissions for the facility for each electronics manufacturing process as well as all heat transfer fluid use. In addition, facilities would be required to report the following: method used to calculate emissions; factors used for gas utilization and by-product formation rates and the source for each factor for each fluorinated GHG and N_2O; production in terms of substrate surface area (*e.g.,* silicon, PV-cell, LCD); for each fluorinated GHG and N_2O, annual gas consumed during the reporting year and gas- and facility-specific heel factors used; the apportioning factors used, a description of the engineering model used for apportioning gas usage, and facility-wide consumption estimates based upon development of the apportioning factors, independent of the consumption value calculated using purchase records; fraction of each gas fed into each process type that is fed into tools with abatement systems; descriptions and information about abatement systems through which fluorinated GHGs and N_2O flow; inputs in the mass-balance equation (for heat transfer fluid emissions); and example calculations. Where process categories defined in the Refined Method and/or default gas utilization and by-product formation rates are not used, we propose that facilities provide descriptions of individual processes or processes categories used to estimate emissions consistent with the IPCC Tier 3 method.

For each abatement system for which a facility is reporting controlled emissions, we propose that facilities be required to report the following: certification that the abatement device is installed, operated, and maintained according to manufacturers' specifications; the uptime and the calculations to determine uptime for that reporting year; the DRE used (*i.e.* either the EPA default DRE value or a properly measured DRE); and documentation for the EPA default DRE value or a properly measured DRE.

These data form the basis of the calculations and are needed for us to understand the reported emissions and verify their reasonableness.

8. Selection of Records That Must Be Retained

We propose that facilities keep records of data used to estimate emissions, records supporting values used to estimate emissions, purchase records, and invoices for gas purchases and sales. For those facilities that use facility-specific, recipe-specific gas utilization and by-production formation rates, we are proposing that the following records be maintained: documentation that the rates were measured using the 2006 ISMI Guidelines, documentation that the measurements made are representative of fluorinated GHG and N_2O emitting

[18] There are many manufacturers, and for each manufacturer many models, that are marketed as fluorinated GHGs-destruction capable (Beu, 2005). While some abatement devices may be capable of destroying some fluorinated GHGs, they may not be effective in abating CF4 (Beu, 2005), which in some processes can constitute 10%–20% (by volume) of fluorinated GHGs exhaust composition (EPA, 2006).

[19] Some variability in performance may be partially attributable to installation as well as operating and maintenance practices although variations in how destruction is measured may also contribute to this variability (Beu, 2005).

processes at the facility, and the date and results of the initial and any subsequent tests to determine process tool gas utilization and by-product formation rates.

For those facilities that are reporting controlled emissions, we propose that the following records be kept: documentation to certify that each abatement device used at the facility is installed, maintained, and operated in accordance with manufacturers' specifications; records of the uptime and the calculations to determine uptime; abatement system calibration and maintenance records; documentation for the EPA default DRE value or a properly measured DRE.

These records consist of values that are directly used to calculate the emissions that are reported and are necessary to enable verification that the GHG emissions monitoring and calculations are done correctly.

B. Fluorinated Gas Production

1. Overview of Reporting Requirements

Under this proposal, subpart L would require facilities that produce fluorinated gases to report their fluorinated GHG emissions from fluorinated gas production and transformation and from fluorinated GHG destruction. Fluorinated gases include fluorinated GHGs (HFCs, PFCs, SF_6, NF_3, HFEs, *etc.*), CFCs, and HCFCs. Certain emissions subject to other subparts or authorities are excluded from this subpart. Specifically, emissions of HFC–23 from HCFC–22 production are addressed under subpart O and are therefore excluded from this subpart. Similarly, as discussed in the Final MRR, emissions of ozone depleting substances (*e.g.,* CFCs and HCFCs) are subject to Title VI of the CAA and are therefore excluded from this subpart.

Under this proposed rule, facilities would be required to estimate their emissions from fluorinated GHG production processes using either a mass-balance approach or an approach based on measured (or in some cases, calculated) emission factors. Facilities would be required to estimate their emissions from CFC and HCFC production processes and from fluorinated gas transformation processes using an emission-factor-based approach. Consistent with the Final MRR, this proposal would establish an annual frequency for reporting and would include provisions to ensure the accuracy of emissions data through monitoring, reporting, and recordkeeping requirements. Reporting would be at the facility level.

2. Summary of Major Changes Since Initial Proposal

In the April 2009 proposed mandatory GHG reporting rule (74 FR 16448; April 10, 2009), the fluorinated GHG production source category was included as proposed subpart L. That initial proposal would have required reporting from facilities emitting more than 25,000 $mtCO_2e$ from fluorinated GHG production and other source categories (*e.g.,* stationary combustion). We proposed monitoring based on a daily mass-balance or yield approach that included measurements of the reactants and the fluorinated GHG product and byproducts. Under that approach, facilities would have had to calculate the difference between the expected production of each fluorinated GHG based on the consumption of reactants and the measured production of that fluorinated GHG, accounting for yield losses related to byproducts and wastes and accounting for streams that were recaptured and destroyed. Facilities would have been required to measure the various inputs and outputs daily using scales and flow meters with an accuracy and precision of 0.2 percent of full scale, and to measure concentrations in streams using methods with an accuracy and precision of 5 percent. (For more detailed information on the initial proposal, *see* the fluorinated gas production section of the April 10, 2009 proposed rule.)

We received numerous comments on the proposed approach. Commenters stated that there may be significant uncertainty associated with the mass-balance approach, that EPA's stated accuracy and precision requirement of 0.2 percent for flow meters and weigh equipment was costly and not technically achievable for many streams, that daily calculations were excessive and likely to introduce errors, that it was sometimes impracticable to perform a mass-balance for more than one reactant, and that the mass-balance approach was not appropriate for batch processes.

Commenters also suggested alternatives to the mass-balance approach. Several commenters focused on the use of site-specific or process-specific emission factors. These commenters noted that many facilities in this source category already measure emissions during performance testing to verify compliance with their emission limits under other EPA regulations. Commenters also noted that some fluorinated GHG producers currently estimate their emissions of fluorinated GHG using the emission factor approach and that this approach is both more cost effective and more accurate than the mass-balance approach. One commenter using the emission factor approach stated that the estimated uncertainty of its overall fluorinated GHG emissions estimate was 13 percent (expressed as one standard deviation) and that the uncertainty associated with the estimates that it would develop using the proposed mass-balance approach would be significantly higher. Commenters suggested both emissions testing and chemical engineering calculations as appropriate techniques to develop site-specific emissions factors.

Partly in response to the comments received on the April 2009 proposed MRR (74 FR 16448; April 10, 2009), today's proposed subpart L rule incorporates a number of changes compared to the original proposal, including but not limited to:

- Inclusion of additional emission estimation methodologies, including process-specific, site-specific emission factors, which allow facilities to estimate emissions using methods that may already be in place;
- Revisions to the mass-balance approach, including provisions to allow monthly rather than daily monitoring; greater flexibility in the accuracy and precision of flowmeters, weigh scales, and concentration measurements (as long as the final estimate meets an overall accuracy and precision requirement); and the use of one rather than two reactants in the mass-balance equation;
- Inclusion of fluorinated GHGs emitted as a by-product of the production of CFCs and HCFCs; and
- Inclusion of fluorinated GHGs emitted as a feedstock or by-product of transformation processes that are not intended to produce any fluorinated gases (when those transformation processes are co-located with fluorinated gas production processes).

3. Definition of Source Category

This source category covers emissions of fluorinated GHGs that occur during the production of fluorinated gases, where fluorinated gases include fluorinated GHGs (HFCs, PFCs, SF_6, NF_3, and fluorinated ethers, among others), CFCs, and HCFCs (except HCFC–22).[20] It also covers emissions of

[20] In the April 2009 proposal, EPA requested comment on whether emissions of fluorinated GHGs from CFC and HCFC production processes should be subject to the subpart L reporting requirements. While no public comments were received on this topic, EPA has determined that HFCs and PFCs are likely to be generated during the production of several CFCs and HCFCs, and that the quantities generated may be significant. According

fluorinated GHGs from transformation and destruction processes that occur at fluorinated gas production facilities. EPA estimates that total emissions from this source category were 10.6 million metric tons of CO_2e in 2006.

Emissions from fluorinated gas production facilities can occur from vents, from leaks at flanges and connections in the production line, and from control devices (*e.g.,* thermal oxidizers). Undesired by-products may be deliberately vented, and some product (or reactant) may be vented at the same time due to imperfect separation of by-products, products, and reactants. Emissions can also occur during occasional service work on the production equipment, during blending and recycling of fluorinated GHGs, and during the evacuation and filling of tanks or other containers that are distributed by the producer (*e.g.,* on trucks and railcars).

Fluorinated GHG Emissions from Fluorinated GHG Production. Emissions that occur during fluorinated GHG production include fluorinated GHG products that are emitted before the production measurement and fluorinated GHG byproducts that are generated and emitted either without or despite recapture or destruction.[21] These emissions are not counted as "mass produced" under the final requirements for suppliers of industrial GHGs in 40 CFR part 98, subpart OO (74 FR 56260; October 30, 2009).

Fluorinated GHG emissions from U.S. facilities producing fluorinated GHGs are estimated to range from 0.8 percent to 2 percent of the amount of fluorinated GHG produced, depending on the facility. In 2006, 12 U.S. facilities produced over 350 million metric tons CO_2e of HFCs, PFCs, SF_6, and NF_3, and an additional 6 facilities produced approximately 1 million metric tons CO_2e of fluorinated anesthetics. Based on an emission rate of 1.5 percent, facilities are estimated to have emitted approximately 5.3 million metric tons CO_2e of HFCs, PFCs, SF_6, and NF_3, and approximately 15,000 metric tons CO_2e of fluorinated anesthetics.

Fluorinated GHG Emissions from CFC and HCFC Production. Our proposal to include fluorinated GHG emissions that occur during CFC and HCFC production processes is based on two important considerations. First, while the quantity of by-product emissions is uncertain, we believe that it is significant and could be similar to total estimated emissions from fluorinated GHG production. Second, many CFC and HCFC production processes are co-located with fluorinated GHG production facilities, allowing for efficiencies in the application of estimation methods and monitoring and reporting infrastructures. These issues are discussed in more detail in the Fluorinated Gas Production Technical Support Document in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

Although we do not have precise estimates of the magnitude of fluorinated GHG emissions from production of CFCs and HCFCs, we estimate that if CFC and HCFC production processes emitted fluorinated GHGs equivalent to one percent of their CFC and HCFC production (excepting HCFC–22 production), U.S. emissions from this source would be 5.3 $mtCO_2e$, the same as from fluorinated GHG production. EPA requests comment on the extent to which fluorinated GHGs are generated and emitted during CFC and HCFC production. EPA also requests comment on the extent to which fluorinated GHGs may be generated and emitted during production of other ozone-depleting substances such as methyl chloroform and carbon tetrachloride and on whether such emissions should be reported under this rule.

CFCs and HCFCs are often produced at the same facilities that produce fluorinated GHGs. In these cases, these facilities would need to quantify their fluorinated GHG emissions from a few processes in addition to those producing fluorinated GHGs. In other cases, CFCs or HCFCs are produced at facilities that do not produce fluorinated GHGs. In these cases, which EPA estimates include 2 facilities, the facilities would not have been covered by the initially proposed subpart L, but would be covered by today's proposal. This coverage is reflected in the threshold analysis discussed below.

Fluorinated GHG Emissions from Other Processes. Facilities producing fluorinated gases would also be required to report emissions of fluorinated GHG feedstocks that occur during the transformation of these feedstocks into other fluorinated substances such as fluoropolymers, as well as emissions of fluorinated GHGs that occur during destruction of fluorinated GHGs that are removed from the supply of industrial gases.

The reasons for requiring reporting of fluorinated GHG emissions from transformation processes that are co-located with fluorinated gas production processes are similar to those for requiring reporting of fluorinated GHG emissions from CFC and HCFC production. First, although EPA does not have precise estimates of the magnitude of fluorinated GHG emissions from transformation processes, discussions with fluoropolymer producers indicate that these emissions do occur. Second, facilities could apply similar methods and monitoring approaches to estimate emissions from both fluorinated gas production and fluorinated gas transformation. The rationale for requiring reporting of emissions from the destruction of fluorinated GHGs that are removed from the supply of industrial gases is discussed below under *Relationship between emissions covered under subpart L and those covered under subpart OO.*

EPA is also considering requiring reporting of fluorinated GHG emissions from two other types of processes. The first type includes processes (other than CFC and HCFC production processes) in which fluorinated GHGs are neither reactants nor products of the process but are nevertheless generated as by-products or intermediates. To the extent that such processes may generate or emit significant amounts of fluorinated GHGs, it may be appropriate to require reporting of those emissions. This would be particularly true if the processes were co-located with fluorinated GHG production processes, permitting effiencies in the application of estimation methods and reporting infrastructures. EPA requests comment on whether, how often, and where such processes occur (*i.e.,* at fluorinated gas production facilities or elsewhere). The second type of process includes fluorinated gas transformation processes that are not co-located with fluorinated gas production facilities. Again, it may be appropriate to require reporting of fluorinated GHG emissions from such processes if these emissions are significant. EPA requests comment on both of these options.

Relationship between emissions covered under subpart L and those covered under subpart OO. Subpart L would require reporting from many of

to the 2006 IPCC Guidelines and fluorinated gas producers, production of CFCs and HCFCs can generate and emit fluorinated GHGs such as various HFCs and some PFCs. (These HFCs exclude HFC–23 generated during HCFC–22 production, which is already covered under Subpart O). These emissions are by-product emissions that occur due to the chemical similarities between HFCs, PFCs, HCFCs, and CFCs and the common use of halogen replacement chemistry to produce them. HFC–23 generated during HCFC–22 production is already covered under Subpart O.

[21] Byproducts that are emitted or destroyed at the production facility are excluded from the Subpart OO definition of "produce a fluorinated GHG." Any HFC–23 generated during the production of HCFC–22 is also excluded from this definition, even if the HFC–23 is recaptured. However, other fluorinated GHG byproducts that are recaptured for any reason are considered to be "produced."

the same facilities (fluorinated GHG producers) that are required to report under subpart OO, which contains the industrial gas supply reporting provisions of the final MRR. In general, subpart OO is intended to capture the quantities of fluorinated GHGs that are entering and leaving the U.S. supply of industrial gases,[22] while subpart L is intended to capture the quantities of fluorinated GHGs emitted at fluorinated gas production facilities.

There are several areas of possible overlap between the emissions that could be reported under this subpart and those reported under subpart OO. The areas of overlap all concern emissions that occur at the fluorinated GHG production facility after (downstream of) the fluorinated GHG production measurement. These include emissions from:

- Fluorinated GHG transformation processes (including polymerization),
- Destruction of fluorinated GHGs that are removed from the supply of industrial gases,
- Cylinder filling (if this occurs after the production measurement),
- Blending of fluorinated GHGs,
- Recycling or reclamation of fluorinated GHGs, and
- Evacuation of fluorinated GHG heels from returned cylinders.

The MRR is intended to inform a range of possible policies for reducing emissions of GHGs, including both upstream and downstream approaches. Under a policy that focused primarily on supply, the fluorinated GHGs added to and subtracted from the gas supply would be tracked, and only the on-site emissions that occurred before (upstream of) the fluorinated GHG production measurement would need to be covered for completeness. On-site emissions that occurred after the production measurement would be assumed to be captured by the production measurement. Under a policy that focused on actual emissions (*i.e.,* "downstream coverage") rather than supply, on-site emissions that occurred both before and after the production measurement would need to be tracked.

Maintaining flexibility to adopt either upstream or downstream approaches argues for some counting under L of emissions that are counted upstream (as supply) under OO.[23] (*See* the October 30, 2009 Final MRR, 74 FR 56260, for more discussion of the rationale for including both upstream and downstream emissions under the rule.) As noted above, EPA is proposing to require reporting of fluorinated GHG emissions from transformation and destruction processes that are located at fluorinated gas production facilities. However, EPA is also considering requiring reporting of fluorinated GHG emissions from the other activities that occur at fluorinated GHG production facilities downstream of the production measurement. EPA requests comment on the magnitude of these other on-site emissions and on whether or not they should be required to be reported under subpart L.

4. Selection of Reporting Threshold

Under today's proposed rule, owners and operators of fluorinated gas production facilities would be required to estimate and report GHG emissions if those emissions, including both combustion and fluorinated GHG emissions, would exceed 25,000 $mtCO_2e$ in the absence of control technology (*e.g.,* thermal oxidation).[24]

In developing the threshold, we considered multiple controlled and uncontrolled emissions thresholds, including 1,000, 10,000, 25,000, and 100,000 metric tons CO_2e. For fluorinated GHG production processes (including fluorinated anesthetics production processes), uncontrolled (pre-control) emissions were estimated by multiplying a factor of 3 percent by the estimated production at each facility. For CFC and HCFC production processes (except for HCFC–22 production processes), uncontrolled emissions were estimated by multiplying a factor of 2 percent by the estimated production at each facility. Uncontrolled emissions are strongly influenced by by-product generation rates, which are known to vary between zero and several percent for fluorinated gas production processes; thus, these estimates are uncertain. Controlled emissions were assumed to be half of uncontrolled emissions at each facility. Because EPA has little information on combustion-related emissions at fluorinated gas production facilities, these emissions were not included in the analysis. The results of the analysis for production of HFCs, PFCs, SF_6, NF_3, CFCs, and HCFCs are shown in Tables 7 and 8 of this preamble.

TABLE 7—THRESHOLD ANALYSIS FOR FLUORINATED GHG EMISSIONS FROM PRODUCTION OF HFCS, PFCS, SF6, NF3, CFCS, AND HCFCS

[Uncontrolled Emissions]

Threshold level (metric tons CO_2e/r)	Total national emissions (metric tons CO_2e)	Number of facilities	Emissions covered		Facilities covered	
			Metric tons CO_2e	Percent	Number	Percent
1,000	10,600,000	14	10,600,000	100	14	100
10,000	10,600,000	14	10,600,000	100	14	100
25,000	10,600,000	14	10,600,000	100	14	100
100,000	10,600,000	14	10,600,000	100	13	93

[22] Specifically, subpart OO tracks the quantities of fluorinated GHGs that are (1) produced, (2) transformed, (3) destroyed, (4) imported, and (5) exported.

[23] In theory, it might be possible to track emissions from transformation and destruction simply using quantities reported under OO. However, this would require that (1) fluorinated GHGs that are produced only to be transformed or destroyed be tracked separately, (2) production, transformation, and destruction be measured to very good precision and accuracy (*e.g.,* 0.2 percent), and (3) that no by-products be formed or emitted during these processes. If all of these conditions were met, emissions could be equated to the differences between production and transformation and production and destruction. In practice, however, it would be difficult to meet all of these conditions.

[24] Following the precedents set by other Clean Air Act regulations, EPA is using the term "uncontrolled" to describe such emissions. Specifically, EPA is proposing to define "uncontrolled fluorinated GHG emissions" as a gas stream containing fluorinated GHG which has exited the process (or process condenser, where applicable), but which has not yet been introduced into an air pollution control device to reduce the mass of fluorinated GHGs in the stream. The term does not imply that the emissions are never controlled, but is synonymous with "pre-control emissions."

TABLE 8—THRESHOLD ANALYSIS FOR FLUORINATED GHG EMISSIONS FROM PRODUCTION OF HFCS, PFCS, SF_6, NF_3, CFCS, AND HCFCS

[Controlled Emissions]

Threshold level (metric tons CO_2e/r)	Total national emissions (metric tons CO_2e)	Number of facilities	Emissions covered		Facilities covered	
			Metric tons CO_2e	Percent	Number	Percent
1,000	10,600,000	14	10,600,000	100	14	100
10,000	10,600,000	14	10,600,000	100	14	100
25,000	10,600,000	14	10,600,000	100	14	100
100,000	10,600,000	14	10,300,000	97	10	71

As can be seen from the tables, most HFC, PFC, SF_2e , NF_3, CFC, and HCFC production facilities would be covered by all the thresholds considered. Although we do not have facility-specific production information for producers of fluorinated anesthetics, we believe that few or none of these facilities are likely to have uncontrolled emissions above the proposed threshold.

EPA is proposing to use a threshold based on uncontrolled (pre-control) rather than controlled (post-control) emissions to ensure that facilities that generate significant quantities fluorinated GHGs fully characterize and quantify their emissions, even if they initially believe those emissions to be small. Discussions with fluorinated gas manufacturers indicate that occasionally, fluorinated GHG by-products may be generated and emitted from production processes unexpectedly. If these by-products are relatively difficult to destroy (*e.g.,* CF_4), facilities' post-control emissions may be significantly higher than expected.[25] The initial scoping test described in the next section is intended to identify the full range of fluorinated GHGs in potentially emitted streams. Applying the full methodologies on the basis of the initial scoping study will provide EPA and the facilities with critical information on the extent to which control technologies are actually reducing emissions and therefore on the actual emissions from the facility.

EPA is requesting comment on an alternative approach in which all fluorinated gas production facilities, regardless of their estimated pre-control emissions, would analyze their emissions using the initial scoping test discussed in the next section. This approach would ensure that facilities understood the identities, and therefore the GWPs, of the fluorinated GHGs potentially emitted. EPA requests comment on this option, as well as on the option of simply eliminating the threshold for fluorinated gas production facilities and making this an "all-in" category.

As is true for the source categories covered by the Final MRR, fluorinated GHG production facilities could cease reporting if their controlled (post-control) emissions were less than 25,000 $mtCO_2e$ per year for five consecutive years or less than 15,000 $mtCO_2e$ per year for three consecutive years. This approach may be appropriate if control technologies are effective and there is no evidence of unexpected uncontrolled emissions. However, EPA requests comment on an alternative "off-ramp" for this source category. Under this alternative approach, the 25,000 and 15,000 $mtCO_2e$ triggers would be based on the level of emissions that is estimated before accounting for the use of any control technology (*e.g.,* thermal oxidation). EPA is requesting comment on this approach because emissions can become quite large if the destruction device malfunctions, is not operated properly, or is not used for some other reason.

As noted above, EPA estimates that under this proposal, all HFC, PFC, SF_6, and NF_3 production facilities would be covered, and few or no anesthetics producing facilities would be covered. However, it is possible that EPA has underestimated total pre-control emissions from anesthetics. In its threshold analysis for fluorinated GHG production, EPA has assumed that emissions have GWPs similar to those of the product produced. However, fluorinated anesthetics are hydrofluoroethers, and other HFE production processes of which EPA is aware generate by-products with higher GWPs than the product. EPA requests comment on this issue.

A full discussion of the threshold selection analysis is available in the revised Fluorinated Gas Production TSD. For specific information on costs, including unamortized first year capital expenditures, please refer to the Economic Impact Analysis (EIA) for this rulemaking.

5. Selection of Proposed Monitoring Methods

a. Summary of Proposed Monitoring Methods

We are proposing to allow facilities to use either a mass-balance approach or a site-specific, process-vent-specific emission factor (PSEF) approach to estimate their fluorinated GHG emissions from fluorinated GHG production. Facilities would be required to use the PSEF approach to estimate their fluorinated GHG emissions from CFC and HCFC production or from fluorinated gas transformation. The mass-balance approach is similar to that proposed in April, 2009, but has been modified in some details in response to comments. Facilities using either approach would be required to perform a one-time scoping test to identify the fluorinated GHGs in certain emitted streams and to verify the destruction efficiency (DE) of any destruction devices every five years. These approaches are discussed in more detail below.

b. Initial Scoping Test of Potentially Emitted Fluorinated GHGs

In today's action, we are proposing that facilities that produce fluorinated gases perform an initial scoping test (proposed 40 CFR part 98.124(a)). The purpose of the scoping test is to ensure that all of the fluorinated GHGs that occur in emitted streams are properly identified. EPA is concerned that without the test, facilities could mischaracterize the set of fluorinated GHGs that was emitted, leading to inaccurate emissions estimates. We are aware that in general, facilities will have already identified most if not all of the fluorinated GHGs occurring in emitted streams during process design and bench and pilot scale testing. However, as noted above, we are also aware of

[25] It is important to note that even if a threshold based on controlled emissions were adopted, failure to report as required when a source's actual emissions were above that threshold would be a violation of these regulations and the Clean Air Act. Lack of test data or other errors of omission do not excuse such violations as the Clean Air Act is a strict liability statute.

situations in which producers have analyzed process or emissions streams and found fluorinated GHGs that they were not expecting. Such by-product fluorinated GHGs can have high GWPs, making their CO_2-equivalent emissions significant.

Under this requirement, which would be one-time for any given process, facilities would be required to sample the vent(s) or stream(s) that, alone or together, would be expected to contain all the fluorinated GHG by-products of the process. Facilities would be required to use EPA Method 18 (GC/ECD, GC/MS), EPA Method 320 (FTIR), or ASTM D6348–03 (FTIR) to identify fluorinated GHGs that occur in concentrations above 0.1 percent in emitted streams.

For facilities using the mass-balance approach, the scoping test could be used to determine whether some emissions that are assumed to occur in the form of the product are actually occurring as by-products. For facilities using the process-vent-specific emission factor approach (PSEF), the test would identify by-products to measure in subsequent emissions testing to develop emission factors.

To avoid the need to survey a large number of processes with relatively small fluorinated GHG emissions, EPA is proposing to limit the scoping test requirement to processes that would emit more than one metric ton per year of fluorinated GHGs before the imposition of control technologies. We are proposing a limit in tons of fluorinated GHGs rather than in tons of CO_2e because the identities, and therefore the GWPs, of some fluorinated GHG constituents of the stream may not be known. Acquiring this information is the purpose of the test. We developed the one-ton limit by starting with a limit of 10,000 $mtCO_2e$ for each process and making the reasonably conservative assumption that the unknown fluorinated GHG could have a GWP of 10,000. For purposes of estimating the mass of fluorinated GHG emitted from the process, facilities could use the same types of engineering calculations that they would use to determine whether process vent testing was required under the PSEF approach (described in more detail below). They could assume that the mass of carbon, fluorine, or another relevant element is emitted in the form of fluorinated GHGs that were previously identified in bench- or pilot-scale testing.

We are proposing that the one-metric-ton trigger be applied to emissions before rather than after control because some byproducts, particularly CF_4, are very difficult to destroy. If these by-products occurred unexpectedly in a stream and if the trigger were applied to emissions after control, the facility would underestimate controlled emissions. Consequently, the facility could fail to undertake the scoping test when it was actually appropriate and could overlook the occurrence and emissions of the by-products.[26] We are proposing that facilities test the streams before the control device because emissions streams are often diluted during destruction processes (*e.g.,* due to fuel and air feeds), which would make it more difficult to detect and identify fluorinated GHGs that survived the destruction process. However, we request comment on this requirement as well as on the scoping test requirement as a whole.

c. Mass-Balance Approach

We are proposing that facilities producing fluorinated GHGs have the option of monitoring emissions using the mass-balance approach. In this approach, facilities would calculate the difference between the expected production of each fluorinated GHG based on the consumption of reactants and the measured production of that fluorinated GHG, accounting for yield losses related to byproducts (including intermediates permanently removed from the process) and wastes. Yield losses that could not be accounted for would be attributed to emissions of the fluorinated GHG product. This calculation could be performed for any fluorine- or carbon-containing reactant (*e.g.,* HF or hydrocarbon) to estimate emissions of the fluorinated GHG product for that reactant (*i.e.,* the mass balance may be based on a carbon balance or a fluorine balance). If fluorinated GHG byproducts were produced and were not completely recaptured or completely destroyed, facilities would also estimate emissions of each fluorinated GHG by-product.

Because the mass-balance approach assumes that losses from the process are emissions of the product, EPA believes that the mass-balance approach would only be appropriate for estimating emissions from fluorinated GHG production, not production of CFCs, HCFCs, or polymers. (In the last three situations, the product is not a fluorinated GHG.) However, EPA requests comment on this issue.

To be eligible to use the mass-balance approach, facilities would have to demonstrate that their planned measurements could meet a statistical error limit required in the rule (described below). If the facility could not demonstrate that it could meet the error limit, it would have to improve the accuracy and/or precision of its monitoring and measurement devices or opt to use another monitoring approach offered in the rule.

To carry out the mass-balance approach, the facility would choose a reactant for yield calculation purposes. The facility would then weigh or meter the mass of that reactant fed into the process, any primary fluorinated GHG produced by the process, the mass of the reactant permanently removed from the process (*i.e.,* sent to the thermal oxidizer or other equipment, not immediately recycled back into the process), any fluorinated GHG byproducts generated, and any streams that contain the product or fluorinated GHG byproducts and that are recaptured or destroyed. These measurements would be tracked monthly or more frequently and consolidated and recorded on a monthly basis. If monitored streams (including relevant process streams, emissions streams, and destroyed streams) included more than one component (product, byproducts, or other materials) in more than trace concentrations,[27] the facility would be required to monitor concentrations of products and byproducts in these streams. Finally, the facility would be required to perform monthly mass-balance calculations for each product produced.

Statistical Error Estimate. To estimate the statistical error associated with use of the mass-balance approach, facilities would be required to use error propagation, considering the accuracy and precision of their measurements and the calculation methods of the mass-balance approach. This approach is described in more detail in the TSD for this proposal. Under this approach, EPA would not specify precision and accuracy requirements for individual mass or concentration measurements. Instead, EPA would require that the error associated with the overall estimate of fluorinated GHG emissions fall under 30 percent (relative error) or under 3,000 $mtCO_2e$ (absolute error). (Both errors are expressed as halves of 95 percent confidence intervals; for normal distributions, this is quite close

[26] For example, suppose that a facility believed that all of the fluorinated GHG by-products from a certain process consisted of HFCs, which its destruction device destroyed with a destruction efficiency of 99.9 percent, but that one of these by-products was actually CF_4, which the destruction device destroyed with an efficiency of only 50 percent. In this case, the facility could underestimate its fluorinated GHG emissions by more than an order of magnitude, neither seeking nor finding the CF_4 that it was actually emitting.

[27] EPA is proposing to define "trace concentration" as any concentration less than 0.1 percent by mass of the stream.

to two standard deviations). Facilities could achieve this level of precision however they chose.

We are proposing to require the error estimate to ensure that the use of the mass-balance approach yields accurate emission estimates. As observed by several groups that commented on the initial proposal, the mass-balance approach can result in large errors if measurements of the flow of fluorinated GHGs in one or more streams have significant errors.[28] We recognize that the proposed approach requires facilities to calculate the overall error of their own estimates, which adds complication and introduces opportunities for mistakes. We therefore plan to develop a calculation tool that would permit reporters to develop an error estimate, reducing both their burden and the likelihood of errors.

We are proposing a maximum relative error of 30 percent because this error is comparable to that cited by the facility that has used an emission factor approach to estimate its fluorinated GHG emissions.[29] It is also comparable to the error that EPA calculates for a facility with an emission rate of two percent and with good precisions and accuracies for its mass flow measurements (+/−0.2 percent) and for its concentration measurement (+/−10 percent) of a waste stream constituting five percent of the process's fluorinated GHG output flow.

For facilities whose emissions constitute a very small share of their inputs and outputs (*e.g.,* one percent or less), a relative error of 30 percent will be very difficult to achieve using a mass-balance approach. At the same time, the absolute error of such a facility's estimate may be smaller than the absolute error of a facility that meets the relative error test but that has a higher emission rate. EPA is therefore proposing a maximum permissible absolute error of 3,000 $mtCO_2e$ for facilities whose estimates have relative errors greater than 30 percent. This absolute error is equivalent to 30 percent of the 10,000 $mtCO_2e$ threshold that is used elsewhere in the subpart to establish requirements for different sources (*e.g.,* process vents). Under this approach, processes whose emissions were lower than 10,000 $mtCO_2e$ could have relative errors higher than 30 percent so long as they met the limit on absolute error. This approach avoids penalizing processes and facilities with low emissions. EPA requests comment on the absolute error limit of 3,000 $mtCO_2e$. EPA is also considering a higher limit, *e.g.,* 5,000 $mtCO_2e$.

Another approach that would avoid penalizing facilities with low emission rates would be to express the maximum relative error as a fraction of the total mass of reactants fed into (or consumed by) the process. For a given process, this mass would remain relatively constant regardless of the emission rate. For the model facility described above, with errors of 0.2 percent in its mass flow measurements and of 10 percent in its concentration measurements, the error of the emissions estimate relative to the total mass of reactants is about 0.3 percent. One advantage of this approach compared to the absolute limit is that this approach limits the relative errors for processes with small throughputs, while the absolute limit could permit very large relative errors for processes with small throughputs. EPA requests comment on this approach.

In developing the approach to specifying maximum absolute and/or relative errors for the overall emissions estimate, we considered the alternative of specifying the maximum allowable errors (precisions and accuracies) of the individual measurements that feed into the mass-balance equation. This is the approach that EPA took in the initial proposal. This approach limits error, but it also limits flexibility, a concern raised by several commenters. Even a facility with a relatively large error in one stream may be able to bring the total error of its emissions estimate to a tolerable level by improving the accuracy and precision of other measurements that are used in the mass-balance equation, such as the mass flows of reactants and products. Nevertheless, EPA requests comment on the option of reverting to specific tolerances for individual measurements that feed into the mass-balance equation, as originally proposed.

Choice of Reactant Whose Yield Is Measured. EPA is today proposing to allow facilities to estimate emissions under the mass-balance approach using one of the reactants rather than both as originally proposed.[30] Some fluorinated GHG producers noted that, for various reasons, it is sometimes considerably more difficult to track the yields of some reactants than others (*e.g.,* HF vs. an organic feedstock). EPA notes that facilities estimating their emissions based on the yield of one reactant would still need to be able to demonstrate that their estimate passed the statistical error test discussed above. EPA requests comment on this approach.

Frequency of Measurement and Calculation. In today's proposed rule, EPA is proposing to require that facilities using the mass-balance approach measure and calculate their emissions monthly. A number of fluorocarbon producers who commented on the initial proposal noted that daily measurements were burdensome and led to large errors in the estimates of daily emissions. They observed that many streams contain acidic and reactive constituents such as HF, and that sampling from these streams can create safety hazards. They also noted that daily yield measurements can vary significantly (sometimes exceeding 100 percent) for three reasons. First, when continuous processes are first started, there is a lag time between the time the reactants are fed into the process and the time products emerge. Second, even after the process has been running for a while, the quantity of material in the process can vary based on weather, changes in production rates, and other conditions. Third, the relatively large errors in measurements of in-process product holding tanks (*e.g.,* based on sight-glass readings) have a significant impact on daily mass balances. Over time, all of these effects smooth out, making longer term mass balances far more reliable than daily mass balances.

EPA has carefully considered these comments. The goal of the rule is to gather information on annual, not daily, emissions. The advantage of more frequent measurements and calculations is that, where mass flows and concentrations are variable, more frequent measurements and calculations will lead to more accurate and precise estimates than less frequent measurements and calculations. However, in this case the disadvantages of daily measurement and calculation

[28] The mass-balance approach works by subtracting the masses of process outputs from those of process inputs. As a result, errors that are a relatively small share of these masses become a large share of the difference between them. Errors are particularly a concern for streams where the fluorinated GHG is only one component of the total flow, and where, therefore, fluorinated GHG concentrations must be measured. In general, the accuracy and precision of concentration measurements is expected to be approximately +/−10 percent, although this can be as low as five percent and as high as 20 percent, depending on the circumstances. If this 10 percent error applies to a stream that constitutes a significant input or (more likely) output of the process, it can lead to an emissions estimate with a high relative error.

[29] A 13 percent error expressed as a standard deviation translates into a 26 percent error expressed as one half of a 95 percent confidence interval.

[30] Under the initial proposed rule, facilities would have been required to perform the mass-balance calculations for each reactant (*e.g.,* both HF and the chlorocarbon or hydrocarbon) and to take the average of the two results as the emissions estimate. This would be expected to lead to the most robust estimate (*i.e.,* the estimate with the lowest uncertainty) if the uncertainties in both yield calculations were similar.

appear to outweigh the advantages. EPA believes that monthly mass-balance calculations will lead to acceptably accurate estimates at reasonable cost. Nevertheless, EPA requests comment on whether the variability of the mass flows or concentrations in some production processes may be sufficiently large to justify more frequent measurement and calculation, *e.g.,* weekly.

EPA also requests comment on whether annual or less frequent characterizations of fluorinated GHG concentrations in some streams should be permitted under the mass-balance approach. Some fluorinated GHG producers have stated that it is difficult to measure fluorinated GHG concentrations in some streams. In some cases, this is because waste streams contain hydrofluoric acid (HF), which, due to its acidity and reactivity, can damage sampling and analytical equipment. As discussed in the TSD, there may be technical solutions to this problem. To the extent that these approaches could be relatively difficult or expensive to implement, however, it might be appropriate to permit very infrequent measurements. The disadvantage of this approach is that it might lead to large errors, particularly for processes that vary over time. A series of measurements might be required to (1) reduce the error and (2) quantify the error for purposes of the statistical error test. Such measurements would be analogous to those used to develop emission factors.

Reactant and Byproduct Emissions. EPA recognizes that the proposed mass-balance approach would assume that all yield losses that are not accounted for are attributable to emissions of the fluorinated GHG product. In some cases, the losses may be untracked emissions (or other losses) of reactants or fluorinated by-products. In general, EPA understands that reactant flows are measured at the inlet to the reactor; thus, any losses of reactant that occur between the point of measurement and the reactor are likely to be small. However, reactants that are recovered from the process, whether they are recycled back into it or removed permanently, may experience some losses that the proposed method does not account for.

Fluorocarbon by-products, according to the IPCC Guidelines, generally have "radiative forcing properties similar to those of the desired fluorochemical." However, EPA is aware of at least one facility where byproducts often have much larger GWPs than the products. In this case, assuming by-product emissions are product emissions would lead to large errors in estimating overall fluorinated GHG emissions. EPA believes that the initial scoping test of emitted streams that is discussed above would help to determine whether this was an issue for a given process.[31] If it was, then the facility could elect to pursue the PSEF approach rather than the mass-balance approach for that process, or, if the facility was still interested in pursuing the mass-balance approach, it could perform more emissions testing to develop a robust break-out among the fluorinated GHGs assumed to be emitted under the mass-balance approach. Such emissions testing would be similar to that performed for the PSEF approach below, except it would focus on the partitioning of emissions among the various fluorinated GHGs. This approach is discussed in more detail in the TSD. EPA requests comment on this and other possible approaches for distinguishing between emissions of fluorinated GHG products and emissions of fluorinated by-products under the mass-balance approach.

Alternative approach based on measurements of balanced element (e.g., total fluorine). EPA is considering an alternative to the mass-balance approach described above in which facilities would not be required to speciate their streams (including relevant process streams, destroyed streams, and emitted streams) monthly. Instead, they could make monthly measurements of the total fluorine (or other element of interest other than carbon) in the streams, *e.g.,* by burning them. This approach, which is described in more detail in the TSD, could be particularly useful for processes with multiple by-products. Facilities would still be required to perform an initial survey of the fluorinated GHGs in the stream(s) to identify the fluorinated GHG constituents. In addition, as discussed above, it may be appropriate to require facilities to perform emissions testing to ensure that emissions are properly allocated among the product and various by-products. However, facilities would perform this testing relatively infrequently (*e.g.,* every five years) rather than monthly. One potential concern regarding this variant of the mass-balance approach is the potential difficulty of performing analysis of combustion products that are likely to include HF and HCl. It may be appropriate to require facilities to validate this approach against the mass-balance method described above. EPA requests comment on this approach.

d. Process-Specific Emission Factor Approach

EPA is proposing an additional monitoring approach based on site-specific, process-specific emissions factors. This approach includes either calculation or measurement of process vent emission factors depending on the size and fate of the emissions from the vent. Under this approach, facilities would develop preliminary emissions estimates to determine the level of annual uncontrolled emissions from each process vent in processes subject to this subpart. For process vents with uncontrolled emissions of less than 10,000 $mtCO_2e$ (or less than 1 metric ton for emissions that include a fluorinated GHG whose GWP does not appear in Table A–1 of subpart A), facilities could conduct either engineering calculations or emissions testing to develop emission factors. Facilities could also conduct either engineering calculations or emissions testing to develop emission factors for emissions that were vented to a destruction device demonstrated to achieve a destruction efficiency of 99.9 percent (for fluorinated GHGs), as long as equipment or procedures[32] were in place to ensure that uncontrolled emissions did not occur. For other vented emissions, facilities would be required to conduct emissions testing to determine the process vent emission factor.

To estimate annual fluorinated GHG emissions from each vent, facilities would multiply each emission factor by the appropriate activity data and account for the use (and uptime) of destruction devices. The fluorinated GHG emissions for all vents at the facility would be summed to obtain the total emissions from process vents for the facility as a whole.

To ensure that the emissions estimate encompassed all sources of emissions within the processes that would be subject to this subpart, facilities using the emission factor approach would also be required to estimate emissions from equipment leaks.[33] Leaks would be

[31] For example, if the survey indicated that attributing all unaccounted-for losses to product emissions would lead to more than a ten percent error in the CO_2e emitted, the facility could be required to adjust its emissions estimate to account for by-product losses.

[32] Such equipment or procedures could include, for example, holding tank capacity, monitoring of by-pass streams, or compulsory process shutdowns in the event the destruction device remains off line.

[33] As noted above, process vents are only one of the sources of emissions from production, transformation, and destruction processes. Another source is equipment leaks, specifically, leaks from piping and connections. The mass-balance approach does not need to be supplemented with equipment leak assessment because it accounts for all emissions between the measurements of inputs

monitored annually using EPA Method 21 and the *Protocol for Equipment Leak Estimates* U.S. Environmental Protection Agency, EPA Publication No. EPA–453/R–95–017, November 1995.

EPA is proposing less demanding measurement requirements for small and destroyed emission streams to ensure that the effort and resources expended to measure emissions are commensurate with the size of those emissions. This principle has been adopted both for other source categories in the MRR and for numerous other EPA programs. However, EPA is requesting comment on some aspects of its proposed approaches.

First, we request comment on the appropriateness of the CO_2e cutoff below which calculations are permitted. One potential concern associated with this approach is that 10,000 $mtCO_2e$ equates to relatively low mass emissions of fluorinated GHGs with high GWPs. For example, 10,000 $mtCO_2e$ equates to 923 pounds of SF_6 and 1,282 pounds of NF_3. Our understanding is that SF_6 can be detected at extremely low emission rates and concentrations, but we request comment on whether emissions of other high-GWP compounds at this level may be difficult to detect. An option on which we are requesting comment is to relax the CO_2e emissions cutoff and to include an unweighted emissions cutoff (*i.e.,* in tons of fluorinated GHG) along with it. For example, for process vents with less than 25,000 $mtCO_2e$ uncontrolled and less than 10,000 pounds of fluorinated GHG uncontrolled, facilities would have the option to conduct emissions testing or engineering calculations or assessments.

Second, EPA requests comment on its criteria for allowing use of engineering calculations to characterize the emissions of process vents that vent to destruction devices. EPA understands that many and perhaps most destruction devices used at fluorinated GHG production facilities can achieve DEs of 99.9 percent or better. EPA also understands that many facilities have equipment or procedures in place to prevent uncontrolled emissions, though some do not. It is important to note that uncontrolled emissions during device downtime can reduce the effective (time-weighted average) DE to 90 percent or less, increasing emissions by a factor of 100 or more. However, one alternative to the proposed approach would be to allow the use of engineering calculations for any vent whose emissions, considering both the DE and the historical uptime of the destruction device, fell below the 10,000 $mtCO_2e$ cutoff. For purposes of this calculation, the annual time of uncontrolled emissions could be equated to the longest annual time of uncontrolled emissions observed over the previous five years. EPA requests comment on this alternative approach.

Preliminary estimates. To develop preliminary emissions estimates for each vent, facilities would be permitted to use the same types of previous measurements, engineering calculations, and engineering assessments that they would be permitted to use to develop emission calculation factors. These are described below under "Process-specific Emission Calculation Factor Approach."

Process vent emissions testing. For process vent emissions testing, facilities would be required to use EPA reference methods, including EPA Method 18 and EPA Method 320, or ASTM D6348–03.[34] Alternative testing methods could be used if validated using EPA Method 301. EPA reference methods are included in the rule requirements for determining sample and velocity traverses, velocity and volumetric flow rates, gas analysis, and stack gas moisture, along with several alternative flow rate determination methods, such as OTM–24 and ALT–012. Commenters who have previously estimated their emissions of fluorinated GHGs stated that they used these approaches to do so.

The testing periods would be required to include representative process operation and to exclude atypical events (such as process upsets or malfunctions).[35] Within any given operating scenario (discussed further below), the full range of process operation would be required to be represented, *i.e.* the emissions data must be representative of typical process operation while also including process variability. Facilities would be required to consider process parameters that may potentially cause variability of the emissions, such as catalyst degradation, seasonal variability, raw material suppliers, *etc.* For example, where a facility uses a catalyst, test runs would have to be conducted at various points over the life of the catalyst. The production level during the testing periods would be required to be representative of normal operation.

To develop process-specific emissions factors, facilities would be required to conduct at least three test runs and to analyze the relative standard deviation (RSD) of the emission factors corresponding to each run to determine whether additional runs were necessary. The emission factors and their RSD would be calculated across all fluorinated GHGs emitted from the vent in CO_2e terms. If the RSD exceeded twenty percent, the facility would be required to conduct an additional three tests. The rationale for the RSD test is that if the variability of a population or parameter is large, then more samples are required to obtain a robust estimate of the mean (average) of that parameter. EPA estimates that at a relative standard deviation of 20 percent, an emission factor calculated as the mean of three test runs has a 95 percent chance of being within 50 percent of the actual mean emission rate of the process. The reasoning and calculations behind this conclusion are discussed in more detail in the TSD.

An alternative approach would be to conduct additional runs until the change in the running average emission factor fell under 10 percent. This approach is similar to requirements for measuring emission factors (slope coefficients) in subpart F (Primary Aluminum) and could provide representative emissions from the process and address variability. However, it has two potential drawbacks in the context of fluorinated gas production. First, for processes whose variability is predictable (*e.g.,* due to catalyst age) rather than random, the fourth sample could satisfy the running average requirement but lead to a biased emission factor, for example if two of the four samples were taken when the catalyst was new. Second, facilities could find it inconvenient to analyze samples and calculate emission factors between each test run after the first three. EPA requests comment on this alternative approach.

For continuous process vents, facilities would conduct 1-hour test runs, and for batch process vents, facilities would test during emissions episodes of the batch. We request comment on the appropriate number of test runs to conduct for continuous and batch process vents and the appropriate RSD that facilities should meet. We also request comment of the appropriateness

and outputs, whether these emissions occur from vents or leaks. (This assumes that the production measurement used to estimate and report emissions under the mass-balance approach is the same as that used to report additions to the industrial gas supply. EPA is proposing that these two measurements be identical.)

[34] EPA Method 320 and the ASTM method are Fourier Transform Infrared (FTIR) methods. For such methods, compounds are identified by characteristic spectra, and libraries providing spectra for the range of compounds likely to be found in emissions streams can greatly facilitate analysis. EPA requests comment on whether such spectral libraries are available for fluorinated GHGs, and if not, on whether EPA might play a role in assembling a spectral library for fluorinated GHGs.

[35] EPA is proposing an exception if monitoring is sufficiently long to ensure that such events are not overrepresented in the emission factor.

of testing batch process vents during emissions episodes only. Another option is to require testing of vents for the full duration of the batch process, but this could significantly increase the expense of the emissions test without necessarily improving its accuracy.

Where multiple processes vent into a common vent or control device, EPA is proposing that facilities do one of the following: sample each process in the ducts before the emissions are combined, sample when only one process is operating, or sample the combined emissions at representative combinations of capacity utilizations for all the processes. If the last option were selected, facilities would be required to perform 3 times n test runs, where n is the number of processes feeding into the common vent or add-on control device. The emission factor would be calculated by dividing the total emissions by the summed activity across the processes venting to the common vent, and the PSEF would be applied whenever one or more of the processes was operating.

Process activity data would have to be collected simultaneously with the emissions data during the emissions test. The process activity data would be used to develop the emissions factor. Process activity data that could be used in development of the emissions factor includes raw material feed, amount of product produced, or other process activity known to have a direct effect on emissions.

Facilities would be required to define the operating scenario that encompasses the range of operating conditions that represent typical operation for the process and to develop representative emissions factors for each operating scenario. To define the process operating scenario, a facility would include information including the process description and the specific process equipment used; the process vents, emission episodes and durations, and the quantity of uncontrolled fluorinated GHG emissions; the control device or destruction device used to control emissions; and the manifolding of process vents within the process and from other processes. Alternative operating scenarios would also be defined for differences in operating conditions that affect emissions. Examples of situations where process differences may warrant separate operating scenarios include the following: Making small volumes of a product in one set of batch process equipment part of the year and making larger volumes in larger batch process equipment part of the year; use of two different types of catalyst in the same process; deliberate alterations in process conditions such as temperature or pressure to shift the reaction to a particular product; and making small volumes of a product in a batch process part of the year and making large volumes in a continuous process part of the year. A facility is required to develop a representative emissions factor for each process operating scenario because each operating scenario for a process will result in different emissions levels.

In general, emissions testing during process startups and shutdowns would not be expected to lead to representative emission factors, because emission rates tend to fluctuate during such events. Exceptions to this could include long-term monitoring that would not over-represent startup or shutdown conditions in the resulting emission factor, and monitoring specifically to obtain emission factors for startups and shutdowns conditions. Several companies indicated that they have analyzed the emissions profile during startup events and during shutdown events. They found that the emission rates during these events departed from those at steady state conditions, but that emissions profiles were consistent between one startup event and another.

The uncertainty of the process-vent-specific emission factor approach is anticipated to be roughly 10 percent; the uncertainty of the emissions testing is estimated to be approximately 10 percent (as calibration requirements for most test methods require ±10 percent accuracy and precision), and the uncertainty of the process activity measurement is ±1 percent. While emissions testing must continue if the first three test runs exhibit an RSD or 0.2 or greater, the RSD is expected to be a measure of the variability of the process rather than the error of the measurement.

EPA is proposing that emission factors would need to be developed before December 31, 2011, the end of the first year of reporting under this subpart. Throughout 2011, facilities would be responsible for gathering monthly activity data to which the emission factors, once developed, would be applied to estimate monthly and annual emissions from each process.

Updates to Emission Factors. After developing their initial process-vent-specific emission factors, facilities would be required to update them every 5 years or when there was a process or equipment change that would alter the process operating scenario. Process or equipment changes would include changes in raw materials, equipment, production levels, or operating conditions that would be expected to affect the level of emissions. EPA is proposing periodic updates of the emission factors because facilities that have measured and re-measured their emission factors over a period of several years have found that gradual, incremental changes to the process (*e.g.,* to improve yields) have significantly changed emission factors over time. The proposed five-year frequency is consistent with that required for some source categories covered in the MRR (*e.g.,* for process vents used in HCFC–22 production processes under subpart O) but is higher than that required for others (*e.g.,* the 10-year frequency for measurement of slope factors for aluminum processes). EPA requests comment on the proposed frequency of measurement.

An alternative to regular updates to emission factors would be updates triggered by changes to other indicators of emission rates, such as process yields. Under such an approach, facilities could calculate how their emission factor would change if the change in yield were attributable solely to a change in the emission rate. If this change exceeded 15 percent (as a fraction of the current emission factor), the emission factor would need to be re-measured. EPA requests comment on this alternative.

Measurements performed before the effective date of this rule. We are proposing that emission factor measurements performed before the effective date of this rule could be used to estimate GHG emissions if the measurements were performed in accordance with the requirements of the rule less than five years before the effective date. We believe that it may also be appropriate to permit use of previously measured emission factors whose measurement departed in some particulars from the requirements of the rule but still substantially met most of the requirements, making it likely that the emission factors were representative. In this case, facilities could submit information to EPA on areas where measurements departed from the requirements from the rule, and EPA could review the measurements to verify that they still substantially met most of the requirements. We request comment on this option.

Process-Specific Emission Calculation Factor Approach. As noted above, facilities could use engineering calculations to estimate emissions from vents that either (1) had annual emissions below 1,000 $mtCO_2e$ or (2) vented to a control device with a destruction efficiency of 99.9 percent

and had equipment and procedures in place to prevent uncontrolled emissions. We are proposing an emission factor approach that includes both emissions testing and engineering calculations, with the required approach depending on the magnitude of uncontrolled emissions from the process vent.

Engineering calculations use basic chemical engineering principles and component property data to calculate emissions (and develop emission factors) rather than actually measuring emissions. Calculations for various emissions episodes could be conducted using standard equations presented in EPA's Emissions Inventory Improvement Process guidance documents, Pharmaceutical NESHAP, and Miscellaneous Organic NESHAP. Calculations highlighted in these documents and in codified rule text include vapor displacement, purging, heating, depressurization, vacuum systems, gas evolution, air drying, and empty vessel purging.

Engineering assessments may be conducted using previous test data or other information available on the process. Engineering assessments include use of previous test reports where the emissions are representative of current operating practices; bench-scale or pilot-scale test data that are representative of full-scale process operating conditions; design analysis based on chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. The data used in engineering assessments must be documented.

Process activity data must be measured in conjunction with the emissions estimate based on calculations and assessments. This process activity data is needed to develop the emissions calculation factor.

Just as for emission factor development, facilities are required to define the operating scenario for the emission calculation factor development. Alternative operating scenarios would also be defined for differences in operating conditions that affect emissions. As discussed previously for the emission factor approach, a facility would be required to develop a representative emission calculation factor for each process operating scenario because each operating scenario for a process will result in different emission levels (*see* discussion above).

Facilities would update the process-vent-specific emission calculation factors every five years or when there is a process or equipment change that would alter the process operating scenario.

Potential use of continuous emissions monitors to measure emissions from vents. Another option we are considering is to require that facilities measure emissions from fluorinated gas production facilities using continuous emissions monitors (CEMS). Under this approach, facilities would be required to install and operate CEMS capable of measuring fluorinated GHGs to measure process emissions. The requirements for the CEMs would be similar to those in subpart C, adjusted, as appropriate, to accommodate CEMS for fluorinated gases. One possible option is to use Fourier Transform Infrared Spectrometers (FTIRs) in scrubber stacks to measure emissions. FTIR spectroscopy is presently used to conduct short-term fluorinated GHG emission measurements from processes.

If properly selected and maintained, CEMS would be expected to provide estimates of emissions more accurate than either the mass-balance or the process-vent approach. However, potential drawbacks to requiring CEMS are that they would be relatively expensive to install and they may not tolerate the acidic and reactive environments found in vents at many fluorinated gas production facilities. (The latter concern might be mitigated by installing CEMS after a scrubber, if this is practicable.) Given these potential concerns, it may be appropriate to require CEMS for particularly large emission streams, *e.g.,* those resulting in emissions of more than 50,000 $mtCO_2e$ annually. EPA requests comment on the use and implementation of CEMS at fluorinated gas production facilities. We also request data or other information evaluating the use of CEMS in fluorinated gas production facilities to determine fluorinated GHG emissions.

Equipment Leak Emissions Estimates. For completeness, EPA is proposing that monitoring of process vents be supplemented by monitoring of equipment leaks, whose emissions do not occur through process vents. To estimate emissions from equipment leaks, we would require use of EPA Method 21 and the *Protocol for Equipment Leak Estimates* (EPA–453/R–95–017). Leak monitoring would be performed annually. The *Protocol* includes four methods for estimating equipment leaks. These are, from least to most accurate, the Average Emission Factor Approach, the Screening Ranges Approach, EPA Correlation Approach, and the Unit-Specific Correlation Approach. We are proposing that the facility use one of the last three methods. To use these methods, the facility would need to have (or develop) Response Factors relating concentrations of the target fluorinated GHG (or surrogate gas co-occurring in the stream) to concentrations of the gas with which the leak detector is calibrated. Our understanding is that flame ionization detectors (FIDs) are generally insensitive to fluorinated GHGs, and that they are therefore not likely to be effective for detecting and quantifying fluorinated GHG leaks. An exception to this would be a situation in which the fluorinated GHG occurred in a stream along with a substance (*e.g.,* a hydrocarbon) to which the FID was sensitive; in this case, the other substance could be used as a surrogate to quantify leaks from the stream. We understand that at least two fluorocarbon producers currently use methods in the Protocol to quantify their emissions of fluorinated GHGs with different levels of accuracy and precision.[36] Other analytical techniques that are sensitive to fluorinated compounds may be available to monitor concentrations of equipment leaks, including photoionization, ultraviolet, infrared, and others. EPA requests comment on the availability and use of portable monitoring instruments for equipment leak monitoring of fluorinated GHG.

Another approach for monitoring leaks from pieces of equipment includes use of the Alternative Work Practice (AWP) for EPA Method 21 (similar to monitoring requirements under 40 CFR part 60, subpart A, 40 CFR part 60.18; 40 CFR part 63, subpart A, 40 CFR part 63.11; or 40 CFR part 65, subpart A, 40 CFR part 65.7). This approach would include monitoring leaking equipment with an optical gas imaging instrument. Emissions from those pieces of equipment found to be leaking could be estimated based on emission factors. Under this approach, facilities would be required to image each piece of equipment associated with processes covered under subpart L and in fluorinated GHG service, and all

[36] One producer estimates HFC and other fluorocarbon emissions by using the Average Emission Factor Approach. This approach simply assigns an average emission factor to each component without any evaluation of whether or how much that component is actually leaking. The second producer estimates emissions using the Screening Ranges Approach, which assigns different emission factors to components based on whether the concentrations of the target chemical are above or below 10,000 ppmv. This producer has developed a Response Factor for HCFC–22, which is present in the same streams as the HFC–23 whose leaks are being estimated. (HFC–23 emissions are discussed in Section O of the October 30, 2009 MRR.)

emissions imaged by the optical gas imaging instrument would be considered leaks and would be subject to emissions estimation. EPA requests comment on the technical feasibility and accuracy of this approach for fluorinated GHG emissions.

Other Potentially Significant Emission Points. We are requesting comment on the inclusion of fluorinated GHG emissions from storage tanks, wastewater, and container filling, particularly where these emissions occur before the production measurement at fluorinated GHG production facilities. We anticipate that emissions from wastewater and storage tanks would be small to insignificant due to the low solubility of most fluorinated GHGs in water and the use of pressurized tanks for storage. However, we request comment on the emission levels expected from these emission points.

Our current understanding is that most fluorinated GHG production facilities measure their production before container filling, *e.g.,* by using flowmeters just upstream of the container connection to measure the mass flowing into the containers. If this is the case, emissions that occur during or after filling (*e.g.,* from hoses and connections) would have been included in the production (supply) measurement. However, if production is measured by weighing containers before and after filling, then emissions during container filling would not have been included in the production measurement. In these cases, facilities using the emission factor approach would need to quantify container filling emissions for completeness. Possible methods for tracking these emissions include engineering estimates, default or site-specific emission factors, and mass balances. These methods are discussed in more detail in the TSD.

Destruction Device Performance Testing. EPA is proposing to require fluorinated gas producers that destroy fluorinated GHGs to conduct an emissions test every five years to determine the destruction efficiency (DE) of the destruction device. As discussed further in the TSD, the testing for determining the DE would be similar to the emissions testing required to develop process-specific emission factors, described above. Facilities would be required to conduct their testing when operating at high loads reasonably expected to occur and when destroying the most-difficult-to-destroy fluorinated GHG fed into the device (or when destroying a surrogate that was more difficult to destroy than that fluorinated GHG). The last point is particularly important because some fluorinated GHGs (*e.g.,* CF_4 and SF_6) are extremely difficult to destroy; DEs determined for other fluorinated GHGs would overestimate the destruction of these fluorinated GHGs.

Facilities that have conducted an emissions test on their destruction device within the five years prior to the effective date of the rule would be allowed to use the DE determined during that test if the test was conducted in accordance with the proposed test requirements. Facilities could also use the DREs determined during principal organic hazardous constituent testing and hazardous waste combustor testing, provided those tests determined the DRE based on the most-difficult-to-destroy fluorinated GHG fed into the device (or based on a surrogate that was more difficult to destroy than the most-difficult-to-destroy fluorinated GHG).

EPA is proposing to require reporting of fluorinated GHG emissions from destruction of fluorinated GHGs; we request comment on whether we should also require reporting of by-product fluorinated GHG emissions from destruction of CFCs and HCFCs. Specifically, we request comment on the extent to which fluorinated GHGs may be generated and emitted during destruction of CFCs and HCFCs at facilities producing these chemicals. Testing of destruction devices used in the electronics sector has shown that destruction of one fluorinated compound can lead to the emission of others under some circumstances.

6. Selection of Procedures for Estimating Missing Data

In the event that a scale or flowmeter normally used to measure reactants, products, by-products, or wastes fails to meet a test to verify its accuracy or precision, malfunctions, or is rendered inoperable, we are proposing that facilities be required to estimate these quantities using other measurements where these data are available. For example, facilities that ordinarily measure production by metering the flow into the day tank could use the weight of product charged into shipping containers for sale and distribution as a substitute. It is our understanding that the types of flowmeters and scales used to measure fluorocarbon production (*e.g.,* Coriolis meters) are generally quite reliable, and therefore that it should rarely be necessary to rely solely on secondary production measurements. In general, production facilities rely on accurate monitoring and reporting of the inputs and outputs of the production process. Nevertheless, EPA is also proposing that if a secondary mass measurement for the stream is not available, producers can use a related parameter and the historical relationship between the related parameter and the missing parameter to estimate the flow.

If concentration measurements are unavailable for some period, we are proposing that the facility use the average of the concentration measurements from just before and just after the period of missing data.

We request comment on these proposed methods for estimating missing data.

7. Selection of Data Reporting Requirements

Under the proposed rule, owners and operators of facilities producing fluorinated gases would be required to report both their fluorinated GHG emissions and the quantities used to estimate them on a process-specific basis. They would also be required to report the results of each scoping study, specifically, the chemical identities of the contents of potentially emitted streams. Facilities using the mass-balance approach would report the masses of the reactants, products, by-products, and wastes, and, if applicable, the quantities of any product in the by-products and/or wastes (if that product is emitted at the facility). The chemical identities of reactants, products, and by-products would also be reported, along with the chemical equations used to estimate emissions. Facilities using the emission factor approach would report the activity data used to calculate emissions (*e.g.,* the quantity produced, transformed, or destroyed) and the emission factors used to estimate them. We are proposing that owners and operators report annual totals of these quantities by process and facility.

Where fluorinated GHG production facilities have estimated missing data, the facility would be required to report the reason the data were missing, the length of time the data were missing, the method used to estimate the missing data, and the estimates of those data.

We propose that facilities report these data because the data are necessary to verify facilities' calculations of fluorinated GHG emissions. We request comment on these proposed reporting requirements.

8. Selection of Records That Must Be Retained

Maintaining records of the information used to determine the reported GHG emissions is necessary to enable us to verify that the GHG emissions monitoring and calculations

were done correctly. Under the proposed rule, owners and operators of facilities producing fluorinated GHGs would be required to retain records documenting the data reported, including records of monthly emission estimation calculations, all data that went in to the calculations, calibration records for flowmeters, scales, and gas chromatographs, and documentation of emission factor development activities. These records are necessary to verify that the GHG emissions monitoring and calculations were performed correctly.

C. Electric Transmission and Distribution Equipment Use

In the April 2009 proposed MRR (74 FR 16448; April 10, 2009), EPA proposed mandatory reporting of SF_6 and PFC emissions from electric power transmission and distribution system equipment in subpart DD. As initially proposed, this source category would comprise electric power transmission and distribution systems that operate using gas-insulated substations, circuit breakers and other switchgear, or power transformers containing sulfur hexafluoride (SF_6) or perfluorocarbons (PFCs) and emissions would represent the annual facility-wide emissions of SF_6 and PFCs for the reporting facility.

EPA received comment from approximately 22 entities, many of whom requested elaboration on what is included in an electric power system for purposes of this source category as well as the relationship of an electric power system to a facility. The requirements of 40 CFR part 98 apply to owners and operators of any "facility".[37] EPA is issuing this supplemental proposal to provide additional detail on this source category.

In doing so, our objective is to clarify and solicit further comment on the scope of an "electric power system" and what constitutes a facility for this subpart. We also provide further detail on options we considered. We are proposing to integrate the Energy Information Administration of the Department of Energy (EIA) list of examples of electric power entities into the definition of a facility for this subpart. The EIA lists the following as electric power entities: "a company; an electric cooperative; a public electric supply corporation as the Tennessee Valley authority; a similar Federal department or agency such as the Bonneville Power Administration; the Bureau of Reclamation or the Corps of Engineers; a municipally owned electric department offering service to the public; or an electric public utility district (a "PUD"); also a jointly owned electric supply project such as the Keystone."[38] We are proposing to incorporate the EIA list of electric power entities because it is widely used in the industry and includes the spectrum of energy supply participants with relevant operations, *i.e.,* vertically integrated, generate and transmit only, transmit and distribute only, transmit only and distribute only.

We are also seeking comment on whether it would be appropriate to use the Regional Greenhouse Gas Initiative (RGGI) definition of a transmission and/or distribution entity in our definition of electric power system.[39] RGGI defines an entity as "the assets and equipment used to transmit and distribute electricity from an electric generator to the electrical load of a customer." It includes all related assets and equipment located within the service territory of the entity, defined as the service territory of a load-serving entity specified by the applicable State regulatory agency. In particular, EPA seeks comment on whether the RGGI definition includes the spectrum of entities identified in the EIA list and captures the full universe of SF_6-emitting entities in the United States.

EPA is requesting comments on only 40 CFR 98.300 Definition of the Source Category in proposed subpart DD. EPA is not seeking further comment on other elements of the initial proposal such as the selection of the threshold and the proposed monitoring methods.

1. Definition of the Source Category

EPA proposes to define the source category as follows: "The electric equipment use source category includes electric power systems as described in this paragraph. Notwithstanding the definition of facility in subpart A, for purposes of this subpart, "facility" means an electric power system. Electric power system means the collection of SF_6- and PFC-insulated equipment linked through electric power transmission or distribution lines and operated as an integrated unit by one electric power entity or several entities that have a single owner. SF_6- and PFC-insulated equipment includes gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, and power transformers containing SF_6 or PFCs. Equipment also includes gas containers such as pressurized cylinders, gas carts, new equipment owned but not yet installed, or other containers."

The largest use of SF_6 is as an electrical insulator and interrupter in equipment intended for use in connection with generation, transmission, distribution, and conversion of electric energy. The gas has been employed by the electric power industry in the United States since the 1950s because of its dielectric strength and arc-quenching characteristics. SF_6 has replaced flammable insulating oils in many applications and allows for more compact substations in dense urban areas. It has also facilitated expansion of the electric power grid through long-distance transmission at high and extra-high voltages. SF_6 is used in gas-insulated substations, circuit breakers and other switchgear, transformers, and gas-insulated lines. The types and location of gas-insulated equipment used varies depending on a number of technical, system design, geographic and historic factors. Currently, there are no available substitutes for SF_6 in high-voltage applications. For further information, *see* the SF_6 from Electrical Equipment TSD in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

Since SF_6 is used in pressurized equipment, unintended emissions of SF_6 occur over the life cycle of the equipment. SF_6 can escape from gas-insulated substations and switchgear through seals, especially from older equipment. The gas can also be released during installation, servicing, and equipment disposal. Emissions of SF_6 from electric power systems were estimated to be 12.4 million metric tons of CO_2e in 2006. Emissions from electrical equipment manufacture and refurbishing are being covered in subpart SS.

PFCs are sometimes used as dielectric and as heat transfer fluids in power transformers. PFCs are also used for retrofitting CFC–113 cooled transformers. The common PFC used in this application is perfluorohexane (C_6F_{14}). In terms of both absolute and carbon-weighted emissions, PFC emissions from electrical equipment are generally believed to be much smaller than SF_6 emissions. EPA does not currently have an estimate of PFC emissions from this source category.

[37] Unless otherwise specified in an individual subpart, facility means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

[38] Energy Information Administration of the U.S. Department of Energy, Energy Glossary: Energy terms and definitions; *http://www.eia.gov/glossary.*

[39] Regional Greenhouse Gas Initiative Model Rule, 2008.

PFCs, however, are very potent and persistent greenhouse gases and an accurate inventory of use and emissions from all sources is important. Consequently, as stated in our initial proposal, we are proposing to include emissions of PFCs in this subpart. Reference to gas-insulated equipment implies SF_6 and PFCs.

The electric transmission and distribution equipment use source category includes all gas-insulated electrical equipment such as gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, and power transformers. This equipment is used as part of an interconnected group of electric transmission lines and associated equipment for the movement or transfer of electric energy in bulk between points of supply and points at which it is transformed for delivery to the ultimate customer. This equipment, along with lines and other associated equipment used for the movement or transfer of electric energy, operates as part of a contemporaneous network in real-time and in a synchronous manner to provide stable and reliable electricity to customers.

A clear definition of a facility for this source category is important in order to determine whether a collection of electrical equipment meets the reporting threshold and to ensure that double or under reporting of emissions is minimized. In defining a facility, we reviewed current definitions used in the CAA and by the Federal Energy Regulatory Commission (FERC), North American Energy Reliability Corporation (NERC), California Air Resources Board (CARB), RGGI and EIA; consulted with industry; and reviewed current regulations relevant to the industry. Typically, the various regulations under the CAA define a facility as a group of emissions sources all located in a contiguous area and under the control of the same person (or persons under common control). The subpart A definition of facility would require all SF_6 equipment included in the facility be located on contiguous or adjacent properties. We are proposing not to use the exact definition of "facility" found in subpart A because the completeness and accuracy of emissions data for this source category are dependent on reporting on all equipment regardless of location. For completeness, reporting needs to account for and report on all sources and activities within the facility. The purpose of transmission is to move energy over long distances. Similarly, distribution can occur over large geographical areas. Therefore, it is neither practical nor appropriate to exclude certain types of equipment solely based on its lack of physical proximity. Emissions from gas-insulated equipment occur during installation, operation, servicing and decommissioning. Accuracy of reporting requires that emissions are systematically neither over nor under actual emissions; consequently including all equipment at all periods of the life cycle is necessary. Thus, EPA has concluded that strict adherence to the subpart A definition is not appropriate for this source category.

In deciding where to draw the boundary between one facility and the next, we considered the following levels of reporting: Per piece of equipment, by substation or switchyard, corporate-level, and aggregation of total equipment by system. Reporting per piece of equipment was deemed costly and highly impractical for reporters. Reporting by substation or switchyard, where multiple pieces of equipment is often located, would also be burdensome, given that a specific reporting protocol using the proposed mass-balance reporting method would have to be set up for each substation, requiring cylinder inventory and other data collection to be done on a per substation basis. Although this may be practical for some system owners, others have responsibility for dozens or hundreds of substations. Finally, EPA considered corporate-level reporting based on comments submitted on our initial proposal. We concluded, however, that given the complex and varied corporate structures within the electric power industry that approach would not be practical and appropriate for this source. The full results of our assessment can be found in the SF_6 from Electrical Equipment TSD.

For this source category, EPA is proposing to define the facility as an "electric power system," which would mean that reporting would occur at a "system-wide" level. The electric power system would be defined as all electric power equipment insulated with SF_6 or PFCs regardless of location linked through electric power transmission or distribution lines and operated as an integrated unit by one electric power entity or several entities that have a single owner. Reporting by the electric power system would comprise all gas-insulated equipment located between the point of generation and the point at which the ultimate customer receives the electricity. Such equipment includes gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, or power transformers containing SF_6 or PFCs. EPA proposes to define an electric power entity as a company; an electric cooperative; a public electric supply corporation as the Tennessee Valley Authority; a similar Federal department or agency such as the Bonneville Power Administration; the Bureau of Reclamation or the Corps of Engineers; a municipally owned electric department offering service to the public; or an electric public utility district (a "PUD"); also a jointly owned electric supply project such as the Keystone. Although the size of these facilities will vary, and some are expected to cross State lines, a facility is likely to encompass more than a thousand miles of lines and hundreds of pieces of equipment located at multiple substations or switchyards. Equipment also includes gas containers such as pressurized cylinders, gas carts, new equipment owned but not yet installed, or other containers.

EPA believes the proposed definition of "facility" for this source category is appropriate and analogous to the 40 CFR part 98 subpart A definition of a "facility" used for other source categories due to the physical interconnection and operational dependence of the components of the system. It is also consistent with the concept of a "transmission and distribution system," which is a standard term used by the industry. The transfer of energy is dependent on the collective functioning of all components of the system which must operate as a contemporaneous network in real-time and in a synchronous manner. Without system-wide use of gas-insulated equipment, operation and system reliability is not possible. Furthermore, system-wide reporting is consistent with the reported servicing and maintenance practices of many SF_6-insulated equipment owners making this approach less burdensome and more efficient than using a substation or per piece of equipment source definition. This is also consistent with the approach used by over 80 systems from across the United States that are participating in the "EPA SF_6 Emission Reduction Partnership for Electric Power Systems", and has proven to be a practical and reasonable approach for the collection of emissions data. In addition, the burden of using the mass-balance method proposed for monitoring is lowest at a system-wide level.

EPA is requesting comment on whether one electric power system should be distinguished from the next on the basis of operation, ownership, or some combination of the two. EPA is proposing that the electric power system be the collection of equipment operated

as an integrated unit by one electric power entity or several entities that have a single owner because it best reflects the functional aspect of the system (transmitting and distributing power) and emphasizes the physical interconnection and operational dependence of the system components. It also reflects current voluntary best practices for GHG reporting from this source category. This proposed definition would not relieve entities that own but do not operate equipment of the obligation to report under 40 CFR 98.3. Regardless of the role that operation or ownership plays in the final source category definition, the obligation to report will apply to both owners and operators.

Under the proposed definition of facility, total emissions would be derived from the entire collection of servicing inventory (cylinders stored) and gas-insulated equipment. Reporting would be based on the aggregation of emissions of all servicing inventory and equipment.

Installation of Electrical Equipment at Electric Power Systems. In section E below, EPA is requesting comment on two issues related to equipment installation and commissioning that is performed by equipment manufacturers at electric power systems. These issues affect both users and manufacturers of electrical equipment and could affect the calculation methods required under both subpart DD and subpart SS. Please *see* section E for a discussion of these issues.

D. Imports and Exports of Fluorinated GHGs Inside Pre-Charged Equipment and Closed-Cell Foams

1. Overview of Reporting Requirements

Under today's proposed rule, importers and exporters of pre-charged equipment and closed-cell foams would be required to report their imports and exports to EPA if either their imports or their exports contained a total of more than 25,000 $mtCO_2e$ of fluorinated GHGs. The reports would be similar to those required of importers and exporters of bulk GHGs under subpart OO of the final MRR published on October 28, 2009. In addition, equipment importers would be required to report the types and charge sizes of equipment and the number of pieces of each type of equipment that they imported or exported, while foam importers would be required to report the volume of foam and fluorinated GHG density of the foam that they imported. Importers and exporters would report at the corporate level.

2. Summary of Initial Proposed Rule and Comments Received

In the proposed MRR published on April 10, 2009, we did not propose to require reporting of the quantities of GHGs imported and exported inside products. We were concerned that it would be difficult for importers and exporters to identify and quantify the quantities of GHGs inside some products and that the number of importers and exporters would be high. However, we requested comment on the option of requiring reporting of imports and exports of HFCs and SF_6 contained in pre-charged air-conditioning, refrigeration, and electrical equipment and in closed cell foams. We noted that for these products, information on the size and chemical identity of the charge or blowing agent is likely to be readily available to importers and exporters (*e.g.,* from nameplates affixed to equipment, servicing manuals, and product information for foams). Moreover, as noted above, the total quantities of imported and exported fluorinated GHGs in pre-charged equipment and foams are significant.

We received a range of comments on whether or not we should require reporting of fluorinated GHGs imported or exported inside of pre-charged equipment and closed-cell foams. Several manufacturers and importers of fluorinated GHGs supported such a requirement, noting that the identities and quantities of fluorinated GHGs inside equipment and foams are well-known, that imported and exported quantities are significant in aggregate, that the number of importers and exporters is small, and that information on fluorinated GHGs imported or exported inside of equipment could help to inform legislation being considered by Congress, which would include fluorinated GHGs imported in pre-charged equipment under emissions caps. Some of these commenters stated that failure to require reporting of imported equipment and foams would be unfair to domestic manufacturers, who would be subject to reporting from which foreign manufacturers would be exempted. They observed that this inequity could drive production offshore, harming the U.S. economy and possibly increasing global GHG emissions if less efficient manufacturers in developing countries took over the lost U.S. production.

Equipment importers and a fluorocarbon producer opposed a requirement to report imports and exports of fluorinated GHGs in pre-charged equipment and foams, stating that such a requirement would be unnecessary and costly. These commenters stated that the quantities of fluorinated GHGs inside individual pieces of equipment are small, ranging from ounces to pounds, and that emissions from such equipment are extremely small because the systems are hermetically sealed.

After carefully considering the comments and available information on imports and exports of fluorinated GHGs inside pre-charged equipment and closed-cell foams, we are proposing to require reporting of these imports and exports.

3. Definition of the Source Category

This source category includes importers and exporters of pre-charged equipment and closed-cell foams that contain fluorinated GHGs. Pre-charged equipment includes air-conditioning equipment or equipment components that contain HFCs and electrical equipment or equipment components that contain SF_6 or PFCs. Closed-cell foams include closed-cell foams blown with HFC blowing agents.

Air-conditioning and refrigeration equipment generally uses HFC refrigerants. In this application, HFCs serve as substitutes for ozone-depleting substances (ODSs), which are being phased out under the Montreal Protocol and Title VI of the CAA. Because some ODSs (*i.e.*, HCFCs) are only beginning to be phased out, the use of HFCs in equipment such as window and residential air-conditioners is expected to grow very quickly over the next decade. Imports and exports of HFC pre-charged equipment may grow as well. Although the quantities of chemical contained in each unit are small in absolute terms (*i.e.*, a few pounds or less), they are more significant in CO_2-equivalent terms, ranging up to eleven $mtCO_2e$ per unit for pre-charged commercial air-conditioners. This significance is due to the high GWPs of the HFCs.

HFCs are also used as blowing agents during the manufacture of foams. Open-cell foams are assumed to emit 100 percent of the blowing agent in the year they are manufactured, whereas closed-cell foams emit only a fraction of their total HFC content upon manufacture. Foam products that are closed-cell and imported or exported as a finished foam product therefore have potential to emit the blowing agent remaining in the foam after manufacture. Closed cell foams that are imported or exported include: polyurethane (PU) rigid foam used as insulation in domestic refrigerators and freezers; commercial refrigeration foam; PU rigid sandwich panel continuous and discontinuous foam; extruded

polystyrene (XPS) sheet foam; and XPS boardstock foam.

SF_6 is used as an electrical insulator and arc-quenching gas in electrical transmission equipment, including circuit breakers and gas-insulated substations. Again, the quantities of SF_6 in each unit are often small in absolute terms (around 14 pounds per circuit breaker), but are larger in CO_2-equivalent terms (around 150 $mtCO_2e$ per circuit breaker).[40]

Our analysis indicates that the quantities of fluorinated GHGs imported and exported inside of pre-charged equipment and foams are significant. Imports are estimated to total about 21 million $mtCO_2e$, while exports are estimated to total about 8 million $mtCO_2e$. For further information, please *see* the TSD for Imports and Exports of Pre-Charged Equipment and Foams (Revised) in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

We are proposing to require reporting for a number of reasons. First, we have determined that exports and particularly imports of pre-charged equipment and foam have a substantial impact on the total U.S. supply of fluorinated GHGs and of industrial GHGs generally. Based on the estimates above, imports constitute between seven and ten percent of the net U.S. supply of fluorinated GHGs, while exports are equivalent to between three and four percent of that total. (The range is based on slightly different estimates of the net U.S. supply based on bottom-up and top-down approaches.) We estimate that 22 million pieces of equipment and 66 million board-feet of foam are imported annually. Although the quantities of HFCs and SF_6 in individual pieces of equipment may be small in terms of the mass of chemical, the high GWPs of these chemicals can make them significant in CO_2-equivalent terms. For example, a pre-charged residential air conditioner (unitary) contains about 7 tons of CO_2e, while an average size circuit breaker with a shipping charge of SF_6 (20 percent of a full, operational charge) contains over 150 tons of CO_2e.

Imported and exported fluorinated GHGs are added to or subtracted from the U.S. supply of fluorinated GHGs regardless of whether they are imported in bulk or in equipment. Every year, a part of the U.S. fluorinated GHG supply is used to charge new equipment or to blow closed-cell foams. If equipment is imported already containing a charge, that charge offsets demand that would otherwise have occurred for fluorinated GHGs that are produced domestically or imported in bulk. Accounting for the quantities of fluorinated GHGs in equipment therefore significantly improves our understanding of the U.S. supply of fluorinated GHGs. Although commenters who opposed reporting noted that leak rates from some types of imported equipment are low, this does not distinguish fluorinated GHGs imported inside of equipment from fluorinated GHGs that are charged into the same type of equipment after its import or domestic manufacture. Any imported or domestically produced fluorinated GHG may be stored for many years inside equipment before being emitted or destroyed.[41]

The second reason that we are proposing to require reporting of imports and exports of fluorinated GHGs inside pre-charged equipment and foams is that discussions with industry experts indicate that the numbers of importers and exporters are relatively small, limiting the administrative burden of the rule and increasing the cost-effectiveness of the data gathering. Experts from the air-conditioning and refrigeration industry estimate that there are approximately 50 importers and 25 exporters of pre-charged air-conditioning and refrigeration equipment, and experts from the electrical equipment industry estimate that there are approximately 8 importers and 10 exporters of pre-charged electrical equipment. Based on the membership of various trade organizations including foam manufacturers and distributors, EPA estimates that there are approximately 50 entities that import and 25 entities that export foams. These numbers are considerably smaller than the number of importers and exporters of bulk fluorinated GHGs that are covered by the final rule published October 30, 2009.

Third, we estimate that the costs associated with identifying, quantifying, and reporting the quantities of fluorinated GHGs imported and exported inside pre-charged products and foams are reasonably modest. As noted above, information on the chemical identities and sizes of equipment charges should be readily available to importers and exporters, and the same is true for the identities and densities of the HFCs in foams, which strongly influence the insulating capacities of the foams.

Inclusion of other products that contain fluorinated GHGs. EPA's understanding is that pre-charged equipment and closed-cell foams account for the great majority of fluorinated GHGs that are imported in or exported from the United States inside of products. However, a variety of products containing fluorinated greenhouse gases (fluorinated GHGs), nitrous oxide (N_2O), and carbon dioxide (CO_2) are imported into and exported from the United States, including, for example, aerosols containing HFCs. EPA requests comment on the magnitude of imports and exports of these other products and on whether such imports and exports should be reported under this subpart.

4. Selection of Reporting Threshold

We are proposing to require that importers and exporters of fluorinated GHGs contained in pre-charged equipment and closed cell foams report their imports and exports if either their total imports or their total exports, in equipment, foams, and in bulk, exceed 25,000 $mtCO_2e$ per year. This threshold is the same as that for bulk imports and exports.

Tables 9 and 10 of this preamble show the estimated imports and exports (in $mtCO_2e$) and facilities (corporations) that would be covered under the various thresholds for imports and exports of equipment and foam.

[40] Emissions from use and manufacture of electrical equipment are addressed under subparts DD and SS of this rule; subpart QQ addresses only the import and export of such equipment.

[41] Even if the fluorinated GHG is recovered from the equipment at the end of the equipment's life, it will ultimately be either emitted or destroyed. Recycling delays emission or destruction (and reduces demand for new fluorinated GHG), but it does not avoid it.

TABLE 9—THRESHOLD ANALYSIS FOR FLUORINATED GHGS IMPORTED INSIDE PRE-CHARGED EQUIPMENT AND CLOSED-CELL FOAMS

Threshold level	HFC refrigeration/AC equipment		SF_6 electrical equipment		Closed-cell foams	
	Imports covered	Importers covered	Imports covered	Importers covered	Imports covered	Importers covered
1,000	15,733,523	50	1,888,932	8	3,025,285	50
10,000	15,733,523	50	1,888,932	8	3,025,285	50
25,000	15,733,523	50	1,888,932	8	3,025,285	50
100,000	15,733,523	50	1,888,932	8	0	0

TABLE 10—THRESHOLD ANALYSIS FOR FLUORINATED GHGS EXPORTED INSIDE PRE-CHARGED EQUIPMENT AND CLOSED-CELL FOAMS

Threshold level	Exports covered	Exporters covered	Exports covered	Exporters covered	Exports covered	Exporters covered
1,000	5,247,905	25	153,323	10	3,025,285	25
10,000	5,247,905	25	107,326	5	3,025,285	25
25,000	5,247,905	25	0	.....	3,025,285	25
100,000	5,247,905	25	0	.....	3,025,285	25

In the absence of importer- and exporter-specific information, we assumed that within the three general categories of products, each importer and exporter imported or exported the same quantity of fluorinated GHGs. (Exports of SF_6 in electrical equipment were the sole exception to this.) This assumption led to the conclusion that 100 percent of imported and exported pre-charged equipment and foams (except exported electrical equipment) would be reported at the 25,000 $mtCO_2e$ threshold. In fact, imports and exports are likely to be concentrated among a subset of importers and exporters, and fewer entities are therefore likely to report at the 25,000 $mtCO_2e$ threshold. We request comment on the distribution of imports and exports among importers and exporters and on the likely coverage (in percentage terms) of imported and exported equipment and foams at the 25,000 $mtCO_2e$ threshold. An alternative approach would be to lower the threshold or to require reporting by all importers and exporters of pre-charged equipment and closed cell foams, but EPA is concerned that this approach could burden many small importers and exporters with reporting while gaining little additional coverage of imports and exports in equipment and foams.

5. Selection of Proposed Monitoring Methods

We are proposing to require importers and exporters of equipment and foams to estimate their imports and exports of each fluorinated GHG by multiplying the mass of the fluorinated GHG contained in each type of equipment or foam by the number of pieces of equipment or by the volume of foam, as appropriate. As noted above, we believe that information on fluorinated GHG identity and charge size (or density, for foams) should be readily available to importers and exporters.

Under the current MRR, bulk importers and exporters of fluorinated GHGs are not required to report individual shipments totaling less than 250 $mtCO_2e$ of fluorinated GHGs. This exemption was intended to exclude small shipments, *e.g.*, of chemical samples being shipped for analysis, from reporting. We established the exemption after an analysis of import and export shipments showed that it would decrease reporting by less than 0.1 percent. We are not proposing a similar exemption for small shipments of equipment and foams because we do not believe it would be necessary and because we are concerned that it might lead to the exclusion of a significant share of imports and exports of these products. We do not believe the small-shipment exemption would be necessary because the definition of import in subpart A already excludes the bringing into the United States of household effects such as refrigerators and window air conditioners. We are concerned that the exemption may result in excluding a significant share of imports and exports because 250 $mtCO_2e$ equates to a large number of pieces of some types of equipment (*e.g.*, over 1,300 household refrigerators).

6. Selection of Data To Be Reported

EPA is proposing to require importers and exporters of pre-charged equipment and closed cell foams to report the following:

(1) The total mass in metric tons of each fluorinated GHG imported or exported in pre-charged equipment or closed-cell foams.

(2) For each type of pre-charged equipment, the identity of the fluorinated GHG used as a refrigerant or electrical insulator, charge size (holding charge,[42] if applicable), and number imported or exported.

(3) For closed-cell foams that are imported or exported inside of appliances, the identity of the fluorinated GHG contained in the foam, the quantity of fluorinated GHG contained in the foam in each appliance, and the number of appliances imported for each type of appliance.

(4) For closed cell-foams that are not inside of appliances, the identity of the fluorinated GHG, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the quantity of foam imported or exported (cubic feet) for each type of closed-cell foam.

(5) Dates on which the pre-charged equipment or closed-cell foams were imported or exported.

(6) Ports of entry through which the pre-charged equipment or closed-cell foams passed.

(7) Countries from or to which the pre-charged equipment or closed-cell foams were imported or exported.

We are proposing to collect this information because it is necessary either to understand the total volume of fluorinated GHGs imported or exported

[42] This refers to any holding charge consisting of a fluorinated GHG. Holding charges consisting of other gases, such as nitrogen, are not included.

inside of pre-charged equipment and foams (and thereby contributing to the U.S. supply of fluorinated GHGs) or to verify submitted information.

7. Selection of Recordkeeping Requirements

EPA is proposing to require importers and exporters of equipment and closed cell foams to retain the following records:

(1) A copy of the bill of lading for the import or export,

(2) The invoice for the import or export, and

(3) For imports, the U.S. Customs entry form.

This information is necessary to verify submitted information.

E. Electrical Equipment Manufacture or Refurbishment

1. Definition of the Source Category

This source category comprises electrical equipment manufacturers and refurbishers of SF_6 or PFC-insulated closed-pressure equipment and sealed-pressure equipment including gas-insulated substations, circuit breakers and other switchgear, gas-insulated lines, or power transformers containing sulfur-hexafluoride (SF_6) or perfluorocarbons (PFCs).

Electrical equipment employed to transmit and distribute electricity constitutes the largest use of SF_6 in the world. The dielectric strength and arc-quenching characteristics of SF_6 make it an extremely effective electrical insulator and interrupter. For this reason, the electric power industry in the United States has used this gas since the 1950s in both closed-pressure and sealed-pressure equipment including gas-insulated substations, circuit breakers and other switchgear, and gas-insulated lines. Closed-pressure equipment requires periodic refilling (topping up) with gas during its lifetime, whereas sealed-pressure equipment generally does not. SF_6 has replaced flammable insulating oils in many applications and allows for more compact substations in dense urban areas. SF_6 insulated equipment has also made expansion of the grid through transmission over significantly longer distances economically practical. Currently, there are no available substitutes for SF_6 in this application. For further information, *see* the SF_6 from Electrical Equipment Manufacturers TSD in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

Manufacturers of gas insulated electrical equipment purchase bulk SF_6 gas to: (1) Install a holding or shipping charge in high-voltage closed-pressure equipment, (2) ship alongside closed-pressure equipment for topping off at installation site, (3) fill sealed-pressure equipment with its intended lifetime supply of SF_6, and (4) develop and test equipment.

Emissions of SF_6 from equipment manufacturers can occur during the development and testing of equipment and during equipment filling, but emissions can also occur during the other uses of SF_6 at manufacturing facilities. Refurbishment of equipment generally occurs at facilities used to manufacture new equipment and emissions typically occur during the leak test operations for gas-containing components as well as the disassembly and reassembly of equipment.

PFCs are sometimes used as dielectrics and heat transfer fluids in power transformers. PFCs are also used for retrofitting CFC–113 cooled transformers. The most common PFC used in this application is perfluorohexane (C_6F_{14}). In terms of both absolute and carbon-weighted emissions, PFC emissions from electrical equipment are generally believed to be much smaller than SF_6 emissions from electrical equipment.

According to the U.S. Inventory of Greenhouse Gas Emissions and Sinks: 1990–2007 (EPA 2009), total U.S. estimated emissions of SF_6 from electrical equipment manufacturers were 0.81 million metric tons CO_2e in 2006. EPA is proposing to require reporting from electrical equipment manufacture and refurbishment facilities because these operations represent a significant source, approximately 5 percent of U.S. SF_6 emissions. It is estimated that ten equipment manufacturers were responsible for these emissions.

EPA is seeking comment on whether transformers using PFCs are currently manufactured in the United States EPA is also seeking comment on whether PFC emissions associated with the production of this equipment occur at the same rate as SF_6 emissions from equipment manufacture and whether emissions occur during the same processes. EPA is proposing to include emissions of PFCs emitted during the manufacture or refurbishment of PFC-containing power transformers because while PFCs are known to be used in this application, the National Inventory has no information on the magnitude of this source. PFCs are very potent and persistent greenhouse gases and an accurate inventory of use and emissions from all sources is important.

2. Selection of Reporting Threshold

We propose to require electrical equipment manufacturers to report their SF_6 and PFC emissions if their total annual purchases of SF_6 and PFCs exceed 23,000 lbs. This consumption-based threshold is equivalent to an emissions-based threshold of 25,000 metric tons CO_2 Eq., assuming an average manufacturer emission rate of 10 percent.[43]

In developing this proposed threshold, we considered several emission-based threshold options including 1,000 metric tons CO_2e; 10,000 metric tons CO_2e; 25,000 metric tons CO_2e: and 100,000 metric tons CO_2e. SF_6 and PFC consumption thresholds of 922; 9,220; and 92,200 lbs of SF_6 and PFC were also considered, corresponding to the emission threshold options of 1,000; 10,000; and 100,000 metric tons CO_2e, respectively. Summaries of the threshold options (consumption-based and emissions-based) and the number of equipment manufacturers and emissions covered under each threshold are presented in Table 11 of this preamble.

TABLE 11—THRESHOLD ANALYSIS FOR ELECTRICAL EQUIPMENT MANUFACTURE

Emission threshold level (metric tons CO_2e/yr)	Total national emissions	Total number of facilities	Emissions covered		Facilities covered	
			Metric tons CO_2e/yr	Percent	Facilities	Percent
1,000	814,128	10	814,128	100	10	100
10,000	814,128	10	814,128	100	10	100
25,000	814,128	10	814,128	100	10	100

[43] The 10 percent emission rate is the average of the "ideal" and "realistic" manufacturing emission rates (4 percent and 17 percent, respectively) identified in a paper prepared under the auspices of the International Council on Large Electric Systems (CIGRE) in February 2002 (O'Connell *et al.* 2002).

TABLE 11—THRESHOLD ANALYSIS FOR ELECTRICAL EQUIPMENT MANUFACTURE—Continued

Emission threshold level (metric tons CO_2e/yr)	Total national emissions	Total number of facilities	Emissions covered		Facilities covered	
			Metric tons CO_2e/yr	Percent	Facilities	Percent
100,000	814,128	5	569,890	70	5	50

The proposed consumption threshold and the corresponding emissions threshold level is consistent with general requirements of the Final MRR (74 FR 56260) and provides comprehensive coverage of emissions for this sector. A consumption-based threshold was selected because it permits equipment manufacturers to quickly determine whether they are covered by referring to SF_6 and PFC purchase records.

3. Selection of Proposed Monitoring Methods

We are proposing that all electrical equipment manufacturing facilities where SF_6 and PFC purchases exceed 23,000 lbs per year report all SF_6 and PFC emissions using a mass-balance approach. This would include all emissions from equipment testing, manufacturing (including filling), decommissioning and disposal, refurbishing, and from storage cylinders. We are proposing this approach because it is the most accurate and because all equipment manufacturers should be able to conduct the mass-balance analysis using readily available information.

The proposed monitoring methods are similar to the methodologies described in the 2006 IPCC Guidelines Tier 3 methods for emissions from electrical equipment manufacturing. These methodologies outline a mass-balance approach that is comparable to the proposed approach for subpart DD *Electric Power System Equipment.*

The mass-balance approach we are proposing for electrical equipment manufacturers works by tracking and systematically accounting for all facility uses of SF_6 and PFCs during the reporting year. The quantities of SF_6 and PFCs that cannot be accounted for are assumed to have been emitted to the atmosphere. The emissions of SF_6 and PFCs would be estimated and reported separately.

The following equation describes the proposed facility-level mass-balance approach. (For brevity, the equation refers only to SF_6; however, the method would also apply to PFCs in power transformers.)

Equipment Manufacturing Emissions = Decrease in SF_6 Inventory + Acquisitions of SF_6 − Disbursements of SF_6

Where:

Decrease in SF_6 Inventory = SF_6 stored in containers at the beginning of the year − SF_6 stored in containers at the end of the year

Acquisitions of SF_6 = SF_6 purchased from chemical producers or distributors in bulk + SF_6 returned by equipment users or distributors with or inside equipment + SF_6 returned to site after off-site recycling

Disbursements of SF_6 = SF_6 contained in new equipment delivered to customers + SF_6 delivered to equipment users in containers + SF_6 returned to suppliers + SF_6 sent off-site for recycling + SF_6 sent to destruction facilities.

EPA is seeking comment on the proposed methods for determining disbursements of SF_6 or PFCs, specifically, with respect to SF_6 or PFCs contained in new equipment delivered to customers and SF_6 or PFCs delivered to equipment users in cylinders. Two methods are being proposed. Disbursement of SF_6 or PFCs to customers in new equipment or cylinders could be estimated by weighing containers before and after gas from the containers was used to fill equipment or cylinders, or by using flow meters to measure the amount of gas used to fill equipment or cylinders. EPA requests comment on these two options.

Alone, both of these options would inappropriately count as "disbursements" emissions that occurred between the flow meter or weighed container and the equipment being filled. These emissions could include losses from coupling and decoupling of fill valves and leaks from hoses or other flow lines that connect the container to the equipment that being filled. EPA is therefore proposing to require that these emissions be quantified and subtracted from the disbursement total.

Specifically, EPA is proposing to require that these emissions be estimated using measurements and/or engineering assessments or calculations based on chemical engineering principles or physical or chemical laws or properties. Such assessments or calculations could be based on, as applicable, the internal volume of the hose or line that was open to the atmosphere during coupling and decoupling activities, the internal pressure of the hose or line, the time the hose or line was open to the atmosphere during coupling and decoupling activities, the frequency with which the hose or line was purged and the flow rate during purges. Such methods could also include the use of leak detection methods (*e.g.,* EPA Method 21 and the *Protocol for Equipment Leak Emission Estimates*) to determine a loss factor appropriate to calculate emissions. Unexpected or accidental emissions from the filling lines or hoses would be required to be included in the total.

EPA is seeking comment on the specific methods that should be employed to estimate emission losses from hoses or flow lines and on whether a particular method or set of methods should be required for this estimate. In addition, EPA requests comment on whether emissions downstream of the containers dispensing the SF_6 or PFCs consist solely of emissions from lines or hoses. EPA's understanding is that electrical equipment is at a vacuum and is sealed prior to being filled with SF_6 or PFCs; however, if it contains air or nitrogen and this gas is purged during the filling process, then the method should also account for SF_6 and PFC emissions that occur during such purging.

EPA is also considering other options for accurately measuring the quantities of SF_6 or PFCs disbursed to equipment users in equipment. (These options are described in more detail in the TSD.) One option being considered is to assume that the mass of SF_6 or PFCs disbursed to customers in equipment is equal to the nameplate capacity of the equipment (or, where the equipment is shipped with a partial charge, equal to the nameplate capacity of the equipment times the ratio of the densities of the partial charge and the full charge.) Although the nominal nameplate capacity could be used for this calculation, EPA is concerned that the actual mass of SF_6 or PFCs charged into each piece of equipment may vary by a few percent from the nominal capacity (*e.g.,* because there is some variability in the internal volume of the

equipment or in the density to which the equipment is charged). Because the mass-balance approach requires precise inputs, inaccuracies of even two or three percent could lead to very large inaccuracies in the facility's emissions estimate.

One way of developing a more precise estimate of the nameplate capacity of equipment would be to fill the equipment with a fluid and then to carefully recover the fluid, measuring what was recovered. This fluid could be SF_6, another gas, or a liquid. If SF_6 was used, the equipment would be charged to its operational or shipping SF_6 density using the facility's usual methods and then emptied. The mass of the SF_6 recovered, adjusted slightly for the residual pressure of the SF_6 that would remain in the equipment even at a deep vacuum, could be equated to the full or shipping charge, as applicable. One advantage of this approach is that it would reflect the actual SF_6 charging practices of the facility; one disadvantage is that it could result in small SF_6 emissions during the charging and recovery steps.

If a liquid was used, the equipment would be filled carefully, ensuring that the full volume was filled, and then emptied. The volume of the liquid recovered would be equated to the internal volume of the equipment.[44] This volume times the SF_6 density at the full charge would yield the nameplate capacity of the equipment.

To account for variability, a certain number of these measurements would need to be performed to develop a robust and representative average nameplate capacity (or shipping charge) for each make and model. The specific number of measurements would depend on the variability of the nameplate capacity within each make and model, as discussed in the TSD. It may be appropriate to select equipment samples filled at different times to reflect day-to-day variability in the facility's filling practices and conditions. EPA seeks comment on these other options for accurately measuring the quantities of SF_6 and PFCs disbursed to customers in equipment and/or cylinders.

Another option is to require that the equipment filled with SF_6 or the PFC from the container be weighed before and after filling. The tare weight of the equipment would then be subtracted from the weight of the filled equipment to determine the weight of the gas in the equipment, and therefore, the weight of the actual disbursement. One potential concern regarding this option is that the mass of the SF_6 or PFC charged into the equipment is likely to be low relative to the mass of the equipment; thus, it may be difficult to obtain a precise measurement of the mass of the SF_6 or PFC using this method (*i.e.*, within 1 percent) even if the scale is precise and accurate to within 1 percent of full scale. EPA requests comment on this approach.

Installation of Electrical Equipment at Electric Power Systems. EPA also requests comment on two issues related to equipment installation and commissioning that is performed by equipment manufacturers at electric power systems. The first issue is whether an equipment installation mass-balance equation is required to measure emissions from equipment installation and commissioning that is performed by equipment manufacturers at utility locations. Where the manufacturer filled the equipment before transferring custody to the equipment user, EPA is assuming that the manufacturer would be responsible for the associated emissions. This would also apply to equipment that was filled at the factory but whose charge leaked out before being delivered to the customer. Quantitative methods for addressing these issues are discussed in more detail in the TSD.

The second issue is whether manufacturers should be required to certify to equipment users the actual quantity (mass) of SF_6 or PFCs charged into the equipment at installation. EPA understands that in some cases, manufacturers may deliberately exceed the nameplate capacity of equipment when charging it, *e.g.*, to postpone the re-fill of the equipment in the event that the equipment develops a leak. If this is the case, then the actual initial charge of the equipment should be conveyed clearly to the equipment user, and the mass-balance approach used by the equipment user should be adjusted to reflect the over-charge. If it is not, the user will underestimate emissions. (These issues are discussed in more detail in the TSD.) EPA requests comment on how frequently equipment is over-charged at installation, and on quantitative methods for compensating for this overcharge in user emissions estimates (*i.e.*, under proposed subpart DD).

Other Options Considered. In developing the proposed approach, we reviewed the 2006 IPCC Guidelines, the United States GHG Inventory, DOE 1605(b), EPA's Climate Leaders Program, and The Climate Registry. In our review of the IPCC Guidelines, we also considered the IPCC Tier 1 and the IPCC Tier 2 methods for calculating and reporting SF_6 and PFC emissions. Although the IPCC Tier 1 and IPCC Tier 2 methods are simple, IPCC does not provide default emission factors for the United States due to lack of data. Furthermore, SF_6 use in electrical equipment manufacturing is largely dependent on the type of equipment being produced and the specific handling practices at facilities. Applying an emission factor to all equipment manufacturers would not take into account the different types of equipment being produced at each facility or the variation in handling practices among facilities. Nor would it provide data of sufficient accuracy for the source or on a per facility basis. As a result, we are not proposing the IPCC Tier 1 or Tier 2 method.

We are not proposing to require continuous emissions monitoring (CEMs) because of insufficient information on which to base a decision and because CEMs is not expected to be practical for this source category at this time due to the intermittent and widespread nature of the emissions. EPA seeks comment on whether continuous emissions monitoring is technically feasible for this source category.

4. Selection of Procedures for Estimating Missing Data

It is expected that equipment manufacturers should be able to obtain 100 percent of the data needed to perform the mass-balance calculations for both SF_6 and PFCs. The use of the mass-balance approach requires correct records for all inputs. However, if needed, missing data can be replaced using data from similar manufacturing operations, and from similar equipment testing and decommissioning activities for which data are available.

5. QA/QC Requirements

We propose that electrical equipment manufacturers be required to use flowmeters or scales that are accurate and precise to within one percent of full scale. In addition, we are proposing to require manufacturers to establish procedures for and document their measurements and calculations under this subpart, including check-out sheets and weigh-in procedures for cylinders, residual gas amounts in cylinders sent back to suppliers, invoices for gas and equipment purchases or sales, and documentation of recycling and destruction. The records that are being proposed are the minimum needed to reproduce and confirm emission calculations.

[44] The temperature of the liquid would need to be kept constant throughout this exercise to obtain an accurate measurement of the volume.

6. Selection of Data Reporting Requirements

We propose annual reporting for the electrical equipment manufacturing and refurbishing industry. Equipment manufacturers would report all SF_6 and PFC emissions, including those from equipment testing, equipment manufacturing, and bulk SF_6 and PFC handling. However, the emissions would not need to be broken down and reported separately for testing, manufacturing, or bulk SF_6 and PFC handling. Along with their emissions, electrical equipment manufacturers would be required to submit the following supplemental data: SF_6 and PFCs with or inside equipment delivered to customers, the nameplate capacity of the equipment delivered to customers, SF_6 and PFCs returned by customers with or inside equipment, bulk SF_6 and PFC purchases, SF_6 and PFCs sent off-site for destruction or to be recycled, SF_6 and PFCs returned from offsite after recycling, SF_6 and PFCs stored in containers at the beginning and end of the year, SF_6 and PFCs returned to suppliers. For any missing data, manufacturers would be required to report the reason the data were missing, the length of time the data were missing, the method used to estimate emissions in their absence, and the quantity of emissions thereby estimated.

These data would be submitted because they are the minimum data that are needed to understand and reproduce the emission calculations that are the basis of the reported emissions.

7. Selection of Records That Must Be Retained

We propose that electrical equipment manufacturers be required to keep records documenting (1) their adherence to the QA/QC requirements specified in the proposed rule, and (2) the data that would be included in their emission reports, as specified above.

F. Subpart A Revisions

Amendments to the General Provisions. In a separate rulemaking package that was recently published (March 16, 2010), EPA issued minor harmonizing changes to the general provisions for the GHG reporting rule (40 CFR part 98, subpart A) to accommodate the addition of source categories not included in the 2009 final rule (*e.g.*, subparts proposed in April 2009 but not finalized in 2009, any new subparts that may be proposed in the future). The changes update 98.2(a) on rule applicability and 98.3 regarding the reporting schedule to accommodate any additional subparts and the schedule for their reporting obligations (*e.g.*, source categories finalized in 2010 would not begin data collection until 2011 and reporting in 2012).

In particular, we restructured 40 CFR 98.2(a) to move the lists of source categories from the text into tables. A table format improves clarity and facilitates the addition of source categories that were not included in calendar year 2010 reporting and would begin reporting in future years. A table, versus list, approach allows other sections of the rule to be updated automatically when the table is updated; a list approach requires separate updates to the various list references each time the list is changed. In addition to reformatting the 98.2(a)(1)–(2) lists into tables, other sections of subpart A were reworded to refer to the source category tables because the tables make it clear which source categories are to be considered for determining the applicability threshold and reporting requirements for calendar years 2010, 2011, and future years.

The source categories proposed in this notice would be added within 40 CFR 98.2 as follows. The following source categories would be added to the list of "all-in" source categories referenced in 40 CFR 98.2(a)(1), because they have a production capacity or gas consumption threshold rather than a CO_2e emission threshold:

- Electric power systems that include electrical equipment with a total nameplate capacity that exceeds 17,820 lbs (7,838 kg) of SF_6 or perfluorocarbons (PFCs) (subpart DD).
- Electric power equipment manufacturing with total annual SF_6 and PFC purchases (combined) that exceed 23,000 lbs per year (subpart SS).

The following source categories would be subject to the rule if facility emissions exceed 25,000 metric tons CO_2e per year. Therefore, these source categories would be added to the list of emission threshold source categories referenced in 40 CFR 98.2(a)(2).

- Fluorinated gas production facilities whose emissions would exceed 25,000 $mtCO_2e$ in the absence of control technologies (subpart L).
- Facilities with electronics manufacturing processes (as defined in proposed 40 CFR part 98, subpart I).

In addition, importers and exporters of pre-charged equipment or closed-cell foam products containing fluorinated GHGs, N_2O, or CO_2 would be added to the list of suppliers referenced in 40 CFR 98.2(a)(4). For all of these source categories, facilities would be required to begin collecting data in 2011 for reporting in 2012.

Today's proposed rule includes a number of definitions applicable to specific source categories. The agency is not planning to add these definitions to the definitions section in Subpart A because these definitions relate to these specific subparts and do not have broader applicability to EPA's mandatory reporting regulations. Instead, EPA intends to include these definitions in the applicable subparts. EPA has sought to avoid any conflict between these subpart-specific definitions and the definitions in Subpart A. In one instance, the supplemental proposal for electric power systems, EPA is proposing to use a category-specific definition of facility rather than the general definition of facility in the General Provisions. The reasons for this category-specific definition of facility are set forth in section II.C of this preamble. The remaining definitions are intended as supplements to the definitions section in the General Provisions. EPA does not believe these definitions create conflicts with the General Provisions, although it welcomes comments on this issue. To the extent regulated entities are in doubt as to which definition applies, they should assume that the category-specific definitions are controlling.

We propose to amend 40 CFR 98.7 (incorporation by reference) to include standard methods used in the proposed subparts. In particular, we would add the 2006 International SEMATECH Manufacturing Initiative's Guidelines for Environmental Characterization of Semiconductor Process Equipment and SEMI E10–0304 Specification for Definition and Measurement of Equipment Reliability, Availability, and Maintainability (2006), which are referenced in proposed 40 CFR 98.94 (Monitoring and QA/QC Requirements for 40 CFR part 98, subpart I, electronics manufacturing) and 40 CFR 98.97 (Records that must be retained). In addition, we propose to revise the paragraphs listing several ASME standards that are already contained in 40 CFR 98.7 to indicate that these standards are also referenced by proposed 40 CFR 98.124 (Monitoring and QA/QC requirements in proposed 40 CFR part 98, subpart L, fluorinated gas production).

III. Economic Impacts of 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 proposed rule can be found in the text of the economic

impact analysis (EIA) in the docket for this rulemaking (EPA–HQ–OAR–2009–0927).

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 economic impact analysis (EIA).

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 fluorinated GHG reporting rule would be approximately $6.1 million in the first year and $3.9 million in subsequent years ($2006). This includes a public sector burden estimate of $384,000 for program implementation and verification activities. EPA also considered an alternative national cost scenario in order to assess national cost estimates if selected subpart I facilities validate the DRE of abatement devices. Under this scenario, the total annualized costs incurred under the fluorinated GHG reporting rule would be approximately $1.7 million higher (or $7.8 million first year; $5.6 million subsequent years). Table 12 shows the first year and subsequent year costs by subpart. In addition, it presents the cost per ton reported, and the relative share of the total cost represented by each subpart.

TABLE 12—NATIONAL ANNUALIZED MANDATORY REPORTING COSTS ESTIMATES (2008$): SUBPARTS I, L, OO AND SS

Subpart	First year			Subsequent years		
	Millions 2006$	$/ton	Share (%)	Millions 2006$	$/ton	Share (%)
Subpart I—Electronics Industry	$2.9	$0.51	42	$2.6	$0.45	67
Subpart L—Fluorinated Gas Production	2.1	0.20	47	0.3	0.08	7
Subpart OO—Imports and Exports of Fluorinated GHGs	0.7	0.02	10	0.6	0.02	16
Subpart SS—Electrical Equipment Manufacture and Refurbishment and Manufacturing of Electrical Components	0.02	0.01	0.3	0.02	0.01	1
Private Sector, Total	5.7	.....	94	3.5	.....	90
Public Sector, Total	0.4	.....	6	0.4	.....	10
Total	6.1	.....	100	3.9	.....	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 the proposed 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 13 of this preamble summarizes cost-to-sales ratios for affected industries.

TABLE 13—ESTIMATED COST-TO-SALES RATIOS FOR AFFECTED ENTITIES

[First Year, 2006$]

NAICS	NAICS description	Subpart	Average cost per entity ($/entity)	All enterprises
334413	Semiconductor and Related Device Manufacturing (Semiconductors)	I	$31,748	0.05%

TABLE 13—ESTIMATED COST-TO-SALES RATIOS FOR AFFECTED ENTITIES—Continued

[First Year, 2006$]

NAICS	NAICS description	Subpart	Average cost per entity ($/entity)	All enterprises
334413	Semiconductor and Related Device Manufacturing (MEMS)	I	5,239	0.01
334413	Semiconductor and Related Device Manufacturing (LCD)	I	7,598	0.01
334119	Other Computer Peripheral Equipment Manufacturing (Photovoltaics)	I	8,777	0.04
325120	Industrial Gas Manufacturing	L	151,045	1.44
326140	Polystyrene Foam Product Manufacturing	OO	3,364	0.03
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	OO	3,364	0.03
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	OO	3,364	0.01
335313	Switchgear and Switchboard Apparatus Manufacturing	OO	3,364	0.02
336391	Motor Vehicle Air-Conditioning Manufacturing	OO	3,364	0.01
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.	OO	3,364	0.05
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	OO	3,364	0.02
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	OO	3,364	0.05
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.	OO	3,364	0.07
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	OO	3,364	0.10
443111	Household Appliance Stores	OO	3,364	0.27
443112	Radio, Television and Other Electronics Stores	OO	3,364	0.15
424610 [b]	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	OO	3,364	0.04
33361	Engine, Turbine, and Power Transmission Equipment Manufacturing	SS	2,213	0.01
33531	Electrical Equipment Manufacturing	SS	2,213	0.02

[b] The 2002 SUSB data uses 1997 NAICS codes. For this industry, the relevant code is NAICS 422610.

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 IV.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 14 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 20 or more employees).

TABLE 14—ESTIMATED COST-TO-SALES RATIOS BY INDUSTRY AND ENTERPRISE SIZE

[First Year, 2006$] [a]

NAICS	NAICS description	Subpart	SBA size standard (effective March 11, 2008)	Average cost per entity ($/entity)	All enterprises	Owned by enterprises with:					
						1 to 20 employees	20 to 99 employees	100 to 499 employees	500 to 749 employees	750 to 999 employees	1,000 to 1,499 employees
334413	Semiconductor and Related Device Manufacturing (Semiconductors).	I	500	$31,748	0.05%	2.07%	0.40%	0.12%	0.08%	0.02%	0.04%
334413	Semiconductor and Related Device Manufacturing (MEMS).	I	500	5,239	0.01%	0.34%	0.07%	0.02%	0.01%	0.00%	0.01%
334413	Semiconductor and Related Device Manufacturing (LCD).	I	500	7,598	0.01%	0.50%	0.10%	0.03%	0.02%	0.01%	0.01%

TABLE 14—ESTIMATED COST-TO-SALES RATIOS BY INDUSTRY AND ENTERPRISE SIZE—Continued

[First Year, 2006$] [a]

NAICS	NAICS description	Subpart	SBA size standard (effective March 11, 2008)	Average cost per entity ($/entity)	All enterprises	Owned by enterprises with:					
						1 to 20 employees	20 to 99 employees	100 to 499 employees	500 to 749 employees	750 to 999 employees	1,000 to 1,499 employees
334119	Other Computer Peripheral Equipment Manufacturing (Photovoltaics).	I	1,000	8,777	0.04%	0.56%	0.09%	0.03%	0.01%	0.02%	0.01%
325120	Industrial Gas Manufacturing.	L	1,000	151,045	1.44%	31.03%	1.03%	4.26%	NA	NA	NA
326140	Polystyrene Foam Product Manufacturing.	OO	500	3,364	0.03%	0.28%	0.07%	0.04%	NA	NA	0.01%
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.	OO	500	3,364	0.03%	0.21%	0.06%	0.02%	0.02%	NA	NA
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	OO	750	3,364	0.01%	0.25%	0.04%	0.02%	0.01%	0.01%	0.01%
335313	Switchgear and Switchboard Apparatus Manufacturing.	OO	750	3,364	0.02%	0.26%	0.06%	0.02%	NA	NA	NA
336391	Motor Vehicle Air-Conditioning Manufacturing.	OO	750	3,364	0.01%	0.37%	0.08%	NA	NA	NA	NA
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.	OO	100	3,364	0.05%	0.11%	0.03%	0.04%	0.05%	0.03%	0.04%
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	OO	100	3,364	0.02%	0.08%	0.02%	0.01%	0.00%	0.01%	0.01%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	OO	100	3,364	0.05%	0.12%	0.02%	0.04%	0.07%	0.03%	0.10%
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.	OO	100	3,364	0.07%	0.15%	0.06%	0.06%	0.12%	0.03%	NA
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.	OO	100	3,364	0.10%	0.18%	0.05%	0.11%	0.09%	0.05%	NA
443111	Household Appliance Stores.	OO	$9 M	3,364	0.27%	0.47%	0.10%	0.08%	NA	NA	NA
443112	Radio, Television and Other Electronics Stores.	OO	$9 M	3,364	0.15%	0.59%	0.17%	0.26%	NA	NA	NA
424610 [b]	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	OO	100	3,364	0.04%	0.10%	0.03%	0.02%	0.01%	0.01%	0.06%
33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.	SS	500–1,000	2,213	0.01%	0.19%	0.03%	0.01%	0.01%	0.01%	0.01%
33531	Electrical Equipment Manufacturing.	SS	750–1,000	2,213	0.02%	0.22%	0.04%	0.01%	0.01%	0.00%	0.01%

[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] The 2002 SUSB data uses 1997 NAICS codes. For this industry, the relevant code is NAICS 422610.

EPA acknowledges that several enterprise categories have ratios that exceed this threshold (*e.g.,* enterprise with one to 20 employees). The Industrial Gas Manufacturing industry (NAICS 325120) has sales test results over 1 percent for all enterprises. The following enterprise categories have sales test results over 1 percent and for entities with less than 20 employees: Industrial Gas Manufacturing (325120) and Semiconductor and Related Device Manufacturing (334413).

EPA took a more detailed look at the categories noted above as having sales test ratios above 1 percent. EPA collected information on the entities likely to be covered by the rule as part of the expert sub-group process.

Industrial Gas Manufacturing (325120). Subpart L covers facilities included in NAICS codes for Industrial Gas Manufacturing (NAICS 325120). Within this subpart, EPA identified 13 ultimate parent company names covered by the proposed rule. Using publicly available sources (*e.g.,* Hoovers.com), we collected parent company sales and employment data and found that only one company could be classified as a small entity. Using the cost data for a representative entity (*see* Section 4), EPA determined the small entity's cost-to-sales ratio is below one percent.

Electronic Computer Manufacturing (334111) and Semiconductor and Related Device Manufacturing (334413). Data on the number of electronics facilities comes from the World Fab Watch and the Flat Panel Display Fabs on Disk datasets. The census data categories cover more establishments than just those facilities covered in the rule. Subpart I covers facilities included in NAICS codes for Semiconductor and Related Device Manufacturing (334413) and Other Computer Peripheral Equipment Manufacturing (334119). The World Fab Watch dataset includes 216 facilities (94 of which exceed the 25,000 ton threshold), while the sum of the two NAICS codes include 1,903 establishments. Covered facilities with emissions greater than 25,000 $MtCO_2e$ per year are unlikely to be included in the 1 to 20 employees size category. Emissions are roughly proportional to production, and establishments with 1 to 20 employees total only 1.6 percent of total receipts, while the proposed threshold excludes 6 percent of industry emissions from the least-emitting facilities. Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless took several steps to reduce the impact of this rule on small entities. For example, EPA is proposing monitoring and reporting requirements that build off of the UIC program. In addition, EPA is proposing equipment and methods that may already be in use by a facility for compliance with its UIC permit. Also, EPA is requiring annual reporting instead of more frequent reporting.

In addition to the public hearing that EPA plans to hold, EPA has an open door policy, similar to the outreach conducted during the development of the proposed and final MRR. Details of these meetings are available in the docket (EPA–HQ–OAR–2009–0927).

E. What are the benefits of the rule for society?

EPA examined the potential benefits of the Fluorinated GHG Reporting Rule. EPA's previous analysis of the GHG reporting rule discussed the benefits of a reporting system with respect to policy making relevance, transparency issues, 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.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not by itself an "economically significant regulatory action" because it is unlikely to have an annual economic effect of less than $100 million. EPA's cost analysis, presented in Section 4 of the Economic Impact Analysis (EIA), estimates that for the minimum reporting under the recommended regulatory option, the total annualized cost of the rule will be approximately $6.1 million (in 2006$) during the first year of the program and $3.9 million in subsequent years (including $0.4 million of programmatic costs to the Agency). This proposed action adds subparts I, L, OO, and SS to the MRR, which was a significant regulatory action. Thus, EPA has chosen to analyze the impacts of this proposed rule as if it were significant. EPA submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this proposed action.

In addition, EPA prepared an analysis of the potential costs associated with this proposed action. This analysis is contained in the Economic Impact Analysis (EIA), *Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions F–Gases Subparts I, L, OO, and SS* (EPA–HQ–OAR–2009–0927). A copy of the analysis is available in the docket for this action and the analysis is briefly

summarized here. In this report, EPA has identified the regulatory options considered, their costs, the emissions that would likely be reported under each option, and explained the selection of the option chosen for the rule. Overall, EPA has concluded that the costs of the F-Gases Rule are outweighed by the potential benefits of more comprehensive information about GHG emissions.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number [2373.01].

EPA has identified the following goals of the mandatory GHG reporting system:

- Obtain data that is of sufficient quality that it can be used to analyze and inform the development of a range of future climate change policies and potential regulations.
- Balance the rule's coverage to maximize the amount of emissions reported while excluding small emitters.
- Create reporting requirements that are, to the extent possible and appropriate, consistent with existing GHG reporting programs in order to reduce reporting burden for all parties involved.

The information from fluorinated GHG facilities will allow EPA to make well-informed decisions about whether and how to use the CAA to regulate these facilities and encourage voluntary reductions. Because EPA does not yet know the specific policies that will be adopted, the data reported through the mandatory reporting system should be of sufficient quality to inform policy and program development. Also, consistent with the Appropriations Act, the reporting rule covers a broad range of sectors of the economy.

This information collection is mandatory and will be carried out under CAA section 114. Information identified and marked as Confidential Business Information (CBI) will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. However, emissions information collected under CAA section 114 generally cannot be claimed as CBI and will be made public.[45]

The projected cost and hour respondent burden in the ICR, averaged over the first three years after promulgation, is $4.51 million and 81,500 hours per year. The estimated average burden per response is 272 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 276. The cost burden to respondents resulting from the collection of information includes the total capital and start-up cost annualized over the equipment's expected useful life (averaging $44,000 per year) a total operation and maintenance component (averaging $24,000 per year), and a labor cost component (averaging $4.44 million per year). Burden is defined at 5 CFR Part 1320.3(b).

These cost numbers differ from those shown elsewhere in the EIA because ICR costs represent the average cost over the first three years of the rule, but costs are reported elsewhere in the EIA for the first year of the rule. Also, the total cost estimate of the rule in the EIA includes the cost to the Agency to administer the program. The ICR differentiates between respondent burden and cost to the Agency, estimated to be $384,000.

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 the final rule.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0927. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [date of publication], a comment to OMB is best assured of having its full effect if OMB receives it by [publication plus 30]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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, For the fluorinated GHG Reporting Rule, 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 100 to number of employees fewer than 1000; one affected NAICS, 44311, defines small entities as those with sales below $9 million. EIA tables 5–11 and 5–12 present small business criteria and enterprise size distribution data for affected NAICS.EPA assessed the potential impacts of the proposed 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.[46] 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.

[45] Although CBI determinations are usually made on a case-by-case basis, EPA has issued guidance in an earlier **Federal Register** notice on what constitutes emissions data that cannot be considered CBI (956 FR 7042–7043, February 21, 1991). As discussed in Section II.R of the preamble to the Final MRR, EPA will be initiating a separate notice and comment process to make CBI determinations for the data collected under this proposed rulemaking.

[46] For the one to 20 employee category, we exclude SUSB data for enterprises with zero employees. These enterprises did not operate the entire year.

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 two NAICS, however, the costs exceed 1 percent of sales for the 1–20 employee size category; for these NAICS, a more detailed assessment was conducted. For NAICS 334413, firms with fewer than 20 employees produce less than 2 percent of output; firms below the 25,000 Mt CO_2e threshold release approximately 6 percent of emissions. Because emissions and production levels are highly correlated, firms with fewer than 20 employees are generally not expected to be affected by the proposed rule; if they are, their costs are likely to be lower than the overall average costs used in the screening analysis. Thus, EPA does not expect the proposed rule to impose significant costs to a substantial number of small entities in NAICS 334413. Subpart L covers facilities included in NAICS codes for Industrial Gas Manufacturing (NAICS 325120). Within this subpart, EPA identified 13 ultimate parent company names covered by the proposed rule. Using publicly available sources (*e.g.,*hoovers.com), we collected parent company sales and employment data and found that only one company could be classified as a small entity. Using the cost data for a representative entity (*see* Section 4 of the EA), EPA determined the small entity's cost-to-sales ratio is below one percent.

After considering the economic impacts of today's proposed rule on small entities, I therefore certify that this proposed 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.

In addition to the public hearing that EPA plans to hold, EPA has an open door policy, similar to the outreach conducted during the development of the proposed and final MRR.

Details of these meetings are available in the docket (EPA–HQ–OAR–2009–0927).

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 proposed 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 proposed rule are approximately $6.1 million in the first year, and $3.9 million per year in subsequent years. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Facilities subject to the proposed rule include facilities that manufacture, sell, import or export fluorinated GHG related products. None of the facilities currently known to undertake these activities are owned by small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies to facilities that manufacture, sell, import, or export fluorinated GHG related products. Few State or local 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, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications."

This proposed rule is not expected to have Tribal implications, as specified in Executive Order 13175. This regulation applies to facilities that manufacture, sell, import, or export fluorinated GHG related products. Few facilities expected to be affected by the rule are likely to be owned by Tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA sought opportunities to provide information to Tribal governments and representatives during development of the MRR rule. In consultation with EPA's American Indian Environment Office, EPA's outreach plan included Tribes. During the proposal phase, EPA staff provided information to Tribes through conference calls with multiple Indian working groups and organizations at EPA that interact with Tribes and through individual calls with two Tribal board members of TCR. In addition, EPA prepared a short article on the GHG reporting rule that appeared on the front page of a Tribal newsletter—*Tribal Air News*—that was distributed to EPA/OAQPS's network of Tribal organizations. EPA gave a presentation on various climate efforts, including the mandatory reporting rule, at the National Tribal Conference on Environmental Management in June, 2008. In addition, EPA had copies of a short information sheet distributed at a meeting of the National Tribal Caucus. EPA participated in a conference call with Tribal air coordinators in April 2009 and prepared a guidance sheet for Tribal governments on the proposed rule. It was posted on the MRR Web site and published in the Tribal Air Newsletter. For a complete list of Tribal contacts, *see* the "Summary of EPA Outreach Activities for Developing the Greenhouse Gas Reporting Rule," in the Docket for the initial proposed rule

(EPA–HQ–OAR–2008–0508–055). In addition to the consultation activities supporting the MRR, EPA continues to provide requested information to Tribal governments and representatives during development of the Track II rules such as this proposed rulemaking. EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed 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 proposed rule 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 proposed rule is not likely to have any adverse energy effects. This proposed rule relates to monitoring, reporting and recordkeeping at facilities that manufacture, sell, import, or export fluorinated GHG related products and does not impact energy supply, distribution or use. Therefore, we conclude that this proposed 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 (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 proposed rulemaking involves technical standards. EPA will use voluntary consensus standards from at least seven different voluntary consensus standards bodies, including the following: ASTM, ASME, ISO, Gas Processors Association, American Gas Association, American Petroleum Institute, and National Lime Association. These voluntary consensus standards will help facilities monitor, report, and keep records of GHG emissions. No new test methods were developed for this proposed rule. Instead, from existing rules for source categories and voluntary greenhouse gas programs, EPA identified existing means of monitoring, reporting, and keeping records of greenhouse gas emissions. The existing methods (voluntary consensus standards) include a broad range of measurement techniques, such as methods to measure gas or liquid flow; and methods to gauge and measure petroleum and petroleum products. The test methods are incorporated by reference into the proposed rule and are available as specified in 40 CFR 98.7.

By incorporating voluntary consensus standards into this proposed rule, EPA is both meeting the requirements of the NTTAA and presenting multiple options and flexibility in complying with the proposed rule. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed regulation.

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

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

Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs (Page 229 of 363)

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

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: March 22, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

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

2. Section 98.7 is amended as follows:
a. By revising paragraph (d)(1).
b. By revising paragraph (d)(2).
c. By revising paragraph (d)(3).
d. By revising paragraph (d)(4).
e. By revising paragraph (d)(5).
f. By revising paragraph (d)(6).
g. By revising paragraph (d)(7).
h. By revising paragraph (d)(8).
i. By revising paragraph (e)(30).
j. By adding paragraph (k).
k. By adding paragraph (l).

§ 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), § 98.124(k), § 98.244(b), § 98.254(c), § 98.344(c), and § 98.364(e).

(2) ASME MFC–4M–1986 (Reaffirmed 1997) Measurement of Gas Flow by Turbine Meters, IBR approved for § 98.34(b), § 98.124(k), § 98.244(b), § 98.254(c), § 98.344(c), 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), § 98.124(k), and § 98.244(b).

(4) ASME MFC–6M–1998 Measurement of Fluid Flow in Pipes Using Vortex Flowmeters, IBR approved for § 98.34(b), § 98.124(k), § 98.244(b), § 98.254(c), § 98.344(c), 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), § 98.124(k), § 98.244(b), § 98.254(c), § 98.344(c), and § 98.364(e).

(6) ASME MFC–9M–1988 (Reaffirmed 2001) Measurement of Liquid Flow in Closed Conduits by Weighing Method, IBR approved for § 98.34(b), § 98.124(k), and § 98.244(b).

(7) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters, IBR approved for § 98.124(k), § 98.244(b), § 98.254(c), and § 98.344(c).

(8) ASME MFC–14M–2003 Measurement of Fluid Flow Using Small Bore Precision Orifice Meters, IBR approved for § 98.124(k), § 98.244(b), § 98.254(c), § 98.344(c), and § 98.364(e).

* * * * *

(e) * * *

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(30) ASTM D6348–03 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for § 98.54(b), § 98.124(c), and § 98.224(b).

* * * * *

(k) The following material is available from the International SEMATECH Manufacturing Initiative, *http://ismi.sematech.org.*

(1) Guideline for Environmental Characterization of Semiconductor Process Equipment, International SEMATECH Manufacturing Initiative Technology Transfer #06124825B–ENG. (2006).

(l) The following material is available for purchase from SEMI, 3081 Zanker Road, San Jose, CA 95134, (408) 943–6900, *http://www.semi.org.*

(1) SEMI E10–0304 Specification for Definition and Measurement of Equipment Reliability, Availability, and Maintainability (2004).

(2) [Reserved]

3. Add subpart I to read as follows:

Subpart I—Electronics Manufacturing

Sec.

Subpart I—Electronics Manufacturing

§ 98.90 Definition of the source category.

(a) The electronics source category consists of any of the processes listed in paragraphs (a)(1) through (a)(6) of this section. Electronics manufacturing facilities include, but are not limited to, facilities that manufacture semiconductors, liquid crystal displays (LCDs), micro-electro-mechanical systems (MEMS), and photovoltaic cells (PV).

(1) Each electronics manufacturing production process in which the etching process uses plasma-generated fluorine atoms and other reactive fluorine-containing fragments, which chemically react with exposed thin-films (*e.g.*, dielectric, metals) and silicon to selectively remove portions of material.

(2) Each electronics manufacturing production process in which chambers used for depositing thin films are cleaned periodically using plasma-generated fluorine atoms and other reactive fluorine-containing fragments from fluorinated and other gases.

(3) Each electronics manufacturing production process in which wafers are cleaned using plasma generated fluorine atoms or other reactive fluorine-containing fragments to remove residual material from wafer surfaces.

(4) Each electronics manufacturing production process in which some fluorinated compounds can be transformed in the plasma processes into different fluorinated compounds which are then exhausted, unless abated, into the atmosphere.

(5) Each electronics manufacturing production process in which the chemical vapor deposition process or other manufacturing processes use N_2O.

(6) Each electronics manufacturing production process in which fluorinated GHGs are used as heat transfer fluids to cool process equipment, control temperature during device testing, and solder semiconductor devices to circuit boards.

(b) [Reserved]

§ 98.91 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains an electronics manufacturing process and the facility meets the requirements of either § 98.2(a)(1) or (a)(2). To calculate GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in paragraph § 98.2(a)(2), calculate process emissions from electronics manufacture by using either paragraph (a), (b), (c), or (d) of this section, as appropriate.

(a) Semiconductor manufacturers shall calculate process emissions for applicability purposes using the default emission factors shown in Table I–1 of this subpart and Equation I–1 of this section.

$$E_T = 1.1 * \sum_i S * EF_i * 0.001 \qquad \text{(Eq. I-1)}$$

Where:

E_T = Total annual process emissions for applicability purposes (metric tons).
1.1 = Factor accounting for heat transfer fluid emissions, estimated as 10 percent of total clean and etch emissions at a facility.
S = 100 percent of manufacturing capacity of a facility (m^2).
EF_i = Emission factor for input gas i.
0.001 = Conversion factor from kg to metric tons.

(b) LCD manufacturers shall calculate process emissions for applicability purposes using the default emission factors shown in Table I–1 of this subpart and Equation I–2 of this section.

$$E_T = \sum_i S * EF_i * 0.000001 \qquad \text{(Eq. I-2)}$$

Where:

E_T = Total annual process emissions for applicability purposes (metric tons).
S = 100 percent of manufacturing capacity of a facility (m^2).
EF_i = Emission factor for input gas i.
0.000001 = Conversion factor from g to metric tons.

(c) MEMS manufacturers shall calculate process emissions for applicability purposes using the default emission factors shown in Table I–1 of this subpart and Equation I–3 of this section.

$$E_T = \sum_i S * EF_i * 0.001 \qquad \text{(Eq. I-3)}$$

Where:

E_T = Total annual process emissions for applicability purposes (metric tons).
S = 100 percent of manufacturing capacity of a facility (m^2).
EF_i = Emission factor for input gas i.
0.001 = Conversion factor from kg to metric tons.

(d) PV manufacturers shall calculate process emissions for applicability purposes using gas-appropriate GWP values shown in Table A–1 to subpart A and equation I–4 of this section.

$$E_T = \sum_i C_i * GWP_i * 0.001 \qquad \text{(Eq. I-4)}$$

Where:

E_T = Total annual process emissions for applicability purposes (metric tons).
C_i = Annual fluorinated GHG (gas i) purchases or consumption (kg).
GWP_i = Gas-appropriate GWP.
0.001 = Conversion factor from kg to metric tons.

§ 98.92 GHGs to report.

(a) You shall report emissions of N_2O and fluorinated GHGs (as defined in § 98.6). The fluorinated GHGs that are emitted from electronics production processes include, but are not limited to, those listed in Table I–2 of this subpart. You must report:

(1) Fluorinated GHGs from plasma etching.

(2) Fluorinated GHGs from chamber cleaning.

(3) Fluorinated GHGs from wafer cleaning.

(4) N_2O from chemical vapor deposition and other manufacturing processes.

(5) Fluorinated GHGs from heat transfer fluid use.

(b) CO_2, CH_4, and N_2O combustion emissions from each stationary combustion unit. You must calculate and report these emissions under subpart C of this part (General Stationary Fuel Combustion Sources) by following the requirements of subpart C.

§ 98.93 Calculating GHG emissions.

(a) You shall calculate annual facility-level emissions for each fluorinated GHG used at your facility, for each process type used at your facility (plasma etching, chamber cleaning, or wafer cleaning) as appropriate, using equations I–5 and I–6 of this section and according to the procedures in paragraph (a)(1), (a)(2), or (a)(3) of this section.

$$processtypeE_i = \sum_{j=1}^{N} E_{ij} \qquad \text{(Eq. I-5)}$$

Where:

processtypeE_i = Annual emissions of input gas i from the processes type (metric tons).
E_{ij} = Annual emissions of input gas i from individual process j or process category j (metric tons).
N = The total number of individual processes j or process categories j, which depend on the electronics manufacturing facility and emission calculation methodology.

$$processtypeBE_k = \sum_{j=1}^{N} \sum_i BE_{kij} \qquad \text{(Eq. I-6)}$$

Where:

processtypeBE_k = Annual emissions of by-product gas k from the processes type (metric tons).
BE_{kij} = Annual emissions of by-product k formed from input gas i during individual process j or process category j (metric tons).
N = The total number of individual processes j or process categories j, which depend on the electronics manufacturing facility and emission calculation methodology.

(1) Semiconductor facilities that fabricate devices on wafers measuring 300 mm or less in diameter shall calculate annual facility-level emissions of each fluorinated GHG used at a facility for each fluorinated GHG-using process type, either from all individual processes at that facility in accordance with § 98.94(d), or from process categories as defined in this paragraph (a)(1).

(i) All etching process categories for which annual fluorinated GHG emissions shall be calculated are defined in this paragraph (a)(1)(i).

(A) Oxide etch means any process using fluorinated GHG reagents to selectively remove SiO_2, SiO_x-based or fully organic-based thin-film material that has been deposited on a wafer during semiconductor device manufacturing.

(B) Nitride etch means any process using fluorinated GHG reagents to selectively remove SiN, SiON, Si_3N_4, SiC, SiCO, SiCN, *etc.* (represented by the general chemical formula, $Si_wO_xN_yX_z$ where w, x, y and z are zero or integers and X can be some other element such as carbon) that has been deposited on a wafer during semiconductor manufacturing.

(C) Silicon etch also often called polysilicon etch means any process using fluorinated GHG reagents to selectively remove silicon during semiconductor manufacturing.

(D) Metal etch means any process using fluorinated GHG reagents associated with removing metal films (such as aluminum or tungsten) that have been deposited on a wafer during semiconductor manufacturing.

(ii) All chamber cleaning process categories for which annual fluorinated GHG emissions shall be calculated are defined in this paragraph (a)(1)(ii).

(A) In situ plasma means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent that is dissociated into its cleaning constituents by a plasma generated inside the chamber where the film was produced.

(B) Remote plasma system means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent dissociated by a remotely located (*e.g.,* upstream) plasma source.

(C) In situ thermal means cleaning thin-film production chambers, after processing one or more wafers, with a fluorinated GHG cleaning reagent that is thermally dissociated into its cleaning constituents inside the chamber where the thin-film (or thin films) was (were) produced.

(iii) All wafer cleaning process categories for which annual fluorinated GHG emissions shall be calculated are defined in this paragraph (a)(1)(iii).

(A) Bevel cleaning means any process using fluorinated GHG reagents with plasma to clean the edges of wafers during semiconductor manufacture.

(B) Ashing means any process using fluorinated GHG reagents with plasma to remove photoresist materials during wafer manufacture.

(2) Semiconductor facilities that fabricate devices on wafers measuring greater than 300 mm in diameter shall calculate annual facility-level emissions of each fluorinated GHG used at a facility for all individual processes at that facility in accordance with § 98.94(d).

(3) All other electronics facilities shall calculate annual facility-level emissions of each fluorinated GHG used at a facility for each process type, including etching and chemical vapor deposition chamber cleaning.

(b) You shall calculate annual facility-level emissions for each fluorinated GHG used at your facility, for each individual process, process category, or process type used at your facility as appropriate, using Equations I–7 and I–8 of this section, and according to the procedures in either paragraph (b)(1), (b)(2), or (b)(3) of this section.

$$E_{ij} = C_{ij} * \left(1 - U_{ij}\right) * \left(1 - a_{ij} * d_{ij}\right) * 0.001 \qquad \text{(Eq. I-7)}$$

Where:

E_{ij} = Annual emissions of input gas i from individual process, process category, or process type j (metric tons).

C_{ij} = Amount of input gas i consumed in individual process, process category, or process type j, as calculated in Equation I–10 (kg) of this section and apportioned pursuant to § 98.94(c).

U_{ij} = Process utilization for input gas i during individual process, process category, or process type j.

a_{ij} = Fraction of input gas i used in individual process, process category, or process type j with abatement systems.

d_{ij} = Fraction of input gas i destroyed in abatement systems connected to individual process, process category, or process type j, accounting for uptime as specified in § 98.94(f)(2). This is zero unless the facility adheres to requirements in § 98.94(f).

0.001 = Conversion factor from kg to metric tons.

$$BE_{ijk} = B_{ijk} * C_{ij} * \left(1 - a_{ij} * d_{kj}\right) * 0.001 \qquad \text{(Eq. I-8)}$$

Where:

BE_{ijk} = Annual emissions of by-product k formed from input gas i during individual process, process category, or process type j (metric tons).

B_{ijk} = Amount of gas k created as a by-product per amount of input gas i (kg) consumed in individual process, process category, or process type j (kg).

C_{ij} = Amount of input gas i consumed in individual process, process category, or process type j, as calculated in Equation I–10 of this section (kg) and apportioned pursuant to § 98.94(c).

a_{ij} = Fraction of input gas i used in individual process, process category, or process type j with abatement systems.

d_{kj} = Fraction of by-product gas k destroyed in abatement systems connected to individual process, process category, or process type j, accounting for uptime as specified in § 98.94(f)(2). This is zero unless the facility adheres to requirements in § 98.94(f).

0.001 = Conversion factor from kg to metric tons.

(1) Semiconductor facilities that fabricate devices on wafers measuring 300 mm or less in diameter shall use the procedures in either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) Except as provided in paragraph (b)(1)(ii), you shall use default process category emission factors for process utilization and by-product formation rates shown in Tables I–6, I–7, and I–8 of this subpart as appropriate.

(ii) You may use recipe-specific measurements instead of the process category default factors provided that you follow methods in § 98.94(d).

(2) Semiconductor facilities that fabricate devices on wafers measuring greater than 300 mm in diameter shall use recipe-specific measurements and follow methods in § 98.94(d) to calculate emissions from each fluorinated GHG-using process type. You shall use Equations I–5 through I–8 of this section to calculate fluorinated GHG emissions from all fluorinated GHG-using process recipes.

(3) All other electronics facilities shall use the default process type-specific emission factors for process utilization and by-product formation rates shown in Tables I–3, I–4, and I–5 of this subpart for MEMS, LCD, and PV manufacturing, respectively.

(c) You shall calculate annual facility-level N_2O emissions from electronics manufacturing processes, using Equation I–9 of this section and the methods in this paragraph (c).

(1) You shall use a factor for N_2O utilization for chemical vapor deposition processes pursuant to either paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) You shall develop a facility-specific N_2O utilization factor averaged over all N_2O-using recipes used for chemical vapor deposition processes in accordance with § 98.94(e).

(ii) If you do not use a facility-specific N_2O utilization factor for chemical vapor deposition processes, you shall use 20 percent as the default utilization factor for N_2O from chemical vapor deposition processes.

(2) You shall use a factor for N_2O utilization for other manufacturing processes pursuant to either paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(i) You shall develop a facility-specific N_2O utilization factor averaged over all N_2O-using recipes used for manufacturing processes other than chemical vapor deposition processes in accordance with § 98.94(e).

(ii) If you do not use a facility-specific N_2O utilization factor for manufacturing processes other than chemical vapor deposition, you shall use the default utilization factor of 0 percent for N_2O from manufacturing processes other than chemical vapor deposition.

(3) If your facility employs abatement systems and you wish to quantify and document N_2O emission reductions due to these systems, you must adhere to the requirements in § 98.94(f).

(4) You shall calculate annual facility-level N_2O emissions for all processes at your facility using Equation I–9 of this section.

$$E\left(N_2O\right) = \sum_j C_{N_2O,j} * \left(1 - U_{N_2O,j}\right) * \left(1 - a_{N_2O,j} * d_{N_2O,j}\right) * 0.001 \qquad \text{(Eq. I-9)}$$

Where:

$E(N_2O)$ = Annual emissions of N_2O (metric tons/year).

$C_{N_2O,j}$ = Amount of N_2O consumed for N_2O-using process j, as calculated in Equation I–10 of this section and apportioned to N_2O process j (kg).

$U_{N_2O,j}$ = Process utilization for N_2O-using process j.

$a_{N_2O,j}$ = Fraction of N_2O used in N_2O-using process j with abatement systems.

$d_{N_2O,j}$ = Fraction of N_2O for N_2O-using process j destroyed by abatement systems connected to process j, accounting for uptime as specified in § 98.94(f)(2). This is zero unless the facility adheres to requirements in § 98.94(f).

0.001 = Conversion factor from kg to metric tons.

(d) You shall calculate gas consumption for each fluorinated GHG and N_2O used at your facility using facility-wide gas-specific heel factors, as determined in § 98.94(b), and using Equation I–10 of this section.

$$C_i = \left(I_{Bi} - I_{Ei} + A_i - D_i\right) * 0.001 \qquad \text{(Eq. I-10)}$$

Where:

C_i = Annual consumption of input gas i (metric tons/year).

I_{Bi} = Inventory of input gas i stored in cylinders or other containers at the beginning of the year, including heels (kg).

I_{Ei} = Inventory of input gas i stored in cylinders or other containers at the end of the year, including heels (kg).

A_i = Acquisitions of gas i during the year through purchases or other transactions, including heels in cylinders or other containers returned to the electronics manufacturing facility (kg).

D_i = Disbursements under exceptional circumstances of gas i through sales or other transactions during the year, including heels in cylinders or other containers returned by the electronics manufacturing facility to the chemical supplier, calculated using equation I–11 of this section (kg).

0.001 = Conversion factor from kg to metric tons.

(e) You shall calculate disbursements of gas i using Equation I–11 of this section.

$$D_i = h_i * N_i * F_i + X_i \qquad \text{(Eq. I-11)}$$

Where:

D_i = Disbursements of gas i through sales or other transactions during the year, including heels in cylinders or other containers returned by the electronics manufacturing facility to the gas distributor (kg).

h_i = Facility-wide gas-specific heel factor for input gas i (%), as determined in § 98.94(b) of this subpart.

N_i = Number of cylinders or other containers returned to the gas distributor containing the standard heel of gas i.

F_i = Full capacity of cylinders or other containers containing gas i (kg).

X_i = Disbursements under exceptional circumstances of gas i through sales or other transactions during the year. These include returns of containers whose contents have been weighed due to an exceptional circumstance as specified in § 98.94(b)(5) of this subpart (kg).

(f) For facilities that use fluorinated heat transfer fluids, you shall report the annual emissions of fluorinated GHG heat transfer fluids using the mass balance approach described in Equation I–12 of this section.

$$EH_i = density * \left(I_{io} + P_{it} - N_{it} + R_{it} - I_{it} - D_{it}\right) * 0.001 \qquad \text{(Eq. I-12)}$$

Where:

EH_i = Emissions of fluorinated GHG heat transfer fluid i, (metric tons/year).

Density = Density of fluorinated heat transfer fluid i (kg/l).

I_{io} = Inventory of fluorinated heat transfer fluid i (kg) (in containers, not equipment) at the beginning of the reporting year (l). The inventory at the beginning of the reporting year must be the same as the inventory at the end of the previous reporting year.

P_{it} = Acquisitions of fluorinated heat transfer fluid i (kg) during the current reporting year (l). Includes amounts purchased from chemical suppliers, amounts purchased from equipment suppliers with or inside of equipment, and amounts returned to the facility after off-site recycling.

N_{it} = Total nameplate capacity (full and proper charge) of equipment that uses fluorinated heat transfer fluid i and that is newly installed during the reporting year (kg).

R_{it} = Total nameplate capacity (full and proper charge) of equipment that uses fluorinated heat transfer fluid i and that is removed from service during the current reporting year (kg).

I_{it} = Inventory of fluorinated heat transfer fluid i (kg) (in containers, not equipment) at the end of current reporting year (l).

D_{it} = Disbursements of fluorinated heat transfer fluid i (kg) during the current reporting year (l). Includes amounts returned to chemical suppliers, sold with or inside of equipment, and sent off site for verifiable recycling or destruction. Disbursements should include only amounts that are properly stored and transported so as to prevent emissions in transit.

0.001 = Conversion factor from kg to metric tons.

§ 98.94 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, you may follow the provisions of § 98.3(d)(1) through (d)(3) for best available monitoring methods rather than follow the monitoring requirements of this section. For purposes of subpart I, any reference to the year 2010 in § 98.3(d)(1) through (d)(3) shall mean 2011.

(b) For purposes of Equation I–10 of this section, you must estimate facility-wide gas-specific heel factors for each cylinder/container type for each gas used according to the procedures in paragraphs (b)(1) through (b)(6) of this section.

(1) You shall base your facility-wide gas-specific heel factors on the residual weight or pressure of a gas cylinder/container that your facility uses to change out that cylinder/container for each cylinder/container type for each gas used.

(2) The residual weight or pressure you use for § 98.94(b)(1) shall be determined by monitoring the mass or the pressure of your cylinders/containers. If you monitor the pressure, you shall convert the pressure to mass using the ideal gas law, as displayed in Equation I–13 of this section, with an appropriately selected Z value.

$$pV = ZnRT \qquad \text{(Eq. I-13)}$$

Where:

p = Absolute pressure of the gas (Pa)

V = Volume of the gas (m^3)

Z = Compressibility factor

n = Amount of substance of the gas (moles)

R = Gas constant (8.314 Joule/Kelvin mole)

T = Absolute temperature (K)

(3) You shall use the facility-wide gas–specific cylinder/container residual mass, determined from § 98.94(b)(1) and (b)(2), to calculate the unused gas for each container, which when expressed as fraction of the initial mass in the cylinder/container is the heel factor.

(4) The initial mass used to calculate the facility-wide gas-specific heel factor may be based on the weight of the gas provided to you in the gas supplier documents; however, you remain responsible for the accuracy of these masses and weights under this subpart.

(5) In the exceptional circumstance that you change a cylinder/container at a residual mass or pressure that differs by more than 20 percent from your facility-wide gas-specific determined values, you shall weigh that cylinder, or measure the pressure of that cylinder with a pressure gauge, in place of using a heel factor.

(6) You shall recalculate facility-wide gas-specific heel factors applied at your facility in the event that the residual weight or pressure of the gas cylinder/container that your facility uses to change out that cylinder/container differs by more than 1 percentage point from that used to calculate the previous gas-specific heel factor.

(c) Semiconductor facilities shall apportion fluorinated GHG consumption by process category, as defined in § 98.93(a)(1)(i) through (a)(1)(iii), or by individual process using

a facility-specific engineering model based on wafer passes.

(d) If you use factors for fluorinated GHG process utilization and by-product formation rates other than the defaults provided in Tables I–6 through I–8 of this subpart, you must use factors that have been measured using the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006). You may use factors for fluorinated GHG process utilization and by-product formation rates measured by manufacturing equipment suppliers if the conditions in paragraphs (d)(1) and (d)(2) of this section are met.

(1) The manufacturing equipment supplier has measured the GHG emission factors for process utilization and by-product formation rates using the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006).

(2) The conditions under which the measurements were made are representative of your facility's fluorinated GHG emitting processes.

(e) If you use N_2O utilization factors other than those defaults provided in § 98.93(c)(1)(ii) or (c)(2)(ii), you must use factors that have been measured using the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006). You may use utilization factors measured by manufacturing equipment suppliers if the conditions in paragraphs (e)(1) and (e)(2) of this section are met.

(1) The manufacturing equipment supplier has measured the N_2O utilization factors using the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006).

(2) The conditions under which the measurements were made are representative of your facility's N_2O emitting processes.

(f) If your facility employs abatement systems and you wish to reflect emission reductions due to these systems in appropriate calculations in § 98.93, you must adhere to the procedures in paragraphs (f)(1) and (f)(2) of this section. If you use the default destruction or removal efficiency of 60 percent, you must adhere to procedures in paragraph (f)(3) of this section. If you use either a properly measured destruction or removal efficiency, or a class average of properly measured destruction or removal efficiencies during a reporting year, you must adhere to procedures in paragraph (f)(4) of this section.

(1) You must certify and document that the systems are properly installed, operated, and maintained according to manufacturers' specifications by adhering to the procedures in paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(i) Proper installation must be verified by certifying the systems are installed in accordance with the manufacturers' specifications.

(ii) Proper operation and maintenance must be verified by certifying the systems are operated and maintained in accordance with the manufacturers' specifications.

(2) You shall take into account and report the uptime of abatement systems when using destruction or removal efficiencies to reflect emission reductions. Abatement system uptime is expressed as the sum of an abatement system's operational productive, standby, and engineering times divided by the total operations time of its associated manufacturing tool(s) as referenced in SEMI Standard E–10–0340 Specification for Definition and Measurement of Equipment Reliability, Availability, and Maintainability (2004).

(3) To report controlled emissions using the default destruction or removal efficiency, you shall certify and document that the abatement systems at the facility for which you are reporting controlled emissions are specifically designed for fluorinated GHG and N_2O abatement and you shall use a default destruction or removal efficiency of 60 percent for those abatement systems.

(4) If you do not use the default destruction or removal efficiency value to report controlled emissions, you shall use either a properly measured destruction or removal efficiency, or a class average of properly measured destruction or removal efficiencies during a reporting year, determined in accordance with procedures in paragraphs (f)(4)(i) through (f)(4)(v) of this section.

(i) Destruction or removal efficiencies must be properly measured in accordance with EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing (March 2010).

(ii) A facility must annually select and properly measure the destruction or removal efficiency for a random sample of abatement systems to include in a random sampling abatement system testing program (RSASTP) in accordance with procedures in paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) of this section.

(A) Each reporting year a random sample of three or 20 percent of installed abatement systems, whichever is greater, for each abatement system class shall be tested. In instances where 20 percent of the total number of abatement systems in each class does not equate to a whole number, the number of systems to be tested shall be determined by rounding up to the nearest integer.

(B) You shall select the random sample each reporting year for the RSASTP without repetition of systems in the sample, until all systems in each class are properly measured in a 5-year period.

(iii) If a facility has measured the destruction or removal efficiency of a particular abatement system during the previous two-year period, the facility shall calculate emissions from that system using the destruction or removal efficiency most recently measured for that particular system.

(iv) If an individual abatement system has not yet undergone proper destruction or removal efficiency testing during the previous two-year period, the facility may apply a simple average of the properly measured destruction or removal efficiencies for all systems of that class, in accordance with the RSASTP. The facility shall maintain or exceed the RSASTP schedule and regime if it wishes to apply class average destruction or removal efficiency factors to abatement systems that have not been properly measured as per the RSASTP.

(v) In instances where redundant abatement systems are used, the facility may account for the total abatement system uptime calculated for a specific exhaust stream during the reporting year.

(g) You shall adhere to the QA/QC procedures of this paragraph when estimating fluorinated GHG and N_2O emissions from all electronics manufacturing processes:

(1) You shall follow the QA/QC procedures in the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006) when estimating facility-specific, recipe-specific fluorinated GHG and N_2O utilization and by-product formation rates.

(2) You shall follow the QA/QC procedures in EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in

Electronics Manufacturing (March 2010) when estimating abatement systems destruction or removal efficiency.

(3) You shall certify that gas consumption is tracked to a high degree of precision as part of normal facility operations ensuring that the inventory at the beginning of the reporting is the same as the inventory at the end of the previous year.

(h) You shall adhere to the QA/QC procedures of this paragraph when estimating fluorinated GHG emissions from heat transfer fluid use and annual gas consumption for each fluorinated GHG and N_2O used at your facility:

(1) You shall review all inputs to Equations I–10 and I–12 of this section to ensure that all inputs and outputs to the facility's system are accounted for.

(2) You shall not enter negative inputs into the mass balance Equations I–10 and I–12 of this section and shall ensure that no negative emissions are calculated.

(3) You shall ensure that the beginning of year inventory matches the end of year inventory from the previous year.

(i) All instruments (*e.g.*, mass spectrometers and fourier transform infrared measuring systems) used to determine the concentration of fluorinated GHG and N_2O in process streams shall be calibrated just prior to destruction or removal efficiency, gas utilization, or by-product formation measurement through analysis of certified standards with known concentrations of the same chemicals in the same ranges (fractions by mass) as the process samples. Calibration gases prepared from a high-concentration certified standard using a gas dilution system that meets the requirements specified in Method 205, 40 CFR part 51, Appendix M may also be used.

(j) All flowmeters, weigh scales, pressure gauges, and thermometers used to measure quantities that are monitored under this section or used in calculations under § 98.93 shall have an accuracy and precision of one percent of full scale or better.

§ 98.95 Procedures for estimating missing data.

(a) Except as provided in paragraph § 98.95(b), a complete record of all measured parameters used in the fluorinated GHG and N_2O emissions calculations in § 98.93 and § 98.94 is required.

(b) If you use heat transfer fluids at your facility and are missing data for one or more of the parameters in Equation I–12 of this subpart, you shall estimate heat transfer fluid emissions using the arithmetic average of the emission rates for the year immediately preceding the period of missing data and the months immediately following the period of missing data. Alternatively, you may estimate missing information using records from the heat transfer fluid supplier. You shall document the method used and values estimated for all missing data values.

§ 98.96 Data reporting requirements.

In addition to the information required by § 98.3(c), you shall include in each annual report the following information for each electronics facility.

(a) Annual emissions of each fluorinated GHG and N_2O emitted from each individual process, process category, or process type as applicable and from all heat transfer fluid use as applicable.

(b) The method of emissions calculation used in § 98.93.

(c) Production in terms of substrate surface area (*e.g.*, silicon, PV-cell, LCD).

(d) Emission factors used for process utilization and by-product formation rates and the source for each factor for each fluorinated GHG and N_2O.

(e) Where process categories for semiconductor facilities as defined in § 98.93(a)(1)(i) through (a)(1)(iii) are not used, descriptions of individual processes or process categories used to estimate emissions.

(f) For each fluorinated GHG and N_2O, annual gas consumed during the reporting year and facility-wide gas-specific heel-factors used.

(g) The apportioning factors for each process category (*i.e.*, fractions of each gas fed into each individual process or process category used to calculate fluorinated GHG and N_2O emissions) and a description of the engineering model used for apportioning gas usage per § 98.94(c). If the method used to develop the apportioning factors permits the development of facility-wide consumption estimates that are independent of the estimates calculated in Equation I–10 of this subpart (*e.g.*, that are based on wafer passes for each individual process or process category), you shall report the independent facility-wide consumption estimate for each fluorinated GHG and N_2O.

(h) Fraction of each gas fed into each process type that is fed into tools with abatement systems.

(i) Description of all abatement systems through which fluorinated GHGs or N_2O flow at your facility, including the number of devices of each manufacturer, model numbers, manufacturers guaranteed destruction or removal efficiencies, if any, and record of destruction or removal efficiency measurements over its in-use life. The inventory of abatement systems shall also include a description of the associated tools and/or processes for which these systems treat exhaust.

(j) For each abatement system through which fluorinated GHGs or N_2O flow at your facility, for which you are reporting controlled emissions, the following:

(1) Certification that each abatement system used at your facility is installed, maintained, and operated in accordance with manufacturers' specifications.

(2) The uptime and the calculations to determine uptime for that reporting year.

(3) The default destruction or removal efficiency value or properly measured destruction or removal efficiencies for each abatement system used in that reporting year to reflect controlled emissions.

(4) Where the default destruction or removal efficiency value is used to report controlled emissions, certification that the abatement systems for which controlled emissions are being reported are specifically designed for fluorinated GHG and N_2O abatement.

(5) Where properly measured destruction or removal efficiencies or class averages of destruction or removal efficiencies are used to report controlled emissions, the following:

(i) A description of the class including the abatement system manufacturer and model number, and the fluorinated GHG and N_2O in the process effluent stream;

(ii) The total number of systems in that class for the reporting year.

(iii) The total number of systems for which destruction or removal efficiency was measured in that class for the reporting year.

(iv) A description of the calculation used to determine the class average, including all inputs of the calculation.

(vi) A description of method of randomly selecting class members for testing.

(k) For heat transfer fluid emissions, inputs in the mass-balance equation, Equation I–12 of this subpart for each fluorinated GHG.

(l) Example calculations for fluorinated GHG, N_2O, and heat transfer fluid emissions.

§ 98.97 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the following records:

(a) Data and copies of calculations used to estimate emissions including all spreadsheets.

(b) Documentation for the values used for fluorinated GHG and N_2O utilization and by-product formation rates. If you use facility-specific, recipe-specific gas

utilization and by-product formation rates, the following records must be retained:

(1) Documentation that these were measured using the International SEMATECH Manufacturing Initiative's Guideline for Environmental Characterization of Semiconductor Process Equipment (December 2006).

(2) Documentation that the measurements made are representative of fluorinated GHG and N_2O emitting processes at your facility.

(3) The date and results of the initial and any subsequent tests to determine process tool gas utilization and by-product formation rates.

(c) For each abatement system through which fluorinated GHGs or N_2O flows at your facility, for which you are reporting controlled emissions, the following:

(1) Documentation to certify that each abatement system used at your facility is installed, maintained, and operated in accordance with manufacturers' specifications.

(2) Records of the uptime and the calculations to determine how the uptime was accounted for at your facility.

(3) Abatement system calibration and maintenance records.

(4) Where the default destruction or removal efficiency value was used, documentation from the abatement system supplier describing the equipment's designed purpose and emission control capabilities.

(5) Where properly measured destruction or removal efficiency is used to report controlled emissions, dated certification by the technician who made the measurement that the destruction or removal efficiency was calculated according to methods in EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing, complete documentation of the results of any initial and subsequent tests, and the final report as specified in EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing (March 2010).

(d) Purchase records for gas purchased.

(e) Invoices for gas purchases and sales.

§ 98.98 Definitions.

Except as provided below, all of the terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part. If a conflict exists between a definition provided in this subpart and a definition provided in subpart A, the definition in this subpart shall take precedence for the reporting requirements in this subpart.

Abatement system means a device or equipment that destroys or removes fluorinated GHGs and/or N_2O in waste streams from one or more electronics manufacturing tool chamber(s).

By-product formation means the creation of fluorinated GHGs during electronics manufacturing processes or the creation of fluorinated GHGs by an abatement system. By-product formation is expressed as rate of the mass of the by-product formed to the mass of the fluorinated GHG used with the largest flow rate.

Destruction or removal efficiency means the efficiency of a control system to destroy or remove fluorinated GHGs, N_2O, or both. The destruction or removal efficiency is equal to one minus the ratio of the mass of all relevant GHGs exiting the emission abatement system to the mass of GHG entering the emission abatement system. When fluorinated GHGs are formed in an abatement system, destruction or removal efficiency is expressed as one minus the ratio of amounts of exiting GHGs to the amounts entering the system in units of CO_2-equivalents.

Gas utilization means the fraction of input N_2O or fluorinated GHG converted to other substances during the etching, deposition, and/or wafer and chamber cleaning processes. Gas utilization is expressed as a rate or factor for specific manufacturing processes.

Heat transfer fluids are fluorinated GHGs used for temperature control, device testing, and soldering in certain types of electronic manufacturing. Heat transfer fluids used in the electronics sector include perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers. Heat transfer fluids commonly used in electronics manufacturing include those sold under the trade names "Galden®" and "Fluorinert™." Electronics manufacturers may also use these same fluorinated chemicals to clean substrate surfaces and other parts.

Heel means the amount of gas that remains in a gas cylinder or container after it is discharged or off-loaded (this may vary by cylinder or container type and facility).

Nameplate capacity means the full and proper charge of gas specified by the equipment manufacturer to achieve the equipment's specified performance. The nameplate capacity is typically indicated on the equipment's nameplate; it is not necessarily the actual charge, which may be influenced by leakage and other emissions.

Proper destruction or removal efficiency measurement means measured in accordance with EPA's Protocol for Measuring Destruction or Removal Efficiency of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing (March 2010).

Uptime means the total time during the reporting year when the abatement system for which controlled emissions will be reported was properly installed, operated, and maintained.

Wafer passes is a count of the number of times a silicon wafer is processed in a specific process category. The total number of wafer passes over a reporting year is the number of wafer passes per tool times the number of operational process tools in use during the reporting year.

Process category is a set of similar manufacturing steps, performed for the same purpose, associated with substrate (*e.g.,* wafer) processing during device manufacture for which fluorinated GHG and N_2O emissions and fluorinated GHG and N_2O usages are calculated and reported.

TABLE I–1 OF SUBPART I—DEFAULT EMISSION FACTORS FOR THRESHOLD APPLICABILITY DETERMINATION

Product type	Emission factors EF_i					
	CF_4	C_2F_6	CHF_3	C_3F_8	NF_3	SF_6
Semiconductors (kg/m^2 Si)	0.90	1.00	0.04	0.05	0.04	0.20
LCD (g/m^2 LCD)	0.50	NA	NA	NA	0.90	4.00
MEMs (kg/m^2 Si)	NA	NA	NA	NA	NA	1.02

Notes: NA denotes not applicable based on currently available information.

TABLE I–2 OF SUBPART I—EXAMPLES OF FLUORINATED GHGS USED BY THE ELECTRONICS INDUSTRY

Product type	Fluorinated GHGs used during manufacture
Electronics	CF_4, C_2F_6, C_3F_8, c-C_4F_8, c-C_4F_8O, C_4F_6, C_5F_8, CHF_3, CH_2F_2, NF_3, SF_6, and HTFs (CF3-(O-CF(CF3)-CF2)n-(O-CF2)m-O-CF3, CnF2n+2, CnF2n+1(O)CmF2m+1, CnF2nO, (CnF2n+1)3N).

TABLE I–3 OF SUBPART I—DEFAULT EMISSION FACTORS FOR MEMS MANUFACTURING

Process type factors	Process Gas i											
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 remote	NF_3	SF_6	C_4F_6[a]	C_5F_8[a]	C_4F_8O[a]
Etch 1–U_i	0.7	[1] 0.4	[1] 0.4	[1] 0.06	NA	[1] 0.2	NA	0.2	0.2	0.1	0.2	NA
Etch BCF_4	NA	[1] 0.4	[1] 0.07	[1] 0.08	NA	0.2	NA	NA	NA	[1] 0.3	0.2	NA
Etch BC_2F_6	NA	NA	NA	NA	NA	0.2	NA	NA	NA	[1] 0.2	0.2	NA
CVD 1–U_i	0.9	0.6	NA	NA	0.4	0.1	0.02	0.2	NA	NA	0.1	0.1
CVD BCF_4	NA	0.1	NA	NA	0.1	0.1	[2] 0.02	[2] 0.1	NA	NA	0.1	0.1
CVD BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.4

Notes: NA denotes not applicable based on currently available information.
[1] Estimate includes multi-gas etch processes.
[2] Estimate reflects presence of low-k, carbide and multi-gas etch processes that may contain a C-containing fluorinated GHG additive.

TABLE I–4 OF SUBPART I—DEFAULT EMISSION FACTORS FOR LCD MANUFACTURING

Process type factors	Process gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 remote	NF_3	SF_6
Etch 1–U_i	0.6	NA	0.2	NA	NA	0.1	NA	NA	0.3
Etch BCF_4	NA	NA	0.07	NA	NA	0.009	NA	NA	NA
Etch $BCHF_3$	NA	NA	NA	NA	NA	0.02	NA	NA	NA
Etch BC_2F_6	NA	NA	0.05	NA	NA	NA	NA	NA	NA
CVD 1–U_i	NA	NA	NA	NA	NA	NA	0.03	0.3	0.9

Notes: NA denotes not applicable based on currently available information.

TABLE I–5 OF SUBPART I—DEFAULT EMISSION FACTORS FOR PV MANUFACTURING

Process type factors	Process Gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6
Etch 1–U_i	0.7	0.4	0.4	NA	NA	0.2	NA	NA	0.4
Etch BCF_4	NA	0.2	NA	NA	NA	0.1	NA	NA	NA
Etch BC_2F_6	NA	NA	NA	NA	NA	0.1	NA	NA	NA
CVD 1–U_i	NA	0.6	NA	NA	0.1	0.1	NA	0.3	0.4
CVD BCF_4	NA	0.2	NA	NA	0.2	0.1	NA	NA	NA

Notes: NA denotes not applicable based on currently available information.

TABLE I–6 OF SUBPART I—DEFAULT EMISSION FACTORS FOR REFINED PROCESS CATEGORIES FOR SEMICONDUCTOR MANUFACTURING FOR 150 MM WAFER SIZE

Refined process category	Process gas i										
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
PATTERNING/ETCHING											
Oxide etch:											
1–U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Nitride etch:											
1–U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Silicon etch:											
1–U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Metal etch:											
1–U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
CHAMBER CLEANING											
In situ plasma cleaning:											
1–U_i	0.8–0.95	0.4–0.8	NA	NA	0.2–0.6	0.05–0.3	0.05–0.3	NA	NA	0.05–0.2	0.05–0.2
BCF_4	NA	0.05–0.2	NA	NA	0.05–0.2	0.05–0.2	0.05–0.2	NA	NA	0.05–0.2	0.05–0.2
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.02–0.08
Remote plasma cleaning:											
1–U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
In situ thermal cleaning:											
1–U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
WAFER CLEANING											
Bevel cleaning:											
1–U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ashing:											
1–U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

TABLE I–6 OF SUBPART I—DEFAULT EMISSION FACTORS FOR REFINED PROCESS CATEGORIES FOR SEMICONDUCTOR MANUFACTURING FOR 150 MM WAFER SIZE—Continued

Refined process category	Process gas i										
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA denotes not applicable based on currently available information.

TABLE I–7 OF SUBPART I—DEFAULT EMISSION FACTORS FOR REFINED PROCESS CATEGORIES FOR SEMICONDUCTOR MANUFACTURING FOR 200 MM WAFER SIZE

Refined process category	Process gas i										
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
PATTERNING/ETCHING											
Oxide etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.5	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Nitride etch:											
1-U_i	0.2–0.8	0.2–0.7	0.1–0.7	0.02–0.3	NA	0.05–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.02–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.005–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Silicon etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Metal etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
CHAMBER CLEANING											
In situ plasma cleaning:											
1-U_i	0.8–0.95	0.4–0.8	NA	NA	0.2–0.6	005–0.3	0.05–0.2	NA	NA	0.05–0.2	0.05–0.2
BCF_4	NA	0.05–0.2	NA	NA	0.05–0.2	0.05–0.2	0.05–0.1	NA	NA	0.05–0.2	0.05–0.2
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.02–0.08
Remote plasma cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	0.005–0.03	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	0.0001–0.2	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
In situ thermal cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
WAFER CLEANING											
Bevel cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ashing:											
1-U_i	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Note: NA denotes not applicable based on currently available information.

TABLE I–8 OF SUBPART I—DEFAULT EMISSION FACTORS FOR REFINED PROCESS CATEGORIES FOR SEMICONDUCTOR MANUFACTURING FOR 300 MM WAFER SIZE

Refined process category	Process gas i										
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
PATTERNING/ETCHING											
Oxide etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.4	0.1–0.8	NA	0.05–0.3	0.1–0.4	0.1–0.4	0.05–0.3	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.005–0.03	0.001–0.01	NA	0.005–0.1	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.005–0.1	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Nitride etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.4	0.1–0.8	NA	0.08–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.003–0.1	0.01–0.1	NA	0.02–0.3	NA	NA	0.05–0.4	0.05–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.02–0.3	NA	NA	0.05–0.4	0.05–0.4	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

TABLE I–8 OF SUBPART I—DEFAULT EMISSION FACTORS FOR REFINED PROCESS CATEGORIES FOR SEMICONDUCTOR MANUFACTURING FOR 300 MM WAFER SIZE—Continued

Refined process category	Process gas i										
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
Silicon etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Metal etch:											
1-U_i	0.2–0.8	0.2–0.7	0.2–0.7	0.02–0.3	NA	0.1–0.3	0.1–0.4	0.1–0.4	0.05–0.2	0.05–0.3	NA
BCF_4	NA	0.05–0.5	0.01–0.8	0.05–0.1	NA	0.01–0.3	NA	NA	0.02–0.4	0.02–0.4	NA
BC_2F_6	NA	NA	NA	NA	NA	0.01–0.3	NA	NA	0.02–0.3	0.02–0.3	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
CHAMBER CLEANING											
In situ plasma cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	0.1–0.4	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	0.001–0.6	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Remote plasma cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	0.002–0.03	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	0.001–0.05	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
In situ thermal cleaning:											
1-U_i	NA	NA	NA	NA	NA	NA	0.1–0.4	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	0.005-.05	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
WAFER CLEANING											
Bevel cleaning:											
1-U_i	0.3–0.8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ashing:											
1-U_i	0.3–0.8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA denotes not applicable based on currently available information.

4. Add subpart L to read as follows:

Subpart L—Fluorinated Gas Production

Sec.
98.120 Definition of the source category.
98.121 Reporting threshold.
98.122 GHGs to report.
98.123 Calculating GHG emissions.
98.124 Monitoring and QA/QC requirements.
98.125 Procedures for estimating missing data.
98.126 Data reporting requirements.
98.127 Records that must be retained.
98.128 Definitions.

Subpart L—Fluorinated Gas Production

§ 98.120 Definition of the source category.

(a) The fluorinated gas production source category consists of processes that produce a fluorinated gas from any raw material or feedstock chemical, except for processes that generate HFC–23 during the production of HCFC–22.

(b) To produce a fluorinated gas means to manufacture a fluorinated gas from any raw material or feedstock chemical. Producing a fluorinated gas includes producing a fluorinated GHG as defined at § 98.410(b). Producing a fluorinated gas also includes the manufacture of a chlorofluorocarbon (CFC) or hydrochlorofluorocarbon (HCFC) from any raw material or feedstock chemical, including manufacture for use in a process that will result in the transformation of the CFC or HCFC either at or outside of the production facility. Producing a fluorinated gas does not include the reuse or recycling of a fluorinated gas, the creation of HFC–23 during the production of HCFC–22, or the creation of by-products that are released or destroyed at the production facility.

§ 98.121 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains a fluorinated gas production process that generates or emits fluorinated GHG and the facility meets the requirements of either § 98.2(a)(1) or (a)(2) of this part. To calculate GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in § 98.2(a)(2), calculate process emissions from fluorinated gas production using uncontrolled GHG emissions.

§ 98.122 GHGs to report.

(a) You must report CO_2, CH_4, and N_2O combustion emissions from each stationary combustion unit. You must calculate and report these emissions under subpart C of this part (General Stationary Fuel Combustion Sources) by following the requirements of subpart C.

(b) You must report under subpart O of this part (HCFC–22 Production and HFC–23 Destruction) the emissions of HFC–23 from HCFC–22 production processes and HFC–23 destruction processes. Do not report the generation and emissions of HFC–23 from HCFC–22 production under this subpart.

(c) You must report the total mass of each fluorinated GHG from:

(1) Each fluorinated gas production process and all fluorinated gas production processes combined.

(2) Each fluorinated gas transformation process that is not part of a fluorinated gas production process and all such fluorinated gas transformation processes combined.

(3) Each fluorinated gas destruction process that is not part of a fluorinated gas production process or a fluorinated gas transformation process and all such fluorinated gas destruction processes combined.

§ 98.123 Calculating GHG emissions.

For fluorinated GHG production processes, you must calculate the fluorinated GHG emissions from each process using either the mass balance method specified in paragraph (a) of this section or the emission factor or emission calculation factor method specified in paragraphs (b), (c), and (d) of this section, as appropriate. For processes that manufacture CFCs or HCFCs or that transform fluorinated gases into substances other than fluorinated GHGs, you must use the procedures in paragraphs (b), (c), and (d) of this section. For destruction processes that destroy fluorinated GHGs that were previously "produced" as defined at 98.410(b), you must use the procedures in paragraph (e) of this section.

(a) *Mass balance method.* Before using the mass balance approach to estimate your fluorinated GHG emissions from a process, you must estimate the absolute and relative errors associated with using the mass balance approach on that process using Equations L–1 through L–4 of this section in conjunction with Equations L–7 through L–12 of this section. If this calculation shows that use of the mass-balance approach to estimate emissions from the process will result in an absolute error exceeding 3,000 metric tons CO_2e per year and a relative error exceeding 30 percent, then you cannot use the mass-balance approach to estimate emissions from the process. Instead, you must use the emission factor approach detailed in paragraphs (b), (c), and (d) of this section to estimate emissions from the process. To perform the calculation, you shall first calculate the absolute and relative errors associated with the quantities calculated using Equations L–8 through L–11. Once errors have been calculated for the quantities in these equations, those errors shall be used to calculate the errors in Equations L–7 and L–12. Where the measured quantity is a mass, the error in the mass shall be equated to the accuracy or precision (whichever is larger) of the flowmeter, scale, or combination of volumetric and density measurements at the flow rate or mass measured. Where the measured quantity is a concentration, the error of the concentration shall be equated to the accuracy or precision (whichever is larger) of the analytical technique used to measure the concentration at the concentration measured.

(1) Equation L–1 of this section provides the general formula for calculating the absolute errors of sums and differences where the sum, S, is the summation of variables measured, a, b, c, *etc.* (*e.g.,* S = a + b + c):

$$e_{SA} = \left[(a * e_a)^2 + \left((b * e_b)^2 + (c * e_c)^2 \right) \right]^{1/2} \qquad \text{(Eq. L-1)}$$

Where:

e_{SA} = absolute error of the sum, expressed as one half of a 95 percent confidence interval.

e_a = relative error of a, expressed as one half of a 95 percent confidence interval.

e_b = relative error of b, expressed as one half of a 95 percent confidence interval.

e_c = relative error of c, expressed as one half of a 95 percent confidence interval.

(2) Equation L–2 of this section provides the general formula for calculating the relative errors of sums and differences:

$$e_{SR} = \frac{e_{sA}}{(a+b+c)} \qquad \text{(Eq. L-2)}$$

Where:

e_{SR} = relative error of the sum, expressed as one half of a 95 percent confidence interval.

e_{SA} = absolute error of the sum, expressed as one half of a 95 percent confidence interval.

a+b+c = sum of the variables measured.

(3) Equation L–3 provides the general formula for calculating the absolute errors of products (*e.g.,* flow rates of GHGs calculated as the product of the flow rate of the stream and the concentration of the GHG in the stream), where the product, P, is the result of multiplying the variables measured, a, b, c, *etc.* (*e.g.,* P = a*b*c):

$$e_{PA} = (a * b * c)\left(e_a^2 + e_b^2 + e_c^2 \right)^{1/2} \qquad \text{(Eq. L-3)}$$

Where:

e_{PA} = absolute error of the product, expressed as one half of a 95 percent confidence interval.

e_a = relative error of a, expressed as one half of a 95 percent confidence interval.

e_b = relative error of b, expressed as one half of a 95 percent confidence interval.

e_c = relative error of c, expressed as one half of a 95 percent confidence interval.

(4) Equation L–4 of this section provides the general formula for calculating the relative errors of products:

$$e_{PR} = \frac{e_{PA}}{(a * b * c)} \qquad \text{(Eq. L-4)}$$

Where:

e_{PR} = relative error of the product, expressed as one half of a 95 percent confidence interval.

e_{PA} = absolute error of the product, expressed as one half of a 95 percent confidence interval.

a*b*c = product of the variables measured.

(5) The total mass of each fluorinated GHG product emitted annually from all fluorinated gas production processes shall be estimated by using Equation L–5 of this section:

$$E_p = \sum_{p=1}^{n}\sum_{i=1}^{m} E_{Pip} \qquad \text{(Eq. L-5)}$$

Where:

E_P = Total mass of each fluorinated GHG product emitted annually from all production processes (metric tons).

E_{Pip} = Total mass of the fluorinated GHG product emitted from production process i over the period p (metric tons, defined in Equation L–7 of this section).

n = Number of concentration and flow measurement periods for the year.

m = Number of production processes.

(6) The total mass of fluorinated GHG by-product k emitted annually from all fluorinated gas production processes shall be estimated by using Equation L–6 of this section:

$$E_{Bk} = \sum_{p=1}^{n}\sum_{i=1}^{m} E_{Bkip} \qquad \text{(Eq. L-6)}$$

Where:

E_{Bk} = Total mass of fluorinated GHG by-product k emitted annually from all production processes (metric tons).

E_{Bkip} = Total mass of fluorinated GHG by-product k emitted from production process i over the period p (metric tons, defined in Equation L–8 on this section).

n = Number of concentration and flow measurement periods for the year.

m = Number of production processes.

(7) The total mass of each fluorinated GHG product emitted from production process i over the period p shall be estimated at least monthly by calculating the difference between the expected production of the fluorinated GHG based on the consumption of one of the reactants (*e.g.,* HF or a chlorocarbon reactant) and the measured production of the fluorinated GHG, accounting for yield losses related to by-products and wastes. This calculation shall be performed using Equation L–7 of this section.

$$E_{Pip} = \frac{R * MW_P * SC_P}{MW_R * SC_R} - P - \sum_{j=1}^{q}\left(C_P * W_{Dj}\right) - \sum_{k=1}^{u} L_{Bkip} \qquad \text{(Eq. L-7)}$$

Where:

E_{Pip} = Total mass of each fluorinated GHG product emitted from production process i over the period p (metric tons).

P = Total mass of the fluorinated GHG produced by production process i over the period p (metric tons).

R = Total mass of the reactant that is consumed by production process i over the period p (metric tons, defined in Equation L–8 of this section).

MW_P = Molecular weight of the fluorinated GHG produced.

MW_R = Molecular weight of the reactant.

SC_P = Stoichiometric coefficient of the fluorinated GHG produced.

SC_R = Stoichiometric coefficient of the reactant.

C_P = Concentration (mass fraction) of the fluorinated GHG product in stream j of destroyed wastes. If this concentration is only a trace concentration, C_P is equal to zero.

W_{Dj} = Mass of wastes removed from production process i in stream j and destroyed over the period p (metric tons, defined in Equation L–9 of this section).

L_{Bkip} = Yield loss related to by-product k for production process i over the period p (metric tons, defined in Equation L–10 of this section).

q = Number of waste streams destroyed in production process i.

u = Number of by-products generated in production process i.

(8) The total mass of the reactant that is consumed by production process i over the period p shall be estimated by using Equation L–8 of this section:

$$R = R_F - R_R \qquad \text{(Eq. L-8)}$$

Where:

R = Total mass of the reactant that is consumed by production process i over the period p (metric tons).

R_F = Total mass of the reactant that is fed into production process i over the period p (metric tons).

R_R = Total mass of the reactant that is permanently removed from production process i over the period p (metric tons).

(9) The mass of wastes removed from production process i in stream j and destroyed over the period p shall be estimated using Equation L–9 of this section:

$$W_{Dj} = W_{Fj} * DE \qquad \text{(Eq. L-9)}$$

Where:

W_{Dj} = The mass of wastes removed from production process i in stream j and destroyed over the period p (metric tons).

W_{Fj} = The total mass of wastes removed from production process i in stream j and fed into the destruction device over the period p (metric tons).

DE = Destruction efficiency of the destruction device (fraction).

(10) Yield loss related to by-product k for production process i over period p shall be estimated using Equation L–10 of this section:

$$L_{Bkip} = \frac{\left(B_{kip} * MW_P * ME_{Bk}\right)}{\left(MW_{Bk} * ME_p\right)} \qquad \text{(Eq. L-10)}$$

Where:

L_{Bkip} = Yield loss related to by-product k for production process i over the period p (metric tons).

B_{kip} = Mass of by-product k generated by production process i over the period p (metric tons, defined in Equation L–11 of this section).

MW_P = Molecular weight of the fluorinated GHG produced.

ME_{Bk} = Moles of the element shared by the reactant, product, and by-product k per mole of by-product k.

MW_{Bk} = Molecular weight of by-product k.

ME_P = Moles of the element shared by the reactant, product, and by-product k per mole of the product.

(11) If by-product k is responsible for yield loss in production process i and occurs in any stream (including process streams, emissions streams, or destroyed streams) in more than trace concentrations, the mass of by-product k generated by production process i over the period p shall be estimated using Equation L–11 of this section:

$$B_{kip} = \sum_{j}^{q} c_{Bjk} * S_j \qquad \text{(Eq. L-11)}$$

Where:

B_{kip} = Mass of by-product k generated by production process i over the period p (metric tons).

c_{Bkj} = Concentration (mass fraction) of the by-product k in stream j of production process i over the period p. If this concentration is only a trace concentration, c_{Bkj} is equal to zero.

S_j = Mass flow of stream j of production process i over the period p.

q = Number of streams in production process i.

(12) If by-product k is responsible for yield loss, is a fluorinated GHG, occurs in any stream (including process streams, emissions streams, or destroyed streams) in more than trace concentrations, and is not completely recaptured or completely destroyed; the total mass of by-product k emitted from production process i over the period p shall be estimated at least monthly using Equation L–12 of this section:

$$E_{Bkip} = B_{kip} - \sum_{j=1}^{q} c_{Bkj} * W_{Dj} - \sum_{l=1}^{x} c_{Bkl} * S_{Rl} \qquad \text{(Eq. L-12)}$$

Where:

E_{Bkip} = Mass of by-product k emitted from production process i over the period p (metric tons).

B_{kip} = Mass of by-product k generated by production process i over the period p (metric tons).

c_{Bkj} = Concentration (mass fraction) of the by-product k in stream j of destroyed wastes over the period p. If this concentration is only a trace concentration, c_{Bjk} is equal to zero.

W_{Dj} = The mass of wastes that are removed from production process i in stream j and that are destroyed over the period p (metric tons, defined in Equation L–9 of this section).

c_{Bkl} = The concentration (mass fraction) of the by-product k in stream l of recaptured material over the period p. If this concentration is only a trace concentration, c_{Bkl} is equal to zero.

S_{Rl} = The mass of materials that are removed from production process i in stream l and that are recaptured over the period p.

q = Number of waste streams destroyed in production process i.

x = Number of streams recaptured in production process i.

(b) *Emission factor and emission calculation factor methods.* To use the method in this paragraph, you must first make a preliminary estimate of the emissions from each individual process vent under paragraph (b)(1) of this section. Then, compare the preliminary estimate to the criteria in paragraph (b)(2) of this section to determine whether the process vent meets the criteria for using the emission factor method described in paragraph (b)(3) of this section or whether the process vent meets the criteria for using the emission calculation factor method described in paragraph (b)(4) of this section.

(1) *Preliminary estimate of emissions by process vent.* You must estimate the annual uncontrolled emissions of fluorinated GHG for each process vent within a process. You may determine uncontrolled emissions of fluorinated GHG by process vent using existing measurements and/or calculations based on chemical engineering principles and chemical property data or you may conduct an engineering assessment. You must document all data, assumptions, and procedures used in the calculations or engineering assessment and keep a record of the uncontrolled emissions determination (in § 98.127(a)).

(i) *Engineering calculations.* For process vent emission calculations, you may use paragraph (b)(1)(i)(A), (B), or (C) of this section.

(A) Emissions Inventory Improvement Process, Volume II: Chapter 16, Methods for Estimating Air Emissions from Chemical Manufacturing Facilities. U.S. Environmental Protection Agency, August 2007.

(B) You may determine the uncontrolled fluorinated GHG emissions from any process vent within the process using the procedures specified in 40 CFR § 63.1257(d)(2)(i), except as specified in paragraphs (b)(1)(i)(B)(*1*) through (b)(1)(i)(B)(*7*) of this section. For the purposes of this subpart, use of the term "HAP" in § 63.1257(d)(2)(i) shall mean "fluorinated GHG".

(*1*) To calculate emissions caused by the heating of a vessel without a process condenser to a temperature lower than the boiling point, you must use the procedures in § 63.1257(d)(2)(i)(C)(*3*).

(*2*) To calculate emissions from depressurization of a vessel without a process condenser, you must use the procedures in § 63.1257(d)(2)(i)(D)(*10*).

(*3*) To calculate emissions from vacuum systems, the terms used in Equation 33 to 40 CFR part 63, subpart GGG, are defined as follows:

(*i*) P_{system} = absolute pressure of the receiving vessel;

(*ii*) P_i = partial pressure of the fluorinated GHG determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver;

(*iii*) P_j = partial pressure of condensables (including fluorinated GHG) determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver;

(*iv*) $MW_{Fluorinated\ GHG}$ = molecular weight of the fluorinated GHG determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver.

(*4*) To calculate uncontrolled emissions when a vessel is equipped with a process condenser, you must use the procedures in 40 CFR 63.1257(d)(3)(i)(B), except as follows:

(*i*) You must determine the flowrate of gas (or volume of gas), partial pressures of condensables, temperature (T), and fluorinated GHG molecular weight ($MW_{Fluorinated\ GHG}$) at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver.

(*ii*) You must assume that all of the components contained in the condenser exit vent stream are in equilibrium with the same components in the exit condensate stream (except for noncondensables).

(*iii*) You must perform a material balance for each component.

(*iv*) For the emissions from gas evolution, the term for time, t, must be used in Equation 12 to 40 CFR part 63, subpart GGG.

(*v*) Emissions from empty vessel purging shall be calculated using Equation 36 to 40 CFR part 63, subpart GGG and the exit temperature and exit pressure conditions of the condenser or the conditions of the dedicated receiver.

(C) Commercial software products that follow chemical engineering principles, including the calculation methodologies in paragraphs (b)(1)(i)(A) and (B) of this section.

(ii) *Engineering assessments.* For process vent emissions determinations, you may conduct an engineering assessment to calculate uncontrolled emissions for each emission episode. An engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices of the process.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, fluorinated GHG emission rate, concentration, or other relevant parameters specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on chemical engineering principles, measureable process parameters, or physical or chemical laws or properties.

(2) Process vent annual mass limit and control determination.

(i) If the individual process vent meets the criteria in either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section, then you may comply with either paragraph (b)(3) (Emission Factor approach) or paragraph (b)(4) (Emission Calculation Factor approach).

(A) Uncontrolled fluorinated GHG emissions for the individual process vent as estimated using procedures in paragraph (b)(1) of this section are less than 10,000 metric tons CO_2e per year or, for emissions including fluorinated GHGs whose GWPs are not listed in Table A–1, 1 metric ton per year.

(B) The individual process vent is vented to a destruction device demonstrated to achieve a destruction efficiency of 99.9 percent for the fluorinated GHGs in the vent stream, and the facility has equipment (*e.g.,* holding tank capacity; monitoring of by-pass streams) or procedures (*e.g.,* compulsory process shutdowns) in place that ensure that uncontrolled emissions do not occur. For each process, you should either track the amount of production or other process activity that is vented to the destruction device or track production or other process activity that by-passes the destruction device.

(ii) If the individual process vent does not meet the criteria in either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section, then the facility must comply with the emission factor method specified in paragraph (b)(3) of this section.

(3) *Process-vent-specific emission factor method.* For each process vent, conduct an emission test and measure uncontrolled fluorinated GHG emissions from the process and measure the process activity, such as the feed rate, production rate, or other process activity rate, during the test as described in this paragraph (b)(3). All emissions test data and procedures used in developing emission factors shall be documented according to § 98.127.

(i) You must measure the process activity, such as the process feed rate, process production rate, or other process activity rate, as applicable, during the emission test according to the procedures in § 98.124 and calculate the rate for the test period, in kg per hour or in kg per batch.

(ii) For continuous processes, you must calculate the hourly uncontrolled fluorinated GHG emission rate using Equation L–13 of this section and determine the hourly uncontrolled fluorinated GHG emission rate per process vent for the test run. For batch processes, you must calculate the uncontrolled fluorinated GHG emissions during each emission episode over the batch using Equation L–14 of this section and determine the fluorinated GHG emissions per process based on the batch runs conducted for the test.

$$E_{ContPV} = \frac{C_{PV}}{10^6} * MW * Q_{PV} * \frac{1}{SV} * \frac{1}{10^3} * \frac{60}{1} \qquad \text{(Eq. L-13)}$$

Where:

E_{ContPV} = Mass of fluorinated GHG f emitted from process vent v from production process i during the emission test during test run r (kg/hr).

C_{PV} = Concentration of fluorinated GHG f during test run r of the emission test (ppmv).

MW = Molecular weight of fluorinated GHG f (g/g-mole).

Q_{PV} = Flow rate of the process vent stream during test run r of the emission test (m^3/min).

SV = Standard molar volume of gas (0.0240 m^3/g-mole at 68° F and 1 atm).

$1/10^3$ = Conversion factor (1 kilogram/1,000 gram).

60/1 = Conversion factor (60 minutes/1 hour).

$$E_{BatchPV} = \frac{\sum_{1}^{ee} C_{PV\text{-}ee} * Q_{PV\text{-}ee} * D_{ee}}{10^6} * MW * \frac{1}{SV} * \frac{1}{10^3} \qquad \text{(Eq. L-14)}$$

Where:

$E_{BatchPV}$ = Mass of fluorinated GHG f emitted from process vent v from production process i during the emission test during test run r (kg/batch).

$C_{PV\text{-}ee}$ = Concentration of fluorinated GHG f during emission episode ee during test run r of the emission test (ppmv).

$Q_{PV\text{-}ee}$ = Flow rate of the process vent stream during emission episode ee during test run r of the emission test (m^3/min).

D_{ee} = Duration of emission episode ee during test run r of the emission test (minutes).

MW = Molecular weight of fluorinated GHG f (g/g-mole).

SV = Standard molar volume of gas (0.0240 m^3/g-mole at 68°F and 1 atm).

$1/10^3$ = Conversion factor (1 kilogram/1,000 gram).

ee = Number of emission episodes ee from process vent v during process i.

(iii) You must calculate a site-specific, process-vent-specific emission factor for each process vent, in kg of uncontrolled fluorinated GHG per process activity rate (*e.g.,* kg of feed or production), as applicable, using Equation L–15 of this section. For continuous processes, divide the hourly fluorinated GHG emission rate during the test by the hourly process activity rate during the test runs. For batch processes, divide the fluorinated GHG emissions by the process activity rate for the batch runs.

$$EF_{PV} = \frac{\sum_{1}^{r}\left(\frac{E_{PV}}{Activity_{EmissionTest}}\right)}{r} \qquad \text{(Eq. L-15)}$$

Where:

EF_{PV} = Average emission factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/kg product).

E_{PV} = Mass of fluorinated GHG f emitted from process vent v from production process i during the emission test during test run r, for either continuous or batch (kg emitted/hr for continuous, kg emitted/batch for batch).

$Activity_{EmissionTest}$ = Process feed, process production, or other process activity rate during the emission test during test run r (*e.g.,* kg product/hr for continuous, calculated in Equation L–13 of this section, kg product/batch for batch, calculated in Equation L–14 of this section).

r = Number of test runs (*i.e.,* batches) performed during the emission test.

(iv) You must calculate fluorinated GHG emissions for the process vent for the reporting period by multiplying the process-vent-specific emission factor by the total process activity, as applicable, for the reporting period, using Equation L–16 of this section.

$$E_{PV\text{-}RptPeriod} = EF_{PV} * Activity_{RptPeriod} \qquad \text{(Eq. L-16)}$$

Where:

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually (kg/month or kg/year).

EF_{PV} = Average emission factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/activity) (*e.g.,* kg emitted/kg product).

$Activity_{RptPeriod}$ = Process feed, process production, or other process activity during the reporting period.

(v) If the process vent is vented to a destruction device, apply the demonstrated destruction efficiency of the device to the fluorinated GHG emissions for the process vent, using Equation L–17 of this section. You may apply the destruction efficiency only to the portion of the process activity that is vented to the destruction device (*i.e.,* controlled).

$$E_{PV\text{-}RptPeriod} = EF_{PV} * \left(Activity_{RptPeriod\text{-}U} + Activity_{RptPeriod\text{-}C} * (1 - DE)\right) \qquad \text{(Eq. L-17)}$$

Where:

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually, considering destruction efficiency (kg/month or kg/year).

EF_{PV} = Emission factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/kg product).

$Activity_{RptPeriod-U}$ = Total process feed, process production, or other process activity during the reporting period for which the process vent is not vented to the destruction device (*e.g.,* kg product).

$Activity_{RptPeriod-C}$ = Total process feed, process production, or other process activity during the reporting period for which the process vent is vented to the destruction device (*e.g.,* kg product).

DE = Demonstrated destruction efficiency of the destruction device (weight fraction).

(vi) Sum the emissions from all process vents in the process for the reporting period to estimate total fluorinated GHG process emissions, using Equation L–18 of this section.

$$E_{Pfi} = \sum_{1}^{v} E_{PV\text{-}RptPeriod} \qquad \text{(Eq. L-18)}$$

Where:

E_{Pfi} = Mass of fluorinated GHG f emitted from production process i, for the reporting period, either monthly or annually (kg).

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually, considering destruction efficiency (kg/month or kg/year).

v = Number of process vents in production process i.

(vii) Sum the emissions from all processes for the reporting period to estimate total fluorinated GHG process vent emissions, using Equation L–19 of this section.

$$E_P = \sum_{1}^{i} E_{Pfi} \qquad \text{(Eq. L-19)}$$

Where:

E_P = Mass of fluorinated GHG f emitted from all process vents at the facility, for the reporting period, either monthly or annually (kg).

E_{Pij} = Mass of fluorinated GHG f emitted from production process i, for the reporting period, either monthly or annually (kg).

i = Number of production processes i at the facility.

(4) *Process-vent-specific emission calculation factor method.* For each process vent, determine fluorinated GHG emissions by calculations and determine the process activity rate, such as the feed rate, production rate, or other process activity rate, associated with the emission rate.

(i) You must calculate uncontrolled emissions of fluorinated GHG by individual process vent, E_{PV}, using measurements and/or calculations based on chemical engineering principles and chemical property data or you may conduct an engineering assessment, using the procedures in paragraphs (b)(1)(i) or (ii) of this section, except paragraph (b)(1)(ii)(C) of this section. The uncontrolled emissions must be based on a typical batch or production rate under a defined operating scenario. The process activity rate associated with the uncontrolled emissions must be determined. All data, assumptions, and procedures used in the calculations or engineering assessment shall be documented according to § 98.127.

(ii) You must calculate a site-specific, process-vent-specific emission calculation factor for each process vent, in kg of fluorinated GHG per activity rate (*e.g.,* kg of feed or production) as applicable, using Equation L–20 of this section.

$$ECF_{PV} = \frac{E_{PV}}{Activity_{\text{Re presentative}}} \qquad \text{(Eq. L-20)}$$

Where:

ECF_{PV} = Emission calculation factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/kg product).

E_{PV} = Average mass of fluorinated GHG f emitted, based on calculations, from process vent v from production process i during the period or batch for which emissions were calculated, for either continuous or batch (kg emitted/hr for continuous, kg emitted/batch for batch).

$Activity_{Representative}$ = Process feed, process production, or other process activity rate corresponding to average mass of emissions based on calculations (*e.g.,* kg product/hr for continuous, kg product/batch for batch).

(iii) You must calculate fluorinated GHG emissions for the process vent for the reporting period by multiplying the process-vent-specific emission calculation factor by the total process activity, as applicable, for the reporting period, using Equation L–21 of this section.

$$E_{PV\text{-}RptPeriod} = ECF_{PV} * Activity_{RptPeriod} \qquad \text{(Eq. L-21)}$$

Where:

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually (kg/month or kg/year).

ECF_{PV} = Emission calculation factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/activity) (*e.g.,* kg emitted/kg product).

$Activity_{RptPeriod}$ = Process feed, process production, or other process activity during the reporting period.

(iv) If the process vent is vented to a destruction device, apply the demonstrated destruction efficiency of the device to the fluorinated GHG emissions for the process vent, using Equation L–22 of this section. You may apply the destruction efficiency only to the portion of the process activity that is vented to the destruction device (*i.e.,* controlled).

$$E_{PV\text{-}RptPeriod} = ECF_{PV} * \left(Activity_{RptPeriod\text{-}U} + Activity_{RptPeriod\text{-}C} * (1 - DE)\right) \qquad \text{(Eq. L-22)}$$

Where:

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually, considering destruction efficiency (kg/month or kg/year).

ECF_{PV} = Emission calculation factor for fluorinated GHG f emitted from process vent v during production process i (kg emitted/kg product).

$Activity_{RptPeriod-U}$ = Total process feed, process production, or other process activity during the reporting period for which the process vent is not vented to the destruction device (*e.g.,* kg product).

$Activity_{RptPeriod-C}$ = Total process feed, process production, or other process activity during the reporting period for which the process vent is vented to the destruction device (*e.g.,* kg product).

DE = Demonstrated destruction efficiency of the destruction device (weight fraction).

(v) Sum the fluorinated GHG emissions from all process vents in the process for the reporting period to estimate total process emissions, using Equation L–23 of this section.

$$E_{Pfi} = \sum_{1}^{v} E_{PV\text{-}RptPeriod} \qquad \text{(Eq. L-23)}$$

Where:

E_{Pfi} = Mass of fluorinated GHG f emitted from production process i, for the reporting period, either monthly or annually (kg).

$E_{PV-RptPeriod}$ = Mass of fluorinated GHG f emitted from process vent v from production process i, for the reporting period, either monthly or annually, considering destruction efficiency (kg/month or kg/year).

v = Number of process vents in production process i.

(vi) Sum the emissions from all processes for the reporting period to estimate total fluorinated GHG process emissions, using Equation L–24 of this section.

$$E_P = \sum_{1}^{i} E_{Pfi} \qquad \text{(Eq. L-24)}$$

Where:

E_P = Mass of fluorinated GHG f emitted from all processes at the facility, for the reporting period, either monthly or annually (kg).

E_{Pij} = Mass of fluorinated GHG f emitted from production process i, for the reporting period, either monthly or annually (kg).

i = Number of production processes i at the facility.

(c) *Calculate fluorinated GHG emissions for equipment leaks (EL).* If you comply with paragraph (b) of this section, you must calculate the fluorinated GHG emissions from pieces of equipment associated with processes covered under this subpart and in fluorinated GHG service. The emissions from equipment leaks must be calculated using one of the following methods in the *Protocol for Equipment Leak Emission Estimates,* U.S. Environmental Protection Agency, EPA Publication No. EPA–453/R–95–017, November 1995: the Screening Ranges Approach; the EPA Correlation Approach; or the Unit-Specific Correlation Approach. You may not use the procedure in the protocol for Average Emission Factor Approach.

(1) You must develop response factors for each fluorinated GHG or for each surrogate to be measured using EPA Method 21, 40 CFR part 60, Appendix A–7. For each fluorinated GHG measured, the response factor shall be less than 10. The response factor is the ratio of the known concentration of a fluorinated GHG to the observed meter reading when measured using an instrument calibrated with the reference compound.

(2) You must collect information on the number of each type of equipment; the service of each piece of equipment (gas, light liquid, heavy liquid); the concentration of each fluorinated GHG in the stream; and the time period each piece of equipment was in service. Depending on which approach you follow, you must collect information for equipment on the associated screening data concentrations for greater than or equal to 10,000 ppmv and associated screening data concentrations for less than 10,000 ppmv; associated actual screening data concentrations; and associated screening data and leak rate data (*i.e.,* bagging) used to develop a unit-specific correlation.

(3) Calculate and sum the emissions of each fluorinated GHG in kg/yr for equipment pieces for all processes, E_{EL}.

(d) *Calculate total fluorinated GHG emissions for the facility/source category.* Estimate annually the total mass of fluorinated GHG emissions from process vents in either paragraph (c)(3) or (c)(4) of this section, as appropriate, and from equipment leak emissions in paragraph (d) using Equation L–25 of this section.

$$E = E_P + E_{EL} \qquad \text{(Eq. L-25)}$$

Where:

E = Total mass of each fluorinated GHG f emitted from the facility, annual basis (kg/year).

E_P = Mass of fluorinated GHG f emitted from all process vents at the facility, annually (kg).

E_{EL} = Mass of fluorinated GHG f emitted from equipment leaks for pieces of equipment for the facility, annually (kg/year).

(e) *Calculate fluorinated GHG emissions from destruction of fluorinated GHGs that were previously* "*produced*" *as defined at 98.410(b).* Estimate annually the total mass of fluorinated GHGs emitted from destruction of fluorinated GHGs that were previously "produced" as defined at 98.410(b) using Equation L–26 of this section:

$$E_D = RE_D * (1 - DE) \qquad \text{(Eq. L-26)}$$

Where:

E_D = The mass of fluorinated GHGs emitted annually from destruction of fluorinated GHGs that were previously "produced" as defined at 98.410(b) (metric tons).

RE_D = The mass of fluorinated GHGs that were previously "produced" as defined at 98.410(b) and that are fed annually into the destruction device (metric tons).

DE = Destruction efficiency of the destruction device (fraction).

§ 98.124 Monitoring and QA/QC requirements.

(a) *Initial scoping test for fluorinated GHGs.* You must conduct an initial scoping test to identify all fluorinated GHGs that may be generated from processes that are subject to this subpart and that have uncontrolled emissions (*i.e.,* pre-control emissions levels) of 1.0 metric ton or more of fluorinated GHGs. For each process, you must conduct the initial scoping test on the stream(s) (including process streams or destroyed streams) or process vent(s) that would be expected to individually or collectively contain all of the fluorinated GHG by-products of the process. Initial scoping testing must be conducted according to the procedures in paragraph (c)(4)(v) of this section.

(b) *Mass Balance monitoring.* If you determine fluorinated GHG emissions using the mass balance method under § 98.123(a), you must estimate the total mass of each fluorinated GHG emitted from the process at least monthly.

(1) You must conduct the following mass measurements on a monthly or more frequent basis using flowmeters, weigh scales, or a combination of volumetric and density measurements with accuracy and precision that allow the facility to meet the error criteria in § 98.123(a):

(i) Total mass of each fluorinated GHG produced shall be estimated using the methods and measurements set forth in § 98.413(a) and (b) and in § 98.414(a) and (b). For each fluorinated GHG, the mass produced used for the mass-balance calculation shall be the same as the mass produced that is reported under subpart OO.

(ii) Total mass of each reactant fed into the production process shall be measured.

(iii) Total mass of each reactant permanently removed from the production process shall be measured.

(iv) If the waste permanently removed from the production process and fed into the destruction device contains more than trace concentrations of fluorinated GHG product, then the mass of waste fed into the destruction device shall be measured.

(v) If a by-product is responsible for yield loss and occurs in any stream (including process steams, emissions streams, or destroyed streams) in more than trace concentrations, then the mass flow of each stream that contains more than trace concentrations of the by-product shall be measured.

(vi) If a by-product is a fluorinated GHG (other than HFC-23 generated during HCFC-22 production), occurs in more than trace concentrations in any stream (including process streams, emissions streams, or destroyed streams), occurs in more than trace concentrations in any stream that is recaptured or is fed into a destruction device, and is not completely recaptured or completely destroyed, then the mass flow of each stream that contains more than trace concentrations of the by-product and that is recaptured or is fed into the destruction device shall be measured.

(2) The following concentration measurements shall be measured on a regular basis using equipment and methods (*e.g.,* gas chromatography) with an accuracy and precision that allow the facility to meet the error criteria in § 98.123(a):

(i) If the waste permanently removed from the production process and fed into the destruction device contains more than trace concentrations of fluorinated GHG product and if the stream mass includes more than trace concentrations of materials other than the product, then the concentration of the product shall be measured.

(ii) If a by-product is responsible for yield loss and occurs in any stream (including process streams, emissions streams, or destroyed streams) in more than trace concentrations and if the stream mass includes more than trace concentrations of materials other than the by-product, then the concentration of the by-product shall be measured.

(iii) If a by-product is a fluorinated GHG, occurs in more than trace concentrations in any stream (including process streams, emissions streams, or destroyed streams), occurs in more than trace concentrations in any stream that is recaptured or is fed into a destruction device, and is not completely recaptured or completely destroyed, and if the measured stream mass includes more than trace concentrations of materials other than the by-product, then the concentration of the by-product shall be measured.

(c) *Emission factor testing.* If you determine fluorinated GHG emissions using the site-specific process-vent-specific emission factor, you must meet the requirements in paragraphs (c)(1) through (c)(8) of this section.

(1) *Process vent testing.* Conduct an emissions test every 5 years that is based on representative performance (*i.e.,* performance based on the normal operating scenario) of the affected process. For each continuous process vent, develop a process-vent-specific emission factor for the representative operating scenario. For each batch process vent, develop a process-vent-specific emission factor for the representative operating scenario, *i.e.,* the typical batch process. Atypical events, such as process shutdowns or startups, may be included in the monitoring for batch processes and may be included for continuous process, if the monitoring is sufficiently long or comprehensive to ensure that such events are not overrepresented in the emission factor. Malfunction events shall not be included in the monitoring.

(2) *Different operating conditions.* Develop separate process-vent-specific emission factor for other operating scenarios as needed. If your process operates under different conditions as part of normal operations, you must perform emission testing and develop separate emission factors for these different process operating scenarios. For continuous process vents, determine the emissions based on the process activity at each specific different condition. For batch process vents, determine emissions based on the process feed rate, process production rate, or other process activity rate for each typical batch operating scenario (*i.e.,* each specific condition).

(3) *Number of runs.* For continuous processes, sample the process vent for a minimum of 3 runs of 1 hour each. For batch processes, sample the process vent for all emission episodes over a minimum of 3 complete batch cycles. If the RSD of the emission factor

calculated based on the first 3 runs is greater than or equal to 0.2 for the emissions factor, continue to sample the process vent for an additional 3 runs of 1 hour each or an additional 3 batch cycles. If more than one fluorinated GHG is measured, and if all measured fluorinated GHGs have GWPs listed in Table A–1, the emissions factor and RSD shall be expressed in terms of total CO_2 equivalents. Otherwise, the emissions factor and RSD shall be expressed in terms of kilograms of each species.

(4) *Emission Test Methods.* Conduct the emissions testing using the following methods:

(i) Sample and velocity traverses. Use EPA Method 1 or 1A in Appendix A–1 of 40 CFR part 60.

(ii) Velocity and volumetric flow rates. Use EPA Method 2, 2A, 2B, 2C, or 2D, 2F, or 2G in Appendix A–1 of 40 CFR part 60. Alternatives that may be used for determining flow rates include Other Test Method 24 (OTM–24) (incorporated by reference, *see* § 98.7) and Emission Measurement Center Alternative Test Method (EMC ALT–012) (incorporated by reference, *see* § 98.7).

(iii) Gas analysis. Use EPA Method 3, 3A, or 3B in Appendix A–1 of 40 CFR part 60.

(iv) Stack gas moisture. Use EPA Method 4 in Appendix A–1 of 40 CFR part 60.

(v) Fluorinated GHG concentrations. Use EPA Method 18 (with GC and either MS or ECD) in Appendix A–1 of 40 CFR part 60; EPA Method 320 in Appendix A of 40 CFR part 63; Draft EPA DRE Protocol; or ASTM D6348–03 (incorporated by reference in § 98.7).

(vi) Alternative fluorinated GHG concentration methods. Alternatives that may be used for determining fluorinated GHG concentrations include EPA TO–15 or other alternative test methods conducted in conjunction with EPA Method 301 for validation.

(5) *Process activity measurements.* Determine the mass rate of process feed, process production, or other process activity as applicable during the test using flow meters, weigh scales, or other measurement devices or instruments with an accuracy and precision of ±1 percent of full scale or better. These devices may be the same plant instruments or procedures that are used for accounting purposes (such as weigh hoppers, belt weigh feeders, combination of volume measurements and bulk density, *etc.*) if these devices or procedures meet the requirement. For monitoring ongoing process activity, use flow meters, weigh scales, or other measurement devices or instruments with an accuracy and precision of ±1 percent of full scale or better.

(6) *Sample each process.* If process vents from separate processes are manifolded together to a common vent or to a common destruction device, you must sample each process in the ducts before the emissions are combined, sample when only one process is operating, or sample the combined emissions at representative combinations of capacity utilizations for all the processes. If the last option is selected, 3 times n test runs shall be required, where n is the number of processes feeding into the common vent or destruction device, and the process-vent-specific emission factor shall be applied whenever one or more of the processes is operating. In this case, calculate the emission factor for each sample by dividing the total emissions by the summed process activity across the processes venting to the common vent. Derive the process-vent-specific emission factor by averaging the 3n emission factors.

(7) *Emission test results.* The results of an emission test must include the analysis of samples, determination of emissions, and raw data. The emissions test report must contain all information and data used to derive the process-vent-specific emission factor, as well as key process conditions during the test. Key process conditions include those that are normally monitored for process control purposes and may include but are not limited to yields, pressures, temperatures, *etc.* (*e.g.,* of reactor vessels, distillation columns).

(8) *Previous measurements.* If you have conducted an emissions test less than 5 years before the effective date of this rule, and the emissions testing meets the requirements in paragraph (c)(1) through (7) of this section, you may use the previous emissions testing to develop process-vent-specific emission factors.

(d) *Emission calculation factor monitoring.* If you determine fluorinated GHG emissions using the site-specific process-vent-specific emission calculation factor, you must meet the requirements in paragraphs (d)(1) through (d)(3) of this section.

(1) Revise the emission calculation factor for each process every 5 years based on representative operation (*i.e.,* performance based on the normal operating scenario) of the affected process. For each continuous process vent, develop the emission calculation factor for the representative operating scenario. For each batch process vent, develop the emission calculation factor for the representative operating scenario, *i.e.,* the typical batch process.

(2) *Different operating conditions.* You must develop separate emissions calculation factors for other operating scenarios as needed. If your process operates under different conditions as part of normal operations, you must conduct emissions calculations and develop separate emission factors for these different process operating scenarios. For continuous process vents, determine the emissions based on the process activity at each specific different condition. For batch process vents, determine emissions based on the process feed rate, process production rate, or other process activity rate for each typical batch operating scenario and for each non-typical batch operating scenario (*i.e.,* each specific condition).

(3) *Process activity measurements.* Use flow meters, weigh scales, or other measurement devices or instruments with an accuracy and precision of ±1 percent of full scale or better for monitoring ongoing process activity.

(e) *Emission monitoring for pieces of equipment.* Conduct the screening level concentration measurements using EPA Method 21 in 40 CFR part 60, appendix A–7 to determine the screening level concentration data or actual screening level concentration data for the Screening Ranges Approach or the EPA Correlation Approach. Conduct the screening level concentration measurements using EPA Method 21 and the bagging procedures to measure mass emissions for developing the Unit-Specific Correlation Approach in the *Protocol for Equipment Leak Emission Estimates,* U.S. Environmental Protection Agency, EPA Publication No. EPA–453/R–95–017, November 1995. Concentration measurements of bagged samples must be conducted using gas chromatography following EPA Method 18 analytical procedures. Use methane as the calibration gas.

(f) *Destruction device performance testing.* If you vent fluorinated GHG emissions or otherwise feed fluorinated GHGs into a destruction device and apply the destruction efficiency of the device in § 98.123, you must conduct an emissions test every 5 years to determine the destruction efficiency.

(1) You must sample the inlet and outlet of the destruction device for a minimum of three runs of 1 hour each to determine the destruction efficiency. You must conduct the emissions testing using the methods in paragraph (c)(4) of this section. To determine the destruction efficiency, emission testing shall be conducted when operating at high loads reasonably expected to occur (*i.e.,* representative of high total fluorinated GHG load that will be sent to the device) and when destroying the

most-difficult-to-destroy fluorinated GHG (or a surrogate that is still more difficult to destroy) that is fed into the device from the processes subject to this subpart.

(2) *Previous testing.* If you have conducted an emissions test within the last 5 years prior to the effective date of this rule, and the emissions testing meets the requirements in paragraph (f)(1) of this section, you may use the destruction efficiency determined during this previous emissions testing.

(3) *Part 264, 266, and 270 principal organic hazardous constituent (POHC) testing.* If a destruction device used to destroy fluorinated GHG is subject to 40 CFR part 264 or 266 and is permitted under 40 CFR part 270 with a demonstrated DRE of at least 99.99 percent for the most-difficult-to-destroy fluorinated GHG fed into the device from the processes subject to this subpart, the emissions testing under paragraph (f)(1) of this section is not required and you may use the destruction efficiency determined during this previous testing.

(4) *Hazardous Waste Combustor testing.* If a destruction device used to destroy fluorinated GHG is subject to 40 CFR part 63, subpart EEE and has a demonstrated DRE of at least 99.99 percent for the most-difficult-to-destroy fluorinated GHG fed into the device from the processes subject to this subpart, the emissions testing under paragraph (f)(1) of this section is not required and you may use the destruction efficiency determined during this previous testing.

(5) *Process change.* For process changes that require a new or revised operating scenario, you must determine whether the concentrations and the fluorinated gas compounds vented to the destruction device following the process change affects the DE (*i.e.,* compare the post-process-change fluorinated GHG load and the most-difficult-to-combust fluorinated GHG with the test conditions). If the operating conditions and DE demonstrated in the destruction device performance testing are not sufficient to achieve the DE for the concentrations and fluorinated gas compounds vented to the destruction device following the process change then, you must conduct another emissions test to demonstrate the DE.

(g) *Mass of previously produced fluorinated GHGs fed into destruction device.* You must measure the mass of fluorinated GHGs that are fed into the destruction device and that were previously produced as defined at 98.410(b). Such fluorinated GHGs include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed. You must use flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of 1 percent of full scale or better. If the measured mass includes more than trace concentrations of materials other than the fluorinated GHG being destroyed, you must measure the concentrations of fluorinated GHG being destroyed. You must multiply this concentration (mass fraction) by the mass measurement to obtain the mass of the fluorinated GHG fed into the destruction device.

(h) *Emissions due to deviations of destruction device.* In their estimates of the mass of fluorinated GHG destroyed, fluorinated GHG production facilities that destroy fluorinated GHGs shall account for any temporary reductions in the destruction efficiency that result from any malfunctions of the destruction device, including deviations from the operating conditions defined in State or local permitting requirements and/or oxidizer manufacturer specifications.

(i) *Emissions due to process startup, shutdown, or malfunctions.* Fluorinated GHG production facilities shall account for fluorinated GHG emissions that occur as a result of startups, shutdowns, and malfunctions, either recording fluorinated GHG emissions during these events, or documenting that these events do not result in significant fluorinated GHG emissions.

(j) Initial scoping testing, emissions testing, and emissions factor development must be completed by December 31, 2011.

(k) Calibrate all flow meters, weigh scales, and combinations of volumetric and density measures using monitoring instruments traceable to the International System of Units (SI) through the National Institute of Standards and Technology (NIST) or other recognized national measurement institute. Recalibrate all flow meters, weigh scales, and combinations of volumetric and density measures at the minimum frequency specified by the manufacturer. Use any of the following applicable flow meter test methods or the calibration procedures specified by the flow meter, weigh-scale, or other volumetric or density measure 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–4M–1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters (incorporated by reference, *see* § 98.7).

(3) ASME–MFC–5M–1985, (Reaffirmed 1994), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters (incorporated by reference, *see* § 98.7).

(4) ASME MFC–6M–1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters (incorporated by reference, *see* § 98.7).

(5) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles (incorporated by reference, *see* § 98.7).

(6) ASME MFC–9M–1988 (Reaffirmed 2001), Measurement of Liquid Flow in Closed Conduits by Weighing Method (incorporated by reference, *see* § 98.7).

(7) ASME MFC–11M–2006, Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters (incorporated by reference, *see* § 98.7).

(8) ASME MFC–14M–2003, Measurement of Fluid Flow Using Small Bore Precision Orifice Meters (incorporated by reference, *see* § 98.7).

(l) All analytical equipment, including gas chromatographs, GC/MS, GC/ECD, FTIR and NMR devices, used to determine the concentration of fluorinated GHG in streams shall be calibrated at least monthly through analysis of certified standards with known concentrations of the same chemicals in the same ranges (fractions by mass) as the process samples. Calibration gases prepared from a high-concentration certified standard using a gas dilution system that meets the requirements specified in Method 205, 40 CFR Part 51, Appendix M may also be used.

(m) For calendar year 2011 monitoring, you may follow the provisions of § 98.3(d)(1) through (3) for best available monitoring methods rather than follow the monitoring requirements of this section. For purposes of subpart L, any reference to the year 2010 in § 98.3(d)(1) through (3) shall mean 2011.

§ 98.125 Procedures for estimating missing data.

(a) A complete record of all measured parameters used in the GHG emissions calculations in § 98.123 is required. Therefore, whenever a quality-assured value of a required parameter is unavailable, a substitute data value for the missing parameter shall be used in the calculations as specified in paragraphs (b) and (c) of this section. You must document and keep records of the procedures used for all such estimates.

(b) For each missing value of the fluorinated GHG concentration, 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.

(c) For each missing value of the mass produced, fed into the production process, fed into the transformation process, fed into destruction devices, sent to another facility for transformation, or sent to another facility for destruction, the substitute value of that parameter shall be a secondary mass measurement where such a measurement is available. For example, if the mass produced is usually measured with a flowmeter at the inlet to the day tank and that flowmeter fails to meet an accuracy or precision test, malfunctions, or is rendered inoperable, then the mass produced may be estimated by calculating the change in volume in the day tank and multiplying it by the density of the product. Where a secondary mass measurement is not available, the substitute value of the parameter shall be an estimate based on a related parameter. For example, if a flowmeter measuring the mass fed into a destruction device is rendered inoperable, then the mass fed into the destruction device may be estimated using the production rate and the previously observed relationship between the production rate and the mass flow rate into the destruction device.

§ 98.126 Data reporting requirements.

(a) *All facilities.* In addition to the information required by § 98.3(c), you shall report the following information.

(1) The chemical identities of the contents of the stream(s) (including process, emissions, and destroyed streams) analyzed under the initial scoping test of fluorinated GHG at § 98.124(a), by process.

(2) The location and function of the stream(s) (including process streams, emissions streams, and destroyed streams) that were analyzed under the initial scoping test of fluorinated GHG at § 98.124(a), by process.

(3) The annual emissions of each fluorinated GHG by process, for equipment leaks, and for the facility as a whole.

(4) The method used to determine the mass emissions of each fluorinated GHG, *i.e.,* mass balance, process-vent-specific emission factor, or process-vent-specific emission calculation factor, for each process and process vent at the facility.

(5) The chemical formula and total mass produced of the fluorinated gas product in metric tons, by chemical and process.

(b) *Reporting for mass balance approach.* For processes whose emissions are determined using the mass-balance approach under § 98.123(a), you shall report the following for each process:

(1) The absolute and relative uncertainties calculated under paragraphs § 98.123(a)(1) through (a)(4), as well as the data (including quantities and their uncertainties) used in these calculations.

(2) The balanced chemical equation that describes the reaction used to manufacture the fluorinated GHG product (specifically, the equation that provides the stoichiometric coefficients in Equation L–7 of this subpart).

(3) The total mass and chemical formula of each reactant fed into the production process in metric tons, by chemical.

(4) The total mass of each reactant permanently removed from the production process in metric tons, by chemical.

(5) The total mass of the fluorinated GHG product removed from the production process and destroyed.

(6) The mass and chemical formula of each by-product generated.

(7) The mass of each by-product destroyed at the facility.

(9) The mass of each by-product recaptured and sent off-site for destruction.

(10) The mass of each by-product recaptured for other purposes.

(c) *Reporting for emission factor and emission calculation factor approach.* For processes whose emissions are determined using the emission factor approach under § 98.123(b)(3) or the emission calculation factor under § 98.123(b)(4), you shall report the following for each process:

(1) The process activity used to estimate emissions (*e.g.,* tons of product produced or tons of reactant consumed).

(2) The site-specific, process-vent-specific emission factor or emission calculation factor for each process vent.

(3) The mass of each fluorinated GHG emitted, including the mass of each fluorinated GHG emitted from equipment leaks.

(d) *Reporting for missing data.* Where missing data have been estimated pursuant to § 98.125, you shall report the reason the data were missing, the length of time the data were missing, the method used to estimate the missing data, and the estimates of those data.

(e) *Reporting of destruction device monitoring data.* A fluorinated GHG production facility that destroys fluorinated GHGs shall report the monitoring results for the destruction device that are deviations from the monitoring limit set (*e.g.,* parametric monitoring of incinerator temperature, outlet concentration checks, *etc.*) during the emissions test.

(f) *Reporting of destruction device testing.* A fluorinated GHG production facility that destroys fluorinated GHGs shall submit the emissions test report for the emission test conducted every 5 years. The emissions testing report must contain the following information:

(1) Destruction efficiency (DE) of each destruction unit for each fluorinated GHG, or if a surrogate was used, the DE of the surrogate.

(2) Test methods used to determine the destruction efficiency.

(3) Methods used to record the mass of fluorinated GHG destroyed.

(4) Chemical identity of the fluorinated GHG(s) used in the performance test conducted to determine DE, including surrogates, and information on why the surrogate is sufficient to demonstrate DE for all fluorinated GHG vented to the destruction unit.

(5) Name of all applicable Federal or State regulations that may apply to the destruction process.

(6) If process changes affect the destruction efficiency of the destruction device or the methods used to record mass of fluorinated GHG destroyed, then the revised emission testing report must be submitted to reflect the changes. The revised report must be submitted to EPA within 60 days of the change.

(g) *Reporting for destruction of previously produced fluorinated GHGs.* A fluorinated GHG production facility that destroys fluorinated GHGs shall report the following for each previously produced fluorinated GHG destroyed:

(1) The mass of the fluorinated GHG fed into the destruction device.

(2) The mass of the fluorinated GHG emitted from the destruction device.

§ 98.127 Records that must be retained.

In addition to the records required by § 98.3(g), you must retain the dated records specified in paragraphs (a) through (h) of this section, as applicable.

(a) *Process information records.*

(1) Identify all products and processes subject to this subpart. Include the unit identification as appropriate.

(2) Monthly and annual records of all analyses and calculations conducted, including all information reported as required under §§ 98.123 and 98.126.

(b) *Emission factor and emission calculation factor method.* Retain the

following records for each process at the facility.

(1) Identify all process vents above and below the 10,000 metric tons CO_2e per year uncontrolled emission limit for fluorinated GHG.

(2) For vents above the 10,000 metric tons CO_2e per year uncontrolled emission limit, identify those that vent to a destruction device demonstrated to achieve a destruction efficiency of 99.9 percent for fluorinated GHGs, and for which the facility has equipment (*e.g.,* holding tank capacity; monitoring of by-pass streams) or procedures (*e.g.,* compulsory process shutdowns) in place that ensure that uncontrolled emissions do not occur.

(3) For each vent, identify the method used to develop the factor (*i.e.,* emission factor by emissions test or emissions calculation factor).

(4) The emissions test data and reports and the calculations used to determine the process-vent-specific emissions factor, including the actual process-vent-specific emission factor, the average hourly fluorinated GHG emission rate from the process vent during the test or the average fluorinated GHG emissions per batch and the process feed rate, process production rate, or other process activity rate during the test.

(5) The calculations used to determine the process-vent-specific emissions calculation factor and the actual emissions calculation factor.

(6) The ongoing monthly, campaign, or batch process production quantity and annual process production quantity or other process activity information in the appropriate units, along with the dates and time period during which the process was operating.

(7) For continuous processes, identify whether the process was representative or whether it was another operating scenario. For batch processes, identify whether each batch operated was considered a typical batch or whether it was another operating scenario. For both continuous and batch processes, identify and provide the measurements during the test of the key process parameters that define the operating scenario (*e.g.,* process equipment, process vents, destruction device)).

(8) Calculations used to determine annual emissions of each fluorinated GHG for each process and the total fluorinated GHG emissions for all processes, *i.e.,* total for facility.

(9) The dates and time periods when the process vent emissions from a campaign or batch were vented to the destruction device.

(c) *Missing data records.* Where missing data have been estimated pursuant to § 98.125, you shall record the reason the data were missing, the length of time the data were missing, the method used to estimate the missing data, and the estimates of those data.

(d) *5-year process vent emission testing.* A fluorinated GHG production facility that conducts process vent emission testing to determine process-vent-specific emission factor for fluorinated GHGs shall retain the results of the emission testing, including data in § 98.124(c)(7) and:

(1) Test methods used to determine the flow rate and fluorinated GHG concentrations of the process vent stream.

(2) Flow rate of fluorinated GHG stream.

(3) Concentration (mass fraction) of each fluorinated GHG.

(4) Emission factor calculated from paragraph (b)(4) of this section in metric tons per activity.

(e) *5-year destruction efficiency testing.* A fluorinated GHG production facility that destroys fluorinated GHGs shall retain the emissions performance testing report containing the following information:

(1) Destruction efficiency (DE) of each destruction device.

(2) Test methods used to determine the destruction efficiency.

(3) Methods used to record the mass of fluorinated GHG destroyed.

(4) Chemical identity of the fluorinated GHG(s) used in the performance test conducted to determine DE.

(5) Name of all applicable Federal or State regulations that may apply to the destruction process.

(6) If process changes affect the destruction efficiency of the destruction device or the methods used to record mass of fluorinated GHG destroyed, then the revised emission testing report must be submitted to reflect the changes. The revised report must be submitted to EPA within 60 days of the change.

(7) Records of test reports and other information documenting the facility's five-year destruction efficiency report in § 98.126(e) and (g).

(f) *Equipment leak records.* If you are subject to § 98.123(c) of this subpart, you must maintain information on the number of each type of equipment; the service of each piece of equipment (gas, light liquid, heavy liquid); the concentration of each fluorinated GHG in the stream; the time period each piece of equipment was in service, and the emission calculations for each fluorinated GHG for all processes. Depending on which equipment leak monitoring approach you follow, you must maintain information for equipment on the associated screening data concentrations for greater than or equal to 10,000 ppmv and associated screening data concentrations for less than 10,000 ppmv; associated actual screening data concentrations; and associated screening data and leak rate data (*i.e.,* bagging) used to develop a unit-specific correlation.

(g) *All facilities.* Dated records documenting the initial and periodic calibration of the gas chromatographs, GC/MS, GC/ECD, FTIR, and NMR devices, weigh scales, flowmeters, and volumetric and density measures used to measure the quantities reported under this subpart, including the industry standards or manufacturer directions used for calibration pursuant to § 98.124(c), (e), (f), (k) and (l).

§ 98.128 Definitions.

Except as provided below, all of the terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part. If a conflict exists between a definition provided in this subpart and a definition provided in subpart A, the definition in this subpart shall take precedence for the reporting requirements in this subpart.

Batch process or *batch operation* means a noncontinuous operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of the equipment after the batch operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation.

Batch emission episode means a discrete venting episode associated with a vessel in a process; a vessel may have more than one batch emission episode. For example, a displacement of vapor resulting from the charging of a vessel with a feed material will result in a discrete emission episode that will last through the duration of the charge and will have an average flow rate equal to the rate of the charge. If the vessel is then heated, there will also be another discrete emission episode resulting from the expulsion of expanded vapor. Other emission episodes also may occur from the same vessel and other vessels in the process, depending on process operations.

Completely destroyed means destroyed with a destruction efficiency of 99.99 percent or greater.

Completely recaptured means 99.99 percent or greater of each fluorinated GHG is removed from a stream.

Continuous process or operation means a process where the inputs and

outputs flow continuously throughout the duration of the process. Continuous processes are typically steady state.

Destruction process means a process used to destroy fluorinated GHG in a destruction device such as a thermal incinerator or catalytic oxidizer.

Equipment (for the purposes of 40 CFR part 98, subpart L only) means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in fluorinated GHG service for a process subject to this subpart; and any destruction devices or closed-vent systems to which processes subject to this subpart are vented.

Fluorinated gas means any fluorinated GHG, CFC, or HCFC.

In fluorinated GHG service means that a piece of equipment either contains or contacts a feedstock, byproduct, or product that contains fluorinated GHG.

Isolated intermediate means a product of a process that is stored before subsequent processing. An isolated intermediate is usually a product of chemical synthesis. Storage of an isolated intermediate marks the end of a process. Storage occurs at any time the intermediate is placed in equipment used solely for storage.

Operating scenario means any specific operation of a process and includes for each process: (1) A description of the process and the specific process equipment used; (2) An identification of related process vents, their associated emissions episodes and durations, and calculations and engineering analyses to show the annual uncontrolled fluorinated GHG emissions from the process vent; (3) The control or destruction devices used, as applicable, including a description of operating and/or testing conditions for any associated destruction device; (4) The process vents (including those from other processes) that are simultaneously routed to the control or destruction device(s); and (5) The applicable monitoring requirements and any parametric level that assures destruction or removal for all emissions routed to the control or destruction device. A change to any of these elements not previously reported, except for item (4) of this definition, shall constitute a different operating scenario.

Process means all equipment which collectively function to produce a fluorinated gas product, including an isolated intermediate (which is also a fluorinated gas product), or to transform a fluorinated gas product. A process may consist of one or more unit operations. For the purposes of this subpart, process includes any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a fluorinated gas product. For a continuous process, cleaning operations conducted may be considered part of the process, at the discretion of the facility. For a batch process, cleaning operations are part of the process. Ancillary activities are not considered a process or part of any process under this subpart. Ancillary activities include boilers and incinerators, chillers and refrigeration systems, and other equipment and activities that are not directly involved (*i.e.,* they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a fluorinated gas product.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a process. All condensers recovering condensate from a process vent at or above the boiling point or all condensers in line prior to a vacuum source are considered process condensers. Typically, a primary condenser or condensers in series are considered to be integral to the process if they are capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse or for sale for fuel value, use, or reuse.

Process vent (for the purposes of 40 CFR part 98, subpart L only) means a vent from a process vessel or vents from multiple process vessels within a process that are manifolded together into a common header, through which a fluorinated GHG-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottoms receivers, surge control vessels, reactors, filters, centrifuges, and process tanks. Process vents do not include vents on storage tanks or pieces of equipment.

Typical batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a typical batch are based on the operating conditions that result in representative emissions. The typical batch defines the uncontrolled emissions for each emission episode defined under the operating scenario.

Uncontrolled fluorinated GHG emissions means a gas stream containing fluorinated GHG which has exited the process (or process condenser, where applicable), but which has not yet been introduced into a destruction device to reduce the mass of fluorinated GHG in the stream. If the emissions from the process are not routed to a destruction device, uncontrolled emissions are those fluorinated GHG emissions released to the atmosphere.

5. Add subpart QQ to read as follows:

Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams

Sec.

Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams

§ 98.430 Definition of the source category.

(a) The source category, importers and exporters of fluorinated GHGs contained in pre-charged equipment or closed-cell foams, consists of the following suppliers: any entity that is importing or exporting pre-charged equipment that contains a fluorinated GHG, and any entity that is importing or exporting closed-cell foams that contain a fluorinated GHG.

§ 98.431 Reporting threshold.

Any importer or exporter of fluorinated GHGs contained in pre-charged equipment or closed-cell foams who meets the requirements of § 98.2(a)(4) must report each fluorinated GHG contained in the imported or exported pre-charged equipment or closed-cell foams.

§ 98.432 GHGs to report.

You must report the quantity of each fluorinated GHG contained in pre-charged equipment or closed-cell foams that you import or export during the calendar year.

§ 98.433 Calculating GHG contained in pre-charged equipment or closed-cell foams.

(a) The total mass of each fluorinated GHG imported and exported inside equipment or foams shall be estimated using Equation QQ–1 of this section:

$$I = \sum_{t} S_t * N_t * 0.001 \qquad \text{(Eq. QQ-1)}$$

Where:

I = Total mass of the fluorinated GHG imported or exported by the entity annually (metric tons)
t = Type of equipment/foam containing the fluorinated GHG
S_t = Mass of fluorinated GHG per unit of equipment or foam type t (charge per piece of equipment or kg/cubic foot of foam, kg)
N_t = Number of units of equipment or foam type t imported or exported annually (pieces of equipment or cubic feet of foam)
0.001 = Factor converting kg to metric tons

§ 98.434 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, you may follow the provisions of § 98.3(d)(1) through (d)(3) for best available monitoring methods rather than follow the monitoring requirements of this section. For purposes of this subpart, any reference to the year 2010 in § 98.3(d)(1) through (3) shall mean 2011.

(b) The inputs to the annual submission shall be reviewed against the import or export transaction records to ensure that the information submitted to EPA is being accurately transcribed as the correct chemical or blend in the correct pre-charged equipment or closed-cell foam in the correct quantities (metric tons) and units (cubic feet and kg/cubic foot).

§ 98.435 Procedures for estimating missing data.

Procedures for estimating missing data are not provided for importers and exporters of fluorinated GHGs contained in pre-charged equipment or closed-cell foams. A complete record of all measured parameters used in tracking fluorinated GHGs contained in pre-charged equipment or closed-cell foams is required.

§ 98.436 Data reporting requirements.

(a) Each importer of fluorinated GHGs contained in pre-charged equipment or closed-cell foams shall submit an annual report that summarizes its imports at the corporate level, except for transshipments, as specified:

(1) Total mass in metric tons of each fluorinated GHG imported in pre-charged equipment or closed-cell foams.

(2) For each type of pre-charged equipment, the identity of the fluorinated GHG used as a refrigerant or electrical insulator, charge size (holding charge, if applicable), and number imported.

(3) For closed-cell foams that are imported inside of appliances, the identity of the fluorinated GHG contained in the foam, the quantity of fluorinated GHG contained in the foam in each appliance, and the number of appliances imported for each type of appliance.

(4) For imported closed cell-foams that are not imported inside of appliances, the identity of the fluorinated GHG, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the quantity of foam imported (cubic feet) for each type of closed-cell foam.

(5) Dates on which the pre-charged equipment or closed-cell foams were imported.

(6) Ports of entry through which the pre-charged equipment or closed-cell foams passed.

(7) Countries from which the pre-charged equipment or closed-cell foams were imported.

(b) Each exporter of fluorinated GHGs contained in pre-charged equipment or closed-cell foams shall submit an annual report that summarizes its exports at the corporate level, except for transshipments, as specified:

(1) Total mass in metric tons of each fluorinated GHG exported in pre-charged equipment or closed-cell foams.

(2) For each type of pre-charged equipment, the identity of the fluorinated GHG used as a refrigerant or electrical insulator, charge size (including holding charge, if applicable), and number exported. (3) For closed-cell foams that are exported inside of appliances, the identity of the fluorinated GHG contained in the foam, the quantity of fluorinated GHG contained in the foam in each appliance, and the number of appliances exported for each type of appliance.

(4) For exported closed cell-foams that are not exported inside of appliances, the identity of the fluorinated GHG, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the quantity of foam exported (cubic feet) for each type of closed-cell foam.

(5) Dates on which the pre-charged equipment or closed-cell foams were exported.

(6) Ports of exit through which the pre-charged equipment or closed-cell foams passed.

(7) Countries to which the pre-charged equipment or closed-cell foams were exported.

§ 98.437 Records that must be retained.

(a) In addition to the data required by § 98.3(g), importers of fluorinated-GHGs in pre-charged equipment and closed-cell foams shall retain the following records substantiating each of the imports that they report:

(1) A copy of the bill of lading for the import.

(2) The invoice for the import.

(3) The U.S. Customs entry form.

(b) In addition to the data required by § 98.3(g), exporters of fluorinated GHGs in pre-charged equipment and closed-cell foams shall retain the following records substantiating each of the exports that they report:

(1) A copy of the bill of lading for the export and

(2) The invoice for the export.

(c) Persons who transship pre-charged equipment and closed cell foams containing fluorinated GHGs shall maintain records that indicated that the pre-charged equipment or foam originated in a foreign country and was destined for another foreign country and did not enter into commerce in the United States.

§ 98.438 Definitions.

Except as provided below, all of the terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part. If a conflict exists between a definition provided in this subpart and a definition provided in subpart A, the definition in this subpart shall take precedence for the reporting requirements in this subpart.

Appliance means any device which contains and uses a fluorinated greenhouse gas refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

Closed cell foam means any foam product constructed with a closed cell structure and a blowing agent containing a fluorinated GHG, including but not limited to polyurethane (PU) appliance foam, PU continuous and discontinuous panel foam, PU one component foam, PU spray foam, extruded polystyrene (XPS) boardstock foam, and XPS sheet foam.

Electrical Equipment means gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, or power transformers.

Fluorinated GHG refrigerant means, for purposes of this subpart, any substance consisting in part or whole of a fluorinated greenhouse gas and that is used for heat transfer purposes and provides a cooling effect.

Pre-charged appliance means any appliance charged with fluorinated greenhouse gas refrigerant prior to sale or distribution or offer for sale or distribution in interstate commerce. This includes both appliances that contain the full charge necessary for operation and appliances that contain a partial "holding" charge of the fluorinated greenhouse gas refrigerant (*e.g.,* for shipment purposes).

Pre-charged appliance component means any portion of an appliance, including but not limited to condensers, compressors, line sets, and coils, that is charged with fluorinated greenhouse gas refrigerant prior to sale or distribution or offer for sale or distribution in interstate commerce.

Pre-charged equipment means any pre-charged appliance, pre-charged appliance component, pre-charged electrical equipment, or pre-charged electrical equipment component.

Pre-charged electrical equipment means any electrical equipment, including but not limited to gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, or power transformers containing a fluorinated GHG prior to sale or distribution, or offer for sale or distribution in interstate commerce. This includes both equipment that contain the full charge necessary for operation and equipment that contain a partial "holding" charge of the fluorinated GHG (*e.g.,* for shipment purposes).

Pre-charged electrical equipment component means any portion of electrical equipment that is charged with SF_6 or PFCs prior to sale or distribution or offer for sale or distribution in interstate commerce.

6. Add subpart SS to read as follows:

Subpart SS—Sulfur Hexafluoride and Perfluorocarbons From Electrical Equipment Manufacture or Refurbishment

Sec.

Subpart SS—Sulfur Hexafluoride and Perfluorocarbons From Electrical Equipment Manufacture or Refurbishment

§ 98.450 Definition of the source category.

The electrical equipment manufacturing category consists of processes that manufacture or refurbish gas-insulated substations, circuit breakers, other switchgear, gas-insulated lines, or power transformers (including gas-containing components of such equipment) containing sulfur-hexafluoride (SF_6) or perfluorocarbons (PFCs).

§ 98.451 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing process and the facility meets the requirements of either § 98.2(a)(1) or (a)(2).

§ 98.452 GHGs to report.

(a) You must report annual SF_6 and PFC emissions (including emissions from equipment testing, manufacturing, decommissioning and disposal, refurbishing, and from storage cylinders and other containers) from any facility associated with the manufacture or refurbishment of closed-pressure and sealed-pressure equipment (including components of such equipment).

(b) You must report CO_2, N_2O and CH_4 combustion-related emissions from each stationary combustion unit. You must calculate and report these emissions under subpart C of this part (General Stationary Fuel Combustion Sources) by following the requirements of subpart C.

§ 98.453 Calculating GHG emissions.

(a) For each electrical equipment manufacturer, you must estimate the annual SF_6 and PFC emissions using the mass-balance approach in Equation SS–1 of this section:

$$\text{User Emissions} = \left(\text{Decrease in } SF_6 \text{ Inventory}\right) + \left(\text{Acquisitions of } SF_6\right) - \left(\text{Disbursements of } SF_6\right) \qquad \text{(Eq. SS-1)}$$

Where:

Decrease in SF_6 Inventory = (SF_6 stored in containers at the beginning of the year)—(SF_6 stored in containers at the end of the year).

Acquisitions of SF_6 = (SF_6 purchased from chemical producers or distributors in bulk) + (SF_6 returned by equipment users or distributors in equipment or containers) + (SF_6 returned to site after off-site recycling).

Disbursements of SF_6 = (SF_6 contained in new equipment delivered to customers) + (SF_6 delivered to equipment users in containers) + (SF_6 returned to suppliers) + (SF_6 sent off site for recycling) + (SF_6 sent to destruction facilities).

(b) The mass-balance method in paragraph (a) of this section shall be used to estimate emissions of PFCs associated with the manufacture or refurbishment of power transformers, substituting the relevant PFC(s) for SF_6 in Equation SS–1.

(c) The disbursements of SF_6 or PFCs to customers in new equipment or cylinders shall be estimated using Equation SS–2 of this section:

$$D_{GHG} = \sum_{p=1}^{n} Q_p \qquad \text{(Eq. SS-2)}$$

Where:

D_{GHG} = The disbursement of SF_6 or PFCs over the period to customers in new equipment or cylinders.

Q_p = The mass of the SF_6 or PFCs charged into equipment or containers over the period p sent to customers or sent off-site for other purposes including for recycling, for destruction or to be returned to suppliers.

n = The number of periods in the year.

(d) The mass of SF_6 or PFCs disbursed to customers in new equipment or cylinders over the period p may be estimated by monitoring the mass flow of the SF_6 or PFCs into the new equipment or cylinders using a flow meter or by weighing containers before and after gas from containers is used to fill equipment or cylinders.

(e) If the mass of SF_6 or the PFC disbursed to customers in new equipment or cylinders over the period p is estimated by weighing containers before and after gas from containers is used to fill equipment or cylinders, this quantity shall be estimated by using Equation SS–3 of this section:

$$Q_p = M_B - M_E - E_L \qquad \text{(Eq. SS-3)}$$

Where:

Q_p = The mass of SF_6 or the PFC disbursed to customers over the period p.

M_B = The mass of the contents of the containers used to fill equipment or cylinders at the beginning of period p.

M_E = The mass of the contents of the containers used to fill equipment or cylinders at the end of period p.

E_L = The mass of SF_6 or the PFC emitted during the period p downstream of the containers used to fill equipment or cylinders (*e.g.,* emissions from hoses or other flow lines that connect the container to the equipment or cylinder that is being filled).

(f) If the mass of SF_6 or the PFC disbursed to customers in new equipment or cylinders over the period p is determined using a flow meter, this quantity shall be estimated using Equation SS–4 of this section:

$$Q_p = M_{mr} - E_L \qquad \text{(Eq. SS-4)}$$

Where:

Q_p = The mass of SF_6 or the PFC disbursed to customers over the period p.
M_{mr} = The mass of the SF_6 or the PFC that has flowed through the flow meter during the period p.
E_L = The mass of SF_6 or the PFC emitted downstream of the flowmeter during the period p (*e.g.,* emissions from hoses or other flow lines that connect the container to the equipment that is being filled).

§ 98.454 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, you may follow the provisions of § 98.3(d)(1) through (d)(3) for best available monitoring methods rather than follow the monitoring requirements of this section. For purposes of subpart SS any reference to the year 2010 in § 98.3(d)(1) through (d)(3) shall mean 2011.

(b) Ensure that all the quantities required by the equations of this subpart have been measured using scales or flow meters that are certified with an accuracy and precision to within one percent of the true mass or weight or better, and is periodically recalibrated per the manufacturer's specifications. Account for the tare weights of the containers. Either measure new or residual gas (the amount of gas remaining in returned cylinders) or have the gas supplier measure them. If the gas supplier weighs the new or residual gas, obtain from the gas supplier a detailed monthly accounting, within 1 percent, of new or residual gas amounts in the cylinders returned to the gas supplier. You remain responsible for the accuracy of these masses and weights under this subpart.

(c) For purposes of Equations SS–3 and SS–4 of this subpart, the mass of SF_6 or the PFC emitted downstream of the container or flowmeter during the period p shall be estimated using measurements and/or engineering assessments or calculations based on chemical engineering principles or physical or chemical laws or properties. Such assessments or calculations may be based on, as applicable, the internal volume of hose or line that is open to the atmosphere during coupling and decoupling activities, the internal pressure of the hose or line, the time the hose or line is open to the atmosphere during coupling and decoupling activities, the frequency with which the hose or line is purged and the flow rate during purges. The estimated mass of SF_6 or the PFC emitted downstream of the container or flowmeter during the period p shall include unexpected or accidental losses.

(d) Calibrate all flow meters, weigh scales, and combinations of volumetric and density measures that are used to measure or calculate quantities that are to be reported under this subpart prior to the first year for which GHG emissions are reported under this part. Calibrations performed prior to the effective date of this rule satisfy this requirement. Recalibrate all flow meters, weigh scales, and combinations of volumetric and density measures at the minimum frequency specified by the manufacturer. Use National Institute of Standards and Technology-traceable standards and suitable methods published by a consensus standards organization (*e.g.,* ASTM, ASME, ISO, or others).

(e) Ensure the following QA/QC methods are employed throughout the year:

(1) Ensure that procedures are in place and followed to track and weigh all cylinders or other containers at the beginning and end of the year.

(2) Ensure all domestic electrical equipment manufacturing locations have provided information to the manager compiling the emissions report (if it is not already handled through an electronic inventory system).

(f) You must adhere to the following QA/QC methods for reviewing the completeness and accuracy of reporting:

(1) Review inputs to Equation SS–1 of this subpart to ensure inputs and outputs to the company's system are included.

(2) Do not enter negative inputs and confirm that negative emissions are not calculated. However, the decrease in SF_6 inventory may be calculated as negative.

(3) Ensure that beginning-of-year inventory matches end-of-year inventory from the previous year.

(4) Ensure that in addition to SF_6 purchased from bulk gas distributors, SF_6 returned from equipment users with or inside equipment and SF_6 returned from off-site recycling are also accounted for among the total additions.

§ 98.455 Procedures for estimating missing data.

A complete record of all measured parameters used in the GHG emissions calculations is required. Replace missing data, if needed, based on data from similar manufacturing operations, and from similar equipment testing and decommissioning activities for which data are available.

§ 98.456 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the following information at each facility level, by chemical:

(a) SF_6 and PFC sales and purchases.

(b) SF_6 and PFCs sent off site for destruction.

(c) SF_6 and PFCs sent off site to be recycled.

(d) SF_6 and PFCs returned from off site after recycling.

(e) SF_6 and PFCs returned by equipment users with or inside equipment.

(f) SF_6 and PFCs stored in containers at the beginning and end of the year.

(g) SF_6 and PFCs inside equipment delivered to customers.

(h) SF_6 and PFCs returned to suppliers.

(i) The nameplate capacity of the equipment delivered to customers with SF_6 or PFCs inside, if different from the quantity in paragraph (g) of this section.

(j) A description of the engineering methods and calculations used to determine emissions from hoses or other flow lines that connect the container to the equipment that is being filled.

(k) For any missing data, you must report the reason the data were missing, the length of time the data were missing, the method used to estimate emissions in their absence, and the quantity of emissions thereby estimated.

§ 98.457 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the following records:

(a) All information reported and listed in § 98.456.

(b) Accuracy certifications and calibration records for all scales and monitoring equipment, including the method or manufacturer's specification used for calibration.

(c) Check-out and weigh-in sheets and procedures for cylinders.

(d) Residual gas amounts in cylinders sent back to suppliers.

(e) Invoices for gas purchases and sales.

§ 98.458 Definitions.

All terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

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Part V

Farm Credit Administration

12 CFR Parts 611, 613, 615 et al. Organization; Eligibility and Scope of Financing; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Definitions; and Disclosure to Shareholders; Director Elections; Final Rule

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 615, 619 and 620

RIN 3052–AC43

Organization; Eligibility and Scope of Financing; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Definitions; and Disclosure to Shareholders; Director Elections

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this final rule on Farm Credit System (System) bank and association director elections and other voting procedures. The final rule clarifies director election processes and updates FCA regulations to incorporate interpretations made through bookletters to System institutions. It also consolidates general election procedures, clarifies the role of nominating committees, enhances eligibility and disclosure requirements for director candidates, and improves annual meeting information statement instructions. The final rule also adds new regulations on floor nominations and meetings of stockholders. We expect this final rule will increase stockholder participation, enhance impartiality, and strengthen disclosures in director elections.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elna Luopa, Senior Corporate Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434; or Laura D. McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

- Strengthen the independence of nominating committees;
- Encourage greater stockholder participation in the director election process;
- Ensure that procedures on nominations from the floor are equitable and known to stockholders;
- Clarify director election procedures;
- Enhance impartiality and disclosure in the election of directors; and
- Incorporate FCA interpretations and responses to questions raised by System institutions and FCA examiners in our regulations.

II. Background

The Farm Credit Act of 1971, as amended (Act) (Pub. L. 92–181, 85 Stat. 583), establishes the System as a farmer-owned cooperative system that provides credit to farmers, ranchers, producers or harvesters of aquatic products, and rural homeowners. The System's cooperative structure relies on stockholder control, participation, and ownership, supported by accurate and timely information provided by the directors of System institutions. Boards of directors have the responsibility of encouraging stockholder participation in the management, control, and ownership of the cooperative. Importantly, it is also from this pool of interested, active, and informed stockholders that the cooperative draws its next generation of directors.

On April 16, 2009, we published a proposed rule (74 FR 17612) to strengthen certain director election provisions and add other provisions to ensure that stockholders' interests continue to be the focus in the boardroom through their elected directors. We further proposed consolidating our director election rules into subpart C of part 611, "Election of Directors and Other Voting Procedures," to keep subject matters together and facilitate ease of use. We initially established a 60-day comment period but, on the request of the public, extended that period another 60 days.[1] The extended comment period for the proposed rule closed on August 14, 2009.

III. Comments and Our Response

We received 96 comment letters to our proposed rule from individuals and entities associated with the System, including the Farm Credit Council (FCC), acting for its membership, and each of the five Farm Credit banks. Of the comment letters received, 62 expressed support for the FCC comment letter, adding individual elaborations when they deemed them appropriate. We discuss the comments to our proposed rule and our responses below. Those areas of the proposed rule not receiving comment are finalized as proposed unless otherwise discussed in this preamble.

A. General Issues

We received 68 comments on the need for additional regulations on election processes in the System, including one from the FCC and multiple letters from members of individual System associations. While most commenters supported our objective of improving System election processes, the FCC, three Farm Credit banks and several associations questioned the need for additional regulations. The FCC and a couple of other commenters acknowledged that some of the existing regulations needed updating, but remarked that they were unaware where the existing rules had failed. Other commenters remarked that we should not impose regulatory requirements that restrict individual institution discretion in elections. These comments are addressed here.

1. Need for Regulation

The FCC and 49 other commenters asked that we withdraw the rule and work with the System to find a nonregulatory approach to strengthen institution elections. Many of these commenters remarked that active dialogue with System boards can address any weaknesses in the current election process, as can FCA informal guidance and examination. The FCC and a few other commenters remarked that our existing rules on election practices already exceed other regulators and suggested we adopt the practices of other financial regulators by requiring each institution to have policies in place specifying election practices in lieu of regulations. A few associations commented that the election process in the System is working and the rule would have a negative impact and increase costs, but one association remarked that the rule provided many opportunities for enhanced elections. This association also cautioned that those opportunities should not be forced upon the institutions. Another association stated that the rule does not follow best practices and expressed dismay at the implementation efforts that would be required if the rule became final, including changes to bylaws and policies. This same association asserted that the rule does not further the safe and sound operations of the System. Conversely, one association expressed appreciation that the rule recognizes best practices, but the commenter questioned the need to capture best practices in regulations. Another commenter stated that associations are in a better position to structure election procedures. The FCC and other commenters remarked that the proposed regulatory scheme seemed unjustified based on the limited election provisions in the Act. Still another commenter

[1] *See* 74 FR 23961 (May 22, 2009).

remarked that adoption of the rule could carry unintended consequences undermining the stated objectives of the rule. A couple of commenters expressed concern that the rule does not give sufficient consideration to the different sizes and operations of various System institutions. One commenter went so far as to state that the rule was a regulatory burden. Another expressed a lack of optimism that the rule would improve election processes. Two Farm Credit banks cautioned FCA on regulating election procedures within the System, questioning if such rules are in keeping with FCA's status as an arm's-length regulator. One bank stated that the proposed rule and existing rules are too detailed, explaining that individual institutions are better equipped to control election procedures. This same bank questioned why this rulemaking was needed as it was not aware of any harm or purpose that would be addressed by the rule.

We are not withdrawing the rule, but, in response to the comments received, we have amended certain provisions based on specific comments. While voluntary administration of elections is valuable, it does not replace the stability that rules provide in assuring System stakeholders of the safety and soundness of the System, and we have a responsibility to address this issue. Moreover, an effective director election process is critical to good governance, which in turn is essential for institution safety and soundness. The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. In the course of issuing regulations, we consider whether the rulemaking may duplicate other requirements, would be ineffective, or impose burdens that are greater than the benefits received. Also, we promulgate rules necessary to implement the expectations and requirements of the Act, which, in the case of director elections, is to support stockholder participation in the management, control, and ownership of the System. We believe this rule clarifies the intended meaning of certain existing rules, eliminates confusion through reorganization of the rules, replaces outdated regulatory language with more current terminology, and introduces technological alternatives to existing requirements. We also believe that this rulemaking is not a regulatory burden, as a large portion of it incorporates previous informal guidance provided to institutions and, therefore, does not result in significant adjustments to individual institution operations. We do not agree with comments that our rule is inconsistent with what other regulators require. The FCA, as an independent regulator of the System, is not required to follow the actions of other regulators. Instead, we consider the policy positions of other regulators to decide if we should follow them or take a different approach if appropriate to implement the requirements and expectations of the Act.

Our election rule sets a minimum level of performance and gives prime consideration to the cooperative structure of the System. We believe the assurances derived from this regulatory minimum standard will benefit the System overall by increased stockholder, investor, and public confidence. In this rulemaking, our intent is to ensure that appropriate election standards exist for all System institutions. We carefully considered the size, complexity, risks, interrelationships, and resources of System institutions when developing our rules, and incorporated variations and flexibility as appropriate. While we believe it is important to preserve individual institution flexibility when possible, our regulatory responsibility requires us to issue regulations that we determine appropriate for safety and soundness reasons. While commenters remarked that they knew of no risk or problem that needs to be addressed in a regulation, we explain that we are not limited to issuing regulations only when there is an existing problem. It is our responsibility as a safety and soundness regulator to be proactive in our rulemaking and provide standards that help avert potential problems.

2. Examination Instead of Rulemaking

Thirty-four (34) System commenters cited our examination and enforcement authorities as a sufficient means to address election issues, concluding that additional regulations are unnecessary. Many explained that the FCA examination function is better suited to addressing individual problems, rather than a rulemaking that impacts the entire System, and that we should focus our attention on those institutions with election concerns instead of developing a set of regulations impacting all institutions. The FCC and several other commenters suggested FCA issue an election governance policy statement and then use its examination authority to verify compliance with the policy. Commenters also stated that we have all the enforcement powers necessary to correct any unsafe or unsound election practices without this rule. The FCC commented that because there are no problems in election of bank directors, there is little burden on FCA in examining individual bank election policies, rather than issuing regulations and examining for compliance with those regulations.

We examine to ensure the safety and soundness of System institutions and their compliance with laws and regulations. This function is not a substitute for our responsibility to issue regulations implementing the Act and ensuring the safety and soundness of System institutions. Our examiners use our rules as the basis for compliance determinations and to require any necessary corrective actions. Regulations reduce the likelihood that examinations will uncover unsafe and unsound practices and provide a minimum standard of performance to assure stakeholders of the safe and sound operations of System institutions. While we agree with the commenters that we have a high level of enforcement authority, we do not view it as our primary tool for ensuring the safety and soundness of System institutions. Safe and sound operations of individual System institutions are ensured by a clear set of rules and thorough examinations.

3. Interaction With Bylaws

The FCC and eight other commenters stated that our rulemaking efforts conflict with section 5.17(b) of the Act. This section of the Act precludes FCA from approving institution bylaws. As we have explained in other rulemakings, issuing rules impacting bylaws does not mean we are approving bylaws in violation of section 5.17(b) of the Act. The prohibition on bylaw approval doesn't preclude rulemaking on matters affecting an institution's bylaws or the safe and sound operations of System institutions. In fact, the Act at section 5.17(a)(9) directs us to issue rules and regulations "necessary or appropriate" to carry out the Act. In pursuit of ensuring a safe and sound System and carrying out the Act, institution bylaws and operations are necessarily impacted by our rules. Additionally, while the authority of System institutions to establish bylaws is fairly broad, it is not without limits. Bylaws must be consistent with applicable laws and regulations, and we retain the responsibility to examine institution bylaws to ensure compliance. Consequently, we may regulate the terms and conditions by which institutions exercise their powers through their bylaws, while not approving the bylaws themselves, and then examine compliance with our regulations.

4. Differences between Farm Credit Banks and Associations

Two Farm Credit banks expressed concern that the regulation does not adequately recognize the differences between bank and association election procedures. One commenter remarked that the rule is too restrictive for banks, while not providing enough protection of association rights. This commenter asked the FCA to reevaluate the proposed rule to recognize differences in election procedures between banks and associations contained in the Act. One association remarked that FCA should adopt the concept of 75-percent stockholder-associations' affirmative vote on all bank election procedures, similar to the current rule on overturning cumulative voting in bank elections. We disagree with the suggestion that stockholder-associations be allowed to overrule bank board decisions on a bank's election process. Each Farm Credit bank may consider the suggestions of its stockholder-associations and incorporate them into the bank's election policies and procedures if the bank desires. We agree that the rule requires further clarity in its application to Farm Credit banks versus associations and have made modifications to those sections of the rule we considered appropriate. We addressed these specific modifications in the section-by-section analysis of this preamble below.

5. Implementation Date

We received five comments asking that the implementation date of the rule be extended to facilitate compliance. We proposed no delayed implementation date because we do not consider it necessary. As stated earlier, much of this rulemaking incorporates previous guidance provided by FCA to the System. We are not delaying the implementation of the other areas of the rule because the timing of the rule's effective date is not anticipated to impact ongoing elections.

B. Specific Issues

1. Meetings of Stockholders [New §§ 611.100 and 611.110]

a. Definitions [New § 611.100]

We received two comments on the definition of "mail ballots." The commenters asked that we continue to permit mail ballots to be used by Farm Credit banks, whether or not a stockholders' meeting has been held. One of the commenters pointed out that Farm Credit banks, as acknowledged elsewhere in the proposed rule, do not always have stockholders' meetings when conducting director elections. This same commenter also remarked that proxy ballots could be used if mail ballots were eliminated.

The commenter's point that the definition offered in the proposed rule would effectively prevent banks from using mail ballots absent a stockholders' meeting is well made. Our proposed definition was in no way intended to prevent Farm Credit banks from using mail ballots, absent a stockholders' meeting. We are therefore removing that portion of the definition and placing the language explaining that mail ballots may not be distributed prior to the conclusion of a meeting in paragraph (d) of § 611.340, which discusses the time when proxy ballots may be accepted and mail ballots may be distributed in connection with stockholders' meetings. We believe this movement of language regarding when mail ballots are distributed from § 611.100(a) to § 611.340(d) clarifies that when a stockholders' meeting is held to conduct elections, mail ballots may not be issued before the conclusion of that meeting.

Although no comments were made on the definition of mail ballots, including by electronic means, we are clarifying that electronic ballots classified as mail ballots are those cast by electronic mail. We did not intend to characterize electronic, "real time" balloting procedures, such as electronic ballot stations or online balloting that may be used by stockholders attending a meeting either in a physical location or online, as mail ballots. Those electronic "real time" balloting methods would properly be characterized as in-person voting. We also clarify that text messaging is not an appropriate method for balloting as it is nearly impossible to verify the identity of the sender of text messages.

One commenter remarked that the definitions for online meetings and online meeting spaces, while providing flexibility, do not allow for meetings without a physical space. This commenter asked for clarification on what business can be conducted by mail or online without physical meetings. This comment is better directed to § 611.110, "Meetings of stockholders," since the definitions in § 611.100 do not contain the limitation mentioned, but we respond to the comment here. We require a physical meeting space when using online meetings for all associations and those Farm Credit banks allowing floor nominations. As explained in the proposed rule preamble, E-commerce requires each stockholder to agree to electronic communication in lieu of traditional communications, so unless all stockholders have made such an agreement, a physical meeting space is needed to provide a "floor" for floor nominations. Because the commenter thought our proposed rule would require Farm Credit banks to always have a physical meeting space when using online meetings, we are modifying § 611.110(a) to clarify this requirement always applies to associations, since associations must allow floor nominations. The requirement would only apply to Farm Credit banks permitting floor nominations, as reflected in § 611.326(b)(2).

We received one comment on the definition of a quorum, asking if a quorum applies to individual meeting items or the entire meeting. A quorum is the number of stockholders needed to be present to start a meeting; it does not vary for each agenda item. However, we are removing the definition of a quorum for reasons stated under section III.B.1.d. of this preamble. We received no comments on the other provisions of § 611.100 and finalize those as proposed.

b. Stockholders' Meetings [New § 611.110]

We received 22 comments, including the FCC, on System associations' holding annual director elections and allowing for the use of online meetings as part of the annual meeting process. Many of these commenters expressed dismay at having to have one large meeting each year instead of individual and localized customer appreciation meetings. Several commenters also stated that institutions should remain free to determine the meeting process. An association commented that it had stopped holding annual meetings 12 years ago, instead using localized customer appreciation gatherings, which have resulted in significant increases in stockholder participation and attendance. Still another association stated that it has scaled down its annual meeting and redirected the cost savings in separate customer appreciation events. One commenter remarked that annual meetings are not practical, nor reliable, for generating stockholder involvement. Another commenter expressed concern that annual meetings are viewed as the only or best means of stockholder participation in institution business. Still another stated that one annual meeting, versus multiple local meetings, is difficult to schedule in a fair manner given the variety of agricultural production timelines involved. Other commenters remarked on the growing territorial sizes and difficulties presented in holding a single annual meeting. One commenter stated that even using regional meetings does

not address timeframes or improve stockholder participation.

The provision that associations hold annual meetings of stockholders comes from section 4.15 of the Act, which provides that each association "shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year." In addition, we are seeking to recognize, within the general election procedures, § 611.1123(a)(3) of our merger regulations. Under § 611.1123(a)(3), the governance plan for a continuing association must provide for the election of at least one director at each annual meeting held subsequent to the date of merger. Incorporating this requirement into general election provisions facilitates compliance as most associations have merged under this rule and therefore have annual meetings and director elections.

We assure commenters that our rule does not require a single, large annual meeting, only that an annual meeting be held. Associations may use a single location or multiple locations to hold their annual meetings. It is up to the association to determine how to best meet the needs of its stockholders in structuring the meeting, but we encourage associations that serve diverse types of agricultural operations or that have large territories to consider using sectional sessions out of consideration for its borrowers. Annual meetings, besides serving as a forum for elections, provide the opportunity to review the association's financial condition, discuss its progress or setbacks over the previous year, look at the challenges that management and board expect to face in the year ahead, address member concerns that warrant the board's attention, and discuss the rights, privileges, and obligations of members, individually and collectively. The annual meeting creates the unique setting for such discussions.

One association objected to requiring annual director elections, explaining that it rotates director terms each year and, because appointed directors are included in that rotation, a stockholder-elected director seat may not be up for election each year. Another commenter expressed concern that the rule does not consider special circumstances, such as mergers, which make electing a director every year impractical.

We disagree with comments that annual director elections, held in conjunction with annual meetings, are not necessary every year. We expect associations to stagger the terms of all their directors, but we do not expect the inclusion of appointed directors in a director rotation cycle to prevent the election of a stockholder-elected director each year. Since appointed directors (either outside directors or board-appointed stockholder directors) are not elected by the voting stockholders but instead, are chosen by the other board members, they should not be included in the director election rotation cycle. With respect to mergers, FCA has favorably responded to requests from associations to suspend director elections in a merger year or to facilitate a planned downsizing of the continuing board of directors.

A commenter asked us to clarify the language in § 611.110(a) regarding the interaction of mail ballots with annual meetings. The rule provides that in-person (including proxy ballots) and online elections of directors must occur at the annual meeting, but mail ballots may be distributed after the meeting. Thus, associations have to elect a director each year, but the timing of the election ballot depends on the balloting methods used: in-person, online, and proxy balloting happens at the annual meeting, but mail balloting happens after the annual meeting concludes. Based on this comment, we have revised §§ 611.110(a) and 611.340(d) to make it clear that mail ballots may only be distributed after the annual meeting.

The FCC and one association asked that banks not be required to have annual meetings because the Act does not require it. Another association asked that banks not be required to elect directors annually. These commenters explained that the manner in which banks communicate with stockholders for election purposes should be left to the banks. We clarify that this rule does not require banks to have annual meetings. While we are not requiring Farm Credit banks to hold these types of meetings, we believe, however, they should do so. Thus, we are not removing the language from § 611.110(a) encouraging Farm Credit banks to hold annual or periodic meetings. We continue to strongly believe that the Act places significant expectations on System institutions to foster and facilitate stockholder involvement in, and knowledge of, the cooperative nature of each System institution and the System itself. Farm Credit banks should give serious consideration to the value of holding an organized, structured meeting wherein stockholder-associations can communicate with their board members on matters that may be of interest and concern to them. In addition, Farm Credit banks are required to elect at least one director on an annual basis.

Most commenters on the online meeting aspect of the rule indicated appreciation for the provision, but expressed reservations on its usefulness, costs and implementation. One commenter remarked that using online meetings may not be appropriate or available in all locations and asked us to clarify whether or not we were requiring online meetings. A couple of commenters remarked that the cost of using technology to conduct meetings or elections may not be justified by actual use of the feature. One of these commenters also stated that based on "hits" to its Web site, stockholders do not prefer this manner of communication. A couple of commenters also stated the security requirements for online meetings and elections would outweigh their benefit. One commenter stated that its stockholders' infrastructure and culture did not support online meetings. Three associations remarked that some institution stockholders did not have the technical skills to participate in online meetings. Other commenters stated that online meetings are not viable means for increasing stockholder participation as many stockholders prefer not to participate in online banking activities. Two associations expressed concern with the implementation issues associated with using online meetings, such as coordinating a virtual floor for an online meeting. One of these commenters stated that online meetings send the message that the board is not interested in personal interaction with stockholders. A couple of commenters observed that a number of its stockholders do not have Internet access, particularly in rural areas, so would not be able to attend an online meeting. However, 12 other commenters favored the use of online meetings, most welcoming a regulation identifying it as a tool for associations to use to increase participation as long as it is not a requirement, but one of these commenters stated that online procedures should be left to the institutions. Another stated that online meetings should not entirely replace a physical meeting.

The rule provides associations the option of holding their annual meetings in both a physical location and online. While we recognize that associations incur certain costs associated with annual meetings, we believe the association's investment in its members through stockholder participation and involvement in the annual meeting justifies the costs involved. In § 611.110, System institutions may use online meetings to augment the traditional annual meetings held in a physical

location, but are not required to do so. In response to the comments, we are modifying this aspect of the provision to clarify that the use of online meetings, online voting, and other technological resources, is optional.

We do not view online meetings as eliminating the board members' personal interactions with stockholders, but as an opportunity for enhanced stockholder participation. Online meetings allow online attendees to communicate with board members and others who are present at the physical meeting site. Online attendees can also nominate a person as a director candidate from the virtual floor provided by the online meeting, ask questions of the meeting chair, and engage in discussions, etc., as if they were physically at the meeting. We recognize that implementing online meetings involves up-front costs to put this technology to use. Each institution must decide whether these costs are justified in light of the benefits to the institution and its stockholders in the long run. We also recognize that there are rural areas of the country where broadband Internet access is not yet available. For this reason, the rule requires that associations must always have a physical location for the annual meeting. The online meeting is an option that is available.

Unlike associations, banks are not required to hold annual meetings or to elect their directors or the nominating committee as a part of the annual meeting process. For Farm Credit banks not using floor nominations, no physical meeting space is required. Thus, bank business can be conducted exclusively online, including conducting director elections and the election of the nominating committees, if the bank provides an online medium for casting votes or uses mail ballots.

c. Stockholder Attendance [New § 611.110(d)]

We received 25 comments, including one from the FCC and multiple letters from members of individual associations, on the proposed requirement that Farm Credit banks and associations actively encourage stockholder attendance at the annual meeting. Commenters stated that the requirement, while well intended, was not practical or necessary. Fourteen (14) commenters from the same association remarked that stockholder participation is achieved outside the annual meeting, such as in focus group meetings, education programs for young, beginning, and small farmers, and customer appreciation days. These same commenters observed that annual meetings are probably the least effective at obtaining stockholder participation, particularly in those associations with larger territories. Commenters from another association remarked that directors are the main source of attendance at annual meetings and that each stockholder receives notice of the meetings and has the freedom to attend or not. One commenter remarked that the regulatory provision would be difficult to enforce. One Farm Credit bank remarked that stockholder participation at annual meetings is overrated, especially when mail ballots are used. This bank also stated that this participation is not as important as regular communication between institutions and stockholders and a sound patronage program. One commenter also remarked that the farming needs of stockholders also play an important role in attendance at annual meetings. Still another commenter asked us to approach member involvement more broadly, instead of focusing on annual meetings. The FCC commented that the proposed provision was arbitrary and asked FCA to allow institutions to determine the best methods for enhancing stockholder participation. The FCC also commented that this provision partially conflicts with the provision to use the Annual Meeting Information Statement (AMIS) for communicating other stockholder participation opportunities. One commenter objected to using the AMIS as a vehicle to enhance stockholder participation, indicating that the AMIS is already filled with information, and more data may dissuade stockholders from reading the AMIS. A few commenters stated that it would be more appropriate for FCA to require institutions to adopt policies encouraging stockholder participation in the management, ownership, and control of their respective institutions. One association remarked that making encouragement of stockholder participation a requirement would not be beneficial or effective to the stated objective.

We agree with comments that the proposed requirement in § 611.110(d), which would have required Farm Credit banks and associations to actively encourage stockholder attendance at the annual meeting, would be difficult to implement and are withdrawing it. However, we do not agree with the comments that encouraging stockholder attendance at stockholder meetings is not necessary and is overrated since there are other means of communication that take place between the institution and members. Stockholder participation and involvement in annual meetings reinforce communications between the institution and members and may suggest a need to improve communications. In response to the comment that FCA should require institutions to adopt policies that encourage stockholder participation in the management, ownership, and control of their institution, we believe that institution boards should undertake this on their own initiative. FCA encourages System institutions to be creative in finding ways to reach out to member-stockholders beyond the lending relationship, provision of related services, and the distribution of annual and quarterly reports and other required disclosures.

d. Quorums

The proposed rule would have clarified, in part, that a quorum count may not include mail ballots. We received 72 comments on this provision, most objecting to preventing institutions from including mail ballots in a quorum count. A minority of commenters either supported the provision or understood its objective. The FCC expressed strong objections to removing mail ballots from quorum counts, arguing that using mail ballots in a quorum count is as logical as allowing proxy ballots in quorum counts. The FCC further contested that including mail ballots in quorum counts is in keeping with cooperative principles because it results in larger stockholder participation. Several commenters also remarked that including mail ballots in quorum counts increases stockholder participation, giving examples whereby participation at annual meetings increased from 3.66 to 12.76 percent when the institution began counting mail ballots in the quorum requirement or that using mail balloting instead of in-person voting tripled stockholder participation. Other commenters argued that eliminating mail ballots from quorum counts will result in lower stockholder participation, lower quorum requirements, and increased annual meeting costs. Commenters also asked for confirmation that quorums be determined by the institutions. An association remarked that online meetings do not justify removing mail ballots from quorum counts. A couple of commenters also observed that the premise that mail balloting occurs after a meeting is convened does not take into consideration that the ballot itself is approved by the institution's board before the meeting. Another commenter explained its institution requires mail ballots to be returned before the annual meeting so voter participation is verified

by the start of the meeting. Still another commenter remarked that in-person quorums are difficult to achieve through regional meetings, so mail ballots are necessary to the count.

Commenters supporting the proposed rule on quorums remarked that while proxy ballots may be used for quorums, mail ballots are used to tally voting results. However, these same commenters suggested it is better left to each institution to decide the matter. In a separate comment, AgriBank commented that it recognized the legal issue involved in using mail ballots in a quorum count, as discussed in the proposed rule preamble, but suggested FCA could overcome that by issuing a rule allowing for the practice. AgriBank offered the perspective that stockholder participation encompasses the entire meeting and election process, from the start of the meeting to the announcement of election results, so including mail ballots in quorum counts is justifiable.

A quorum is the minimum number of voting stockholders needed for a meeting to begin and business conducted. Stockholder participation is separate and distinct from a quorum count. In response to comments on ballot approval, we note that the board's approval of the ballot format in advance of the meeting has no bearing on the quorum requirement. In response to the commenter who noted that his institution requires mail ballots to be returned before the annual meeting so its voter participation is verified by the start of the meeting, our regulations do not permit mail ballots to be distributed prior to the end of an annual meeting.

After considering the comments, we are not finalizing § 611.120 in this rulemaking. As suggested by commenters, this provision of the proposed rule may be better suited to the continued discretion of each institution's business judgment. We continue to expect institutions to establish sound quorum requirements for director elections. We are retaining the requirement that each institution's bylaws identify quorum requirements. Due to other changes in this rulemaking, we are moving this requirement to § 611.110(a).

2. Eligibility for Membership on Board of Directors [§ 611.310]

We received four comments on new paragraph (e), which clarifies that a person is not eligible to be a director if that person is elected to serve on the institution's nominating committee and attends a meeting of the nominating committee. We received related comments on the companion provision in § 611.325(c) and address those comments here as well. One commenter expressed no objection to the rule. Another commenter suggested relaxing the rule to allow attendance at an organizational meeting if no director nominees are discussed. Still another commenter asked that the existing rule be left alone, explaining that it is understandable, removes the appearance of being self-serving, and is well received by the nominating committee. One commenter argued that committee members should be allowed to recuse themselves from discussions or decisions and then be nominated to run for the board as long as the nominating committee still has a quorum after that person leaves the committee. The FCC raised a concern that nominating committee members may become floor nominees after presenting the nominating committee report and believes that such a person should not be eligible to be nominated as a director candidate from the floor. One commenter asked for clarification on when the prohibition attaches.

While we appreciate the comments supporting our existing rule, we believe it is important to clarify that the existing rule addresses a change in a person's status after election to, but before service on, a nominating committee. The rule provides that individuals elected to the nominating committee are permitted to resign from the committee and run for election to the board only if they did not attend any meetings of the nominating committee. We encourage institutions to elect alternate members so the committee can function without interruption if one of its members were to resign. In this rule, nominating committees will be required to keep minutes of their meetings, including meeting attendance, which will enable the institution to verify that the resigning member did not attend any committee meetings. As we explained in the proposed rule, attending a meeting of the nominating committee could give a committee member the ability to access information that would allow that person to judge the likelihood of a successful run for the board, thus creating a potential conflict of interest that the rules in § 611.310 seek to avoid. As long as a nominating committee member does not attend any nominating committee meeting, the person may resign from the committee to run for election to the board in the same election cycle. Thus, we are finalizing this provision in § 611.310(e), and the related provision at § 611.325(c), as proposed.

We received comments from the FCC, a Farm Credit Bank, and two associations on new paragraph (f) in § 611.310, requiring associations to inform out-of-territory borrowers as to the borrower's eligibility to serve as a director. We received related comments on the companion provision in § 611.325(a) and address those comments here as well. The FCC and one association asked that we revise the requirement on giving notice of eligibility, remarking that associations should not have to make extraordinary disclosures to out-of-territory borrowers for this purpose. They instead suggested that disclosures on out-of-territory borrowers' eligibility to serve as directors be part of other communications to all stockholders on director qualifications. The FCC then asked that if FCA finalizes the provision for special disclosures to out-of-territory borrowers, the disclosure only be required if an association's bylaws do not prohibit such borrowers from serving as directors. One association asked that the disclosure be limited to those associations prohibiting out-of-territory borrowers from serving as directors. The bank raised no objection to allowing out-of-territory borrowers to serve as directors and suggested that this type of disclosure should be provided to all borrowers because a borrower within the territory may later move outside the territory. One association objected to the entire provision due to the difficulty in knowing whether borrowers are stockholders in multiple associations.

We agree with those commenters who suggested that notice should only be provided to out-of-territory borrowers holding voting stock in those associations that prohibit such borrowers from running for election. Voting stockholders have an assumed right to run for election, so notice is not necessary. However, because the rule allows associations to limit this right in the case of out-of-territory borrowers, those borrowers should be notified of such. Thus, we revise our proposal in both § 611.310(f) and § 611.325(a) to only require disclosure when an association's bylaws prohibit out-of-territory borrowers who hold voting stock in the association from serving as a director or on the nominating committee.

The FCC and one association remarked that section 4.15 of the Act directs association nominating committees to only consider director candidates from the institution's territory. We disagree because these commenters fail to recognize that any voting stockholder in an association is potentially eligible to be elected as a director of that institution, whether

nominated by the nominating committee or through a floor nomination. While the language of section 4.15 directs the nominating committee to consider all territories of the institution when identifying nominees, it does not prevent the committee from also considering other eligible voting stockholders, such as out-of-territory borrowers that hold voting stock. In addition, the legislative history behind section 4.15 indicated Congress' intent to make sure the nominating committee gave due consideration to all aspects of the institution's borrower base in order to have a board of directors that is knowledgeable of the agriculture financed by the institution.

We received no comments on the other provisions of § 611.310 and finalize those as proposed.

3. Impartiality in the Election of Directors [§ 611.320]

a. Institution Resources [§ 611.320(c)]

We received seven comments on the proposed clarifications to § 611.320(c), including one from the FCC. Two commenters agreed with the proposed change to recognize associations' standing as stockholders in their funding banks, thereby allowing stockholder-associations to use their resources in support of a candidate to the bank board. The FCC agreed that each institution should adopt procedures equitable to all candidates, including floor nominees, and emphasized that use of institution resources should be a choice. The FCC and one other commenter, however, objected to limiting use of institution resources for election activities to Farm Credit Banks. The System's only agricultural credit bank (CoBank) commented that this provision would not be "workable" for agricultural credit banks due to the mixed stockholder structure of affiliated associations and retail borrowers.

We clarify in the final rule text that we are not requiring any bank, including CoBank, to permit its stockholder-associations to campaign for bank director candidates. This type of activity can only occur to the extent permitted by the bank's own policies and procedures. We explained in the proposed rule that the bank must authorize this activity because it is the bank's director election process and the bank should have the authority to determine the allowable activities of its stockholders in this process, subject to our regulations. In the event a bank does not choose to allow its stockholder-associations to use associations' property, facilities, and resources in support of bank director candidates, no stockholder-association in that district would be authorized to do so in any manner. On the other hand, if a bank has permitted its stockholder-associations to engage in this activity in the past and intends to allow the activity to continue, it must now adopt policies and procedures that comply with the regulatory requirements of § 611.320(c).

The FCC and a couple of associations suggested extending the use of institution resources to the associations for campaign activities in their own elections, as long as it is done in an equitable and prudent manner. The FCC explained that voter access to candidate campaign information is essential to an informed voting public and that many candidates are unable to finance distribution costs, especially in larger territories. The FCC also argued that young, beginning, and small farmers who might run for a director position are most disadvantaged in the current restrictions on an association's ability to pay distribution costs for candidates. The FCC stated that an association could not express or imply an endorsement of any candidate. The FCC further remarked that existing rules and FCA guidance on this issue unduly hamper voting stockholders' access to meaningful information.

Our rule in § 611.320(c) allows candidates for directors to make use of an institution's property, facilities, and resources provided the property, facilities, and resources are simultaneously available and it is made known that they are available for use by all declared candidates. As we explained in the proposed rule, our rules are designed to ensure fairness and equal access to the reimbursement opportunity. Use of an institution's financial resources must be reasonable, prudent, and consistent with supporting an election that is fair and unbiased. We do not, however, agree with the comments that associations should be able to distribute campaign material for or on behalf of candidates running for election to the association's board of directors and, therefore, we are not changing § 611.320(e).

We recognize that the larger geographic territories of some System institutions make it unrealistic to expect stockholders to have meaningful knowledge of most director candidates without some supplemental information beyond the required disclosures. We also acknowledge that the large number of stockholders in many associations also makes it impractical or cost-prohibitive for candidates to mail or distribute information themselves. In an FCA bookletter, "Distribution of Director Candidate Information" (BL–056), dated September 11, 2008, we clarified the meaning of "campaign material" for purposes of § 611.320(e) by differentiating campaign material from educational material. The bookletter explained that System institutions may provide, to stockholders, supplemental material on director candidates without violating the prohibition on distributing campaign material when that material is educational in nature and all candidates have a fair and equal opportunity to provide educational material. In providing this clarification, we wanted to ensure that the interpretation of "campaign material" did not limit the distribution of appropriate information on director candidates to stockholders.

We received one comment seeking clarification on whether non-incumbent candidates must be provided reimbursement for travel if an incumbent director travels at the institution's expense to a regional meeting before being named by the nominating committee as a director-nominee. We direct the commenter to our frequently asked questions (FAQs) on the governance rule, specifically FAQ 36, posted on FCA's Web site under "FCS Information."

We received no comments on the other provisions of § 611.320(c) and finalize those as proposed.

b. Involvement of Directors in Board Elections [New § 611.320(f)]

We received a comment from the FCC and 78 other commenters, including multiple letters from members of individual associations, on adding a new paragraph (f) to address the involvement of directors in board elections. The FCC and several other commenters stated strong objection to prohibiting director activity in board elections, citing fundamental free speech. One commenter expressed no objection to the rule and another stated strong support of it. A third of the commenters asked that the provision be eliminated entirely, arguing directors should be allowed to offer an opinion on fellow board members and that doing so presents no conflict.

Many commenters argued that the requirement is an infringement on free speech and unduly undermines the notion of cooperative, open elections. Several of these commenters further stated that good governance encourages communication. One Farm Credit bank and a few associations stated that stockholder-elected directors should be permitted to make such statements, but only in the director's capacity as a

stockholder. The FCC and several other commenters expressed concern about the message such a restriction would send to stockholders and questioned the need for the rule, stating an unawareness of any problems in this area. A few associations commented that the prohibition would make finding willing and qualified candidates more difficult, while directors from a couple of associations argued that the provision would limit their ability to be effective directors. Others asserted that directors have a duty to relate information on candidates if the directors believe the candidate holds views that may cause harm to the institution. Another commenter remarked that the prohibition could have unintended consequences, such as being misinterpreted by stockholders or preventing the board or board chairman from providing guidance to the nominating committee on desirable director qualifications.

Some commenters explained that the views of incumbent directors are important to voting stockholders, many arguing that corporate elections do not have similar restrictions. Commenters also expressed the view that limiting director speech might be difficult to monitor, especially oral communication. Others considered the limitation on making statements for other director candidates an extreme measure that is better addressed through standards of conduct policies.

We understand and have thoroughly considered the sentiments of the commenters, and, as a result, we are modifying the provision to limit the prohibition to active campaigning as a "director" of an institution. We are mindful of the dual role that elected directors play (as both stockholders and directors) in the cooperative, and we do not want to prohibit a stockholder's right to support a candidate. At the same time, we continue to believe a director's active support of a candidate creates a potential for conflicts of interest. We also clarify that our rule does not prevent board members from offering guidance to nominating committees on desirable director qualifications. This type of guidance is not specific to any one person, but rather addresses the board's overall needs. We do not believe the final language will, as suggested, adversely affect either the ability of directors to do their jobs or recruitment efforts for open board positions.

The final provision, as modified, prevents a director from using his or her official authority as a director to influence or otherwise affect the result of an election on another's behalf. Examples of active campaigning for a director candidate (except one's self) that would be prohibited include writing and delivering speeches on behalf of a candidate, organizing and officially appearing at campaign events on another's behalf (attendance as an audience member is permissible if the director is not receiving compensation, or reimbursement, from the institution for the time or travel to the event), preparing and distributing campaign literature for a candidate, and using official institution stationery or titles accorded the director for board positions (such as audit committee chairman or board chairman) for personal endorsements or recommendations. Likewise, a director would not be allowed to use any authority associated with his or her official "director" title in a manner that could reasonably be construed to imply that the institution either sanctions or endorses the director's activities on another's behalf for nomination or election. With this modification, we want to be sure that any activity undertaken by a director on another's behalf remains personal in his role as a stockholder and is not presented in a manner that represents the director in his or her official capacity or implies official sanction by the institution of a candidate. We believe this modification addresses commenter concerns and provides an appropriate balance between a stockholder-elected director's responsibilities to remain officially neutral in institution elections, while still preserving the director's personal rights as a stockholder.

We appreciate comments concerning difficulties in monitoring oral communications between directors and the membership and encourage institutions to address this matter through the institution's standards of conduct policy and procedures.

4. Nominating Committees [Existing § 611.325]

We received comment letters from the FCC and 47 other commenters, including multiple letters from members of individual associations, on the proposed changes to this section, only one of which supported all the proposed changes. Of the other 47 comments, seven were directed at the introductory paragraph of § 611.325. In this paragraph, we clarified that each institution may have only one nominating committee in any one election cycle. The FCC and another commenter stated that multiple committees are more efficient for those institutions holding regional elections. The FCC then requested FCA to clarify whether subcommittees may be used if the rule is finalized as proposed. If so, the FCC recommended that only final actions on nominees require full committee vote. One commenter asked why subcommittees are appropriate but multiple nominating committees are not. Two commenters suggested permitting nominating committees to be formed on a state or regional basis instead of just one committee for the institution's entire territory.

We are not changing the rule to allow for multiple nominating committees within a single institution because we do not believe multiple nominating committees were intended by the Act. Section 4.15 of the Act states that each year the voting stockholders will elect a nominating committee at the annual meeting. Congress used the singular, and we are not persuaded that a different interpretation is appropriate. As a committee of voting stockholders, the nominating committee has the significant task of identifying qualified voting stockholders to stand for election to the entire board of directors and not a portion of the board. A single nominating committee working in concert makes the best possible selections for director nominees. However, we believe there is value in using subcommittees to aid the full committee in its task, especially in institutions with large territories. Our rule permits institutions' nominating committees to work in subcommittees for the express purpose of identifying possible director-nominees in director nomination regions for the nominating committee's review and consideration. The rule is clear that the nominating committee as a whole must decide on the director-nominees for the recommended slate of candidates.

Four Farm Credit banks expressed concern with the requirement that banks have nominating committees. The commenter explained that the nominating committee is a group of individuals who are not stockholders in the bank and have no investment in the bank, and thereby lack an incentive for locating good candidates. The commenter also asserted that Congress recognized the distinction between associations and banks when crafting section 4.15 of the Act, which is why the Act does not require nominating committees for banks. The commenter requested that FCA remove the bank nominating committee requirement to allow stockholder-associations to nominate their own candidates to the bank board or, in the alternative, make bank nominating committees an optional requirement.

We addressed similar comments on bank nominating committees in the initial rulemaking for nominating committees and have not changed our position on this issue.[2] As a clarification, our rule requires bank nominating committees to be elected by voting stockholders who, at the bank level, are stockholder-associations, and the candidates for service on a nominating committee also come from the stockholder-associations. Further, each bank may allow floor nominations for director candidates. Therefore, stockholder-associations are not prohibited from participating in the nomination process.

We received no comments opposed to the reorganization of § 611.325 and finalize it as proposed.

a. Nominating Committee Composition [Existing § 611.325(a)]

We received four comments on requiring associations to inform out-of-territory borrowers as to the borrower's eligibility to serve on an institution's nominating committee and addressed these comments in the companion provision of § 611.310(f) and discussed in section III.B.2. of this preamble. Consistent with changes made on the companion provision, we are modifying the language in 611.325(a) to require notice to out-of-territory borrowers only when the institution's bylaws prohibit out-of-territory borrowers who hold voting stock from being eligible to serve on the nominating committee.

b. Nominating Committee Election [New § 611.325(b)]

We received 26 comments, including multiple letters from members of individual associations, on adding new paragraph (b) on nominating committee elections. Of these, 19 comments were on the provision that an institution may use ballots that would allow stockholders to vote for nominating committee members as a slate, as long as stockholders also retain the ability and right to elect members individually. Four commenters asked for clarification on how such a ballot would be structured and votes tabulated. Other commenters expressed support for only having a vote on the committee as a slate, but some of these questioned the need for the matter to be included in the regulation. A Farm Credit bank remarked that individual votes enable larger stockholder-associations to control the committee composition and asked that the provision be removed from the rule. One commenter supported the proposed rule provision on nominating committee elections. One commenter asked if we favor the use of floor nominations for nominating committees. Another commenter objected to the slate vote provision, explaining that voting for individual committee members facilitates identifying alternates.

We agree with commenters that our proposed language in § 611.325(b)(1) was unclear on how the ballot would be structured and how votes would be tabulated, which might have created confusion for the voting stockholders in casting such a vote. In reviewing the issue, we believe that discussion on the manner of achieving the "opportunity" for stockholders to vote either on a slate of candidates or individuals is better suited to informal guidance. Consequently, we have modified this provision to state only that institutions must provide stockholders the opportunity to vote on candidates for each nominating committee position, simultaneously clarifying that the vote is for candidates running for each position on the committee. As to the comment on allowing write-in candidates for nominating committees, institutions may choose to use that method in addition to others. However, while write-in candidates on a ballot for election to the nominating committee are not likely to garner the number of votes needed for election, we remind institutions that they may permit nominations from the floor for nominating committee candidates. In this manner, a floor nominee's name can be added to the ballot before the vote occurs, thus significantly increasing the floor nominee's chances for election.

We received comments from the FCC on § 611.325(b) that association nominating committee members may only be elected to serve a 1-year term. The FCC asked us to clarify that nominating committee members may serve consecutive terms. A few other commenters asked us to clarify that nominating committee members may serve on the following year's committee.

We agree with commenters and for that reason did not propose limits on the number of consecutive 1-year terms association nominating committee members may serve. However, individual members of an association nominating committee must stand for and be reelected in order to serve another 1-year term, and we have clarified this requirement in the rule. We do not set the term that a bank nominating committee member serves because there is no statutory provision specifying the term of a bank nominating committee member. We encourage institutions to establish safeguards against self-perpetuation of the nominating committee's membership.

We received no comments on the provision regarding the use of in-person (including use of an online medium) or mail balloting procedures to elect a nominating committee, but we clarify that using proxy ballots to elect a nominating committee is also permitted. We also received no comments on the provision in § 611.325(b)(2) that Farm Credit banks must use weighted voting with no cumulative voting permitted when electing members to serve on a nominating committee and we finalize this portion of the rule as proposed.

c. Nominating Committee Conflicts of Interest [New § 611.325(c)]

We received two comments regarding when a nominating committee member may resign from the committee and run for election to the board of directors. These comments are addressed in section III.B.2. of this preamble, where we discuss eligibility to serve as a director in the companion § 611.310(e).

d. Nominating Committee Duties [Redesignated § 611.325(d)]

We received 44 comments, including one from the FCC and letters from multiple members of individual associations, on clarifying that nominating committees may not be used for other institution business. The FCC and many other commenters agreed that nominating committee duties should be limited to the business of the nominating committee, but strongly objected to preventing the nominating committee from identifying candidates for the following year's nominating committee. These commenters asked to use the current nominating committee as a vehicle for identifying members for the following year. Several commenters said that often nominating committee members come across future potential committee members in the search for director candidates. A few commenters questioned who would perform the task of finding new committee members if the sitting nominating committee were prevented from doing so. These commenters expressed potential conflicts with other FCA regulations if management has to step in and perform the task. One association commented that the Act does not prohibit using the nominating committee for other duties. Still others commented that allowing other types of committees to identify potential future nominating committee members does not support cooperative principles nor is it cost-effective. One commenter suggested FCA regulate

[2] *See* preamble to final governance rule, 71 FR 5762 (February 2, 2006).

terms, providing for nominating committee term limits to prevent self-perpetuation, while others suggested institutions use their nominating committee policies to control self-perpetuation matters. One commenter suggested the listed duties in the rule be the minimum, not the only, duties the committee may perform. Another stated that the existing rule is sufficient and needs no change.

We agree with commenters that nominating committees are well suited to aid in the identification of candidates for the next nominating committee, and we are amending the rule to reflect that it is permissible. We do not, however, believe that the nominating committee should perform other duties. We believe that having other duties diverts the nominating committee from its significant role in the director election process. Further, a nominating committee may not be given the task of verifying the eligibility or credentials of a floor nominee.

One commenter asked that we clarify whether the nominating committee must nominate all eligible candidates for open director seats. This commenter stated that prohibiting such an action would be objectionable. Yet another commenter stated that it wanted to limit the nominating committee to only naming two candidates for each open director seat.

The nominating committee's responsibilities are to identify, evaluate, and nominate candidates for open director positions. The committee must evaluate their qualifications and nominate at least two candidates for each open director position, while also endeavoring to ensure representation from all areas of the territory and, as nearly as possible, all types of agriculture practiced within the territory. An evaluative process must occur, and it is within the discretion of the nominating committee to select those candidates who it believes are the best qualified to serve as directors. It rests with the nominating committee to decide which director nominees will be on the slate of recommended candidates. Thus, we want to clarify that the nominating committee is not limited to providing just two names for each open director position.

The FCC and two other commenters asked for clarification on how votes are tallied when the stockholders are presented with more than two nominees for one director position. The FCC used the example of the nominating committee identifying two nominees for a position and then also getting a floor nomination, which may result in there not being a majority of votes for any one candidate.

We have no regulatory provision that requires a winning candidate for a director position to receive a majority of the votes cast. In the situation the FCC describes, the winning candidate could receive a "plurality" of votes. An institution's policies and procedures on impartiality in director elections should recognize that a winning director candidate may receive less than a majority of the votes cast when there are more than two candidates for one director position. Should a contest result in a tie vote between two candidates, most institution bylaws have provisions for dealing with it.

A bank asked for confirmation that § 611.325(d)(1), regarding representation from the institution's territory, is a guide and not a requirement. In response, we clarify that this aspect of the rule is a guide based on the legislative history of the Act, and it is not a requirement.

e. Nominating Committee Resources [Redesignated § 611.325(e)]

We received one comment on adding a requirement that institutions provide their nominating committees with FCA rules and other FCA-issued guidance on the operation of nominating committees. The commenter asks us to instead require institutions to provide nominating committees a comprehensive listing of resources available, indicating those that must be provided. The commenter explained that presenting all the material listed in the rule would be counterproductive and might overwhelm the committee.

We disagree with the commenter and believe this requirement is necessary to ensure that the nominating committee is aware of FCA's rules and guidance regarding the nominating committee's role in representing the institution's stockholders in the director elections process and understands how it must operate in accordance with those rules. We are hesitant to require instead a comprehensive listing of resources as suggested because it might actually discourage the nominating committee from asking for all the material that it should have access to without delay. Consequently, we finalize this provision as proposed.

We also note that the final rule requires nominating committees to maintain records of its meetings. We believe it is appropriate that the nominating committee record, within its meeting minutes, whether it obtained the resources it requested from the institution. We further encourage nominating committees to record in their meeting minutes whether they were satisfied with the resources provided or if the resources were insufficient for the nominating committee to fulfill its duties.

5. Floor Nominations [New § 611.326]

We received, from the FCC and 10 others, comments on incorporating into our rules previous guidance provided to System institutions in FCA bookletter, "Floor Nomination Procedures for System Associations and Banks" (BL–055), dated February 14, 2008, and other floor nomination procedural requirements. In addition to comments specific to this section, many comment letters included statements affirming that floor nominations are an express right of association stockholders.

The FCC and four other commenters asked that the manner of conducting floor nominations be left to each association. The FCC and one association further remarked that floor nominations should not be used to circumvent the nominating committee's efforts and that institutions should be allowed to balance election procedures to provide equal and fair treatment to all nominees. One commenter explained that the procedure for making floor nominations varies by the size of the institution. The FCC and an association also suggested that the number of individuals needed to support a floor nomination be equal to the number of people serving on the nominating committee or the number of votes given by nominating committee members to those on the nominating committee slate, rather than just a second to the nomination.

Voting stockholders of every association have the express right of making nominations from the floor. We reaffirm that this right may not be unduly restricted in a way that effectively weakens it, nor can the procedures for making floor nominations be unduly burdensome. We believe that asking for more than one voice in support of a floor nomination weakens the process. Further, permitting variations in the procedures for making floor nominations based solely on the size of the institution is not appropriate because floor nominations are an express right of the voting stockholders and are not dependent on institution size. To ensure the right to make floor nominations is not unduly inhibited, this rulemaking sets minimum procedural limits for the level of voting stockholder support that can be required by the institution before accepting a floor nomination. We do not believe that floor nominations are easier than being

nominated through the nominating committee. A floor nominee must meet the same eligibility and disclosure requirements as all other nominees and must gain the support of the voting stockholders in order to be elected. The voting stockholders make the final decision on who is elected to the board of directors, and the manner of nomination may or may not influence the stockholders' vote.

The rule also seeks to address the concern that allowing nominations from the floor may create delays and inefficiencies at stockholders' meetings because the institution first has to verify that the nominee is eligible for the position for which he or she has been nominated before the meeting can proceed. Floor nominations are public nominations of candidates that are not previously vetted by any person or committee. In the interest of running an efficient stockholders' meeting, it is the responsibility of the association to have ready access to a current stockholders' list and any other needed documentation that would allow the association to verify that the nominee from the floor meets the eligibility requirements to run as a candidate for a director position, particularly if the voting stockholders are casting their ballots at the meeting and are not voting solely by mail ballot after the stockholders' meeting is concluded.

One commenter supported the floor nomination process, but stated that director eligibility should be the same regardless of the manner in which a person is nominated. Another commenter stated that nominating committee members should not be eligible to be floor nominated director candidates until one election cycle has passed. We agree, and while § 611.326(a) does not specifically address eligibility to serve as a floor nominated director, our other rules do. Our rules in §§ 611.310(e) and 611.325(c) specifically address the commenter's concern. Both provisions make it clear that an individual cannot be a candidate for a bank or an association board of directors in the same election cycle during which that individual was a member of the institution's nominating committee and attended any meetings of the nominating committee. Regardless of how the individual may be nominated, including a nomination from the floor, his or her membership on the nominating committee makes the individual ineligible to run as a director-nominee for the duration of that election cycle.

One commenter asked if FCA favors the use of floor nominations for service on the nominating committee. The FCA takes no position on whether nominations from the floor should be permitted for the nominating committee. This is a decision that the board of directors should make and include in the association's bylaws so that voting stockholders know whether floor nominations for the nominating committee are accepted.

A bank commented that if banks do not hold meetings for elections, it cannot offer floor nominations. The bank asserted that, given this and the fact that there is no prohibition in the Act against other forms of nomination, the bank has allowed its stockholder-associations to name nominees for vacant director seats outside the nominating committee process. In response, we expect the bank to let the nominating committee complete its duties before allowing any other type of nominations. We do not require or prohibit Farm Credit banks from using floor nominations. The use of floor nominations in bank elections is at the discretion of each bank; however, banks choosing to allow floor nominations must follow the provisions of § 611.326, and we have modified this provision to make that clear.

We received no comments on other provisions of new § 611.326 and finalize them as proposed.

6. Director-Nominee Disclosures [New § 611.330]

We received three comments on § 611.330(a) objecting to disclosing family relationships that would be reportable under part 612 because the disclosure unduly infringes on privacy rights of nominees and nominees' family members. We address this issue in our Governance FAQ 39.

The FCC and three associations commented on § 611.330(c)(1), stating that including candidate disclosures as part of the AMIS complicates the election process. The FCC explained that the inability to obtain disclosure statements from floor nominees until after the annual meeting has led to an increase in the use of mail ballots, resulting in reduced stockholder attendance at annual meetings. Commenters asked that we allow institutions to set the process for director candidate disclosures and only address the process to ensure equitable treatment. The commenters further asked that floor nominee disclosures be reconciled with other disclosure procedures. Two associations commented that floor nominee disclosures should be left to the institution's policies as the rule is favorable to floor nominations. One of these associations specifically asked that floor nomination disclosures be obtainable in advance of a meeting.

We decline the suggestion that disclosure statements from floor nominees be obtained before the start of the stockholders' meeting. Floor nominations, by their very nature, occur during the meeting. It is therefore impossible to obtain disclosures in advance of a floor nomination. While we understand the commenters' concerns regarding potential delays in the meeting process to obtain these disclosures, doing as the commenters suggest would deny stockholders the express right to make floor nominations. We recognize that those institutions using only mail ballots encounter no such difficulties because floor nominees provide their disclosures to the institution before the mail ballots are prepared. We received no comments on the other provisions of § 611.330 and finalize those as proposed.

7. Regional Voting in Director Elections [New § 611.335 and Existing § 615.5230]

We received three comments on our proposal to consolidate the regional election provisions in new § 611.335. We had proposed moving the existing requirements on regional elections of directors from existing §§ 615.5230(a)(3) and 620.21(d)(4)(ii) to a new § 611.335 called "Regional voting in director elections." One commenter questioned whether the proposed rule changed the provisions for regional voting. Another commenter asked us to clarify that regional voting rules only address voting and not eligibility requirements for directors or nominating committee members.

We did not intend our proposed reorganization of the regional election rules to change any provisions or cause confusion on its applicability. We intended no change in our rules on this topic and, therefore, to avoid any such confusion, we are not finalizing the movement of the regional election provisions from § 615.5230 into a new § 611.335. The regional election provisions will remain in § 615.5230, but in a new paragraph (b) due to the effect of other reorganization efforts. We received no comments on the proposed grammatical corrections to the regional election provisions and finalize those as proposed at § 615.5230. We are also finalizing the deletion of those regional voting provisions from § 620.21(d)(4)(ii) because existing § 620.21 is an interim report to stockholders (AMIS) and the regional election provisions from that section address the distribution of ballots in regional elections, which is addressed elsewhere in the rule. As a

conforming technical change, we are changing the reference to § 615.5230 in § 611.1210(f) to reflect this organizational change and adding a cross-citation to § 611.350 in § 615.5230.

8. Confidentiality and Security in Voting [new § 611.340]

We received no comments on adding language to paragraph (d) to explain that only proxy ballots may be accepted before stockholders' meetings are convened for election or other voting purposes. However, a few comments on other areas of our rule discuss the value of proxy ballots and we address those comments here. A bank and a few associations commented on the difficulty of using proxy ballots with floor nominations, explaining that there is no advance knowledge of floor nominations for stockholders to provide voting guidance to proxy holders. Three commenters remarked that having to use proxy ballots instead of mail ballots creates a disadvantage to floor nominees. Commenters also stated proxy ballots are more confusing for stockholders. A few commenters asked us to explain why proxy ballots are better than mail ballots for quorum counts, arguing that proxy ballots are harmful to the floor nomination process and reliance on them for quorum counts would be unfair to floor nominees.

Proxy ballots should not be problematic for floor nominations. Proxy ballots must be returned to the institution by the date of the stockholders' meeting and before balloting begins. The stockholder voting by proxy may withdraw the proxy authorization and vote in person at the meeting. Thus, a nominee from the floor could conceivably uphold a viable candidacy with sufficient stockholder support from those voting at the meeting as well as those that decide to revoke their proxy ballots and vote in person at the meeting. In addition, the bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the designated proxy provided the proxy is also a voting stockholder. In such a case, the designated proxy would have the discretion to vote for a floor nominee. Proxy ballots are counted towards the quorum requirement because a proxy is an authorization for a named agent to act for a voting stockholder at a meeting, including casting the vote of the stockholder, and are treated as "present" and voting members when determining if a quorum is present.

As discussed earlier in section III.B.1.a. of this preamble, we are modifying paragraph (d) of this section to clarify that when a stockholders' meeting is held to conduct elections, mail ballots may not be issued before the conclusion of that meeting. Revisions to § 611.340(d) explain that only proxy ballots may be accepted before stockholders' meetings are convened for election or other voting purposes. Distributing and accepting mail ballots before an annual meeting results in those stockholders being unable to consider any candidate nominated from the floor since mail ballots cannot be revoked once received by the institution.

We received a comment from a bank asking us to clarify that confidentiality in voting does not prevent institution staff from assisting the independent tabulator, such as reminding stockholders of voting deadlines or providing replacement ballots when asked. Our rule does not prevent institution staff from providing administrative assistance when that assistance is limited to the type of tasks described by the commenter. Institution staff may not provide assistance to either the tellers committee or the independent third-party tabulator if that assistance compromises the security or the confidentiality of the ballots or the balloting process. We received no comments on other changes to revised § 611.340 and finalize them as proposed.

9. Cooperative Principles in Elections [existing §§ 611.350 and 615.5230]

We received one comment on moving the existing requirement to disclose the types of agriculture in which directors of an institution engage to the AMIS and address that comment in section III.B.10. of this preamble. We received a comment from CoBank, asking for clarification on whether the language in §§ 611.350(a) and 615.5230(a)(3), regarding FCA approval of a voting scheme, included past FCA approvals. The language regarding exceptions to voting provisions approved by FCA was intended to include existing exceptions. Thus, CoBank's existing voting provisions, approved by FCA several years ago, would stand without requiring further approval. For clarity's sake, this language in both sections has been modified to make clear that any FCA-approved voting structure, whether past or present, satisfies the rule.

We received no comments on other changes to § 611.350, but have made conforming changes to this section to restore the location of rule text on regional voting to § 615.5230, as discussed in section III.B.7. of this preamble, and to address the comment of CoBank, also discussed in that section of this preamble. We finalize all other language as proposed.

We did receive a few comments, including one from the FCC, asking that each System institution be allowed to adopt its own election policies and procedures without the FCA's imposing additional regulatory requirements. They suggested that FCA establish a governance policy that addresses delineated areas and then examine each institution on its implementation of the policy in light of the institution's own circumstances. Given the absence of any problems with the election of bank directors, the commenters believe that FCA would not be burdened by examining the institution's compliance with a governance policy. The commenters further suggest that, like an existing regulatory provision that allows the bank to eliminate cumulative voting in director elections upon an affirmative vote of 75 percent of the bank's voting stockholders, the same concept should be adopted for the balance of the bank's election procedures.

We addressed the general comments on rulemaking versus informal guidance in section III.A.1. of this preamble, but believe the specifics of these comments should be further responded to in this section. The FCA's final rule on governance for Farm Credit banks and associations, adopted in April 2006, had the stated objective of identifying a set of standards for banks and associations to follow in their director elections.[3] Nearly 4 years have passed since the governance rule was put into place, and our examination of the implementation of the governance rule demonstrates that having these standards in place has not only allowed for an orderly process in examining an institution's compliance with the governance rules, but has helped minimize the amount of time examiners must spend in this area for those institutions with a strong governance structure. For institutions whose governance needs strengthening, the rules enable the examiners to focus on weaknesses that need to be eliminated through corrective action by the board. Providing a regulatory option that would allow the bank's stockholders to vote to overturn the bank's director elections procedures as prescribed by regulation in favor of the bank's own unique governance policy would not move FCA in the direction it has taken in building a strong governance framework for banks and associations.

The FCC also requested clarification on whether cumulative voting is required to be used by institutions if not

[3] *Id.*

adopted by the institution's bylaws. As stated earlier, we proposed moving voting rights of each type of System institution from § 615.5230(a)(1)(iii) to § 611.350(d). We intended no change in the application of the rules, and we did not intend for our proposed reorganization and consolidation of election rules to cause confusion on their interpretation. Stockholder-associations have the right to cumulate votes unless the Farm Credit Bank's bylaws provide otherwise. A Farm Credit Bank may eliminate cumulative voting only if 75 percent of its stockholder-associations vote to eliminate it. Each stockholder-association has only one vote that is not a weighted vote in eliminating the provision. The provision has been in existence for many years.[4] Similarly, voting stockholders of an association may vote on a proposition to eliminate cumulative voting in director elections if they approve a change in the association's capitalization bylaws to eliminate cumulative voting.

10. Annual Meeting Information Statement (AMIS)

We received a comment from the FCC that Farm Credit banks should not have to comply with all AMIS provisions, as bank elections are conducted outside the framework of an annual meeting. The FCC suggested that an AMIS issued by a bank only has to have information for potential director candidates regarding resources available to the candidates.

We disagree with the FCC's suggestion. We believe that the AMIS requirement remains relevant for the banks regardless of whether they choose to elect their directors in the context of an annual meeting or separate and apart from an annual meeting. It is important that the bank include in the AMIS the information identified in our rule. Stockholder-associations are entitled to updated financial information and information on current directors regardless of why the AMIS is being prepared. However, because Farm Credit banks are not required to hold annual meetings, we have modified § 620.21(a)(1) to reflect that disclosure of meeting date, time, and location need not be part of a Farm Credit bank AMIS if no meeting is held. However, all other information identified in paragraph (a) must be part of a bank's AMIS.

We received no comments on other organizational changes to this section of our rule, including renaming subpart E to clarify that an AMIS is used for more than an annual meeting, dividing the existing § 620.21 into two sections, one to address preparation and distribution of an AMIS and the other to address the contents of an AMIS, and reorganizing existing § 620.21 to clarify the minimum information that must be included in an AMIS and the additional information that must be included in any AMIS issued in connection with elections. We finalize these organizational changes as proposed.

a. Preparing and Distributing the AMIS [New § 620.20]

We received four comments on the proposed outside timeframe of 30 business days for distributing the AMIS to stockholders. A System bank commented that the 30-day timeframe creates difficulties, as it allows stockholder-associations in its district to make director nominations for an extended period of time. This commenter also remarked that including the slate of nominees from the nominating committee in the AMIS causes scheduling difficulties based on the bank's director nomination process and questions the need for this time limit. We address the comment from the bank on its director nomination process in section III.B.4. of this preamble.

The bank commented that the 45 calendar days it currently uses provide ample time for stockholder-associations to deliberate and vote. The bank acknowledges that its 45 calendar day timeframe is "roughly equivalent" to the proposed 30 business days, but notes that setting any timeframe removes flexibility. Another Farm Credit bank and one association asked that the timeframe be expanded from 30 business days to 45 days to assist larger institutions. These commenters did not specify if the suggestion was for calendar or business days. Another association suggested a 45 business day time limit to accommodate larger associations.

The existing rule requires an AMIS be provided to stockholders at least 10 days before a meeting or election to ensure the stockholders' receipt before the meeting. We believe an outside timeframe is needed to ensure that the information in the AMIS is reasonably current at the time that the stockholders' meeting or director elections take place. We carefully considered the timeframes offered by the commenters, but decline to change the rule. The suggested 45 business days would allow the AMIS to be distributed 9 weeks in advance of the annual meeting or director elections versus the 6 weeks we proposed. We continue to believe that more than 6 weeks is too long for the AMIS to still provide current information. We also note that the suggested 45 business days might coincide with a quarterly report issuance, causing confusion in the financial data that is being reported and or updated in the AMIS. We considered using the suggested 45 calendar days since it is essentially equivalent to 30 business days, but believe that mixing calendar days and business days would create confusion while only providing three additional days. Therefore, we are finalizing the timeframes as proposed.

We received one comment from a bank on the overall procedural requirements for the AMIS, including the signature requirements, timeframes, Web site posting, and public access. The bank remarked that these requirements adversely affect the bank, since the requirement is designed to get information to stockholders before a meeting. Specifically, this bank objects to the signature and public availability requirements, stating these are not "particularly meaningful" for its stockholder-associations. We also received a comment from another bank that the signatures on an AMIS do not need to be the same as for annual and quarterly reports, stating that the AMIS is not as formal a report. This bank suggested that the AMIS be signed by one senior officer, instead of the chief executive officer, chief financial officer, and a board designee. We further received a comment from the FCC and an association on § 620.20(a)(3), which permits an AMIS to be posted on an institution's Web site after the AMIS is mailed to stockholders. The commenters asked us to clarify that the posting of the AMIS on a Web site is optional. Both commenters explain that the AMIS should not be required to be on a Web site since it is not a public document, and institutions should not be required to make it one.

We disagree with the commenter that the AMIS does not require the same signatures as the annual and quarterly reports. The AMIS is a supplement of those reports. Further, this is not a new requirement. Our existing rules in § 620.3(b) apply for all reports, including the AMIS, which is why we are adding a reference in § 620.20 to facilitate compliance with our rules. We are not requiring institutions to post the AMIS on their Web sites, but are establishing timeframes for keeping an AMIS on a Web site should an institution decide to do so. Also, the AMIS is a report that must be available for public inspection as required by § 620.2(b).

[4] The cumulative voting rule was last changed in 1997 to permit a less than unanimous consent to overturn cumulative voting in bank director elections. (*See* 62 FR 49907, September 24, 1997).

We received no comments on other provisions in § 620.20 and finalize them as proposed.

b. Contents of the AMIS [existing § 620.21]

i. Minimum Requirements for Each AMIS [§ 620.21(a)]

We received one comment on the existing requirement to disclose the types of agriculture in which directors of an institution engage. The commenter stated that the information, already contained in the annual report, does not need to be restated in the AMIS. We proposed no change to this requirement. We only proposed moving the provision from existing § 615.5230(b)(5) to paragraph (a)(4) of this section. Further, we remind the commenter that an AMIS provides pertinent information on directors and institution business in preparation for an annual meeting or election. As meetings and elections do not always coincide with the issuance of annual reports, we do not believe it is unduly burdensome to reference this information in the AMIS.

We received no other comments on changes to this paragraph and, except for the modification to § 620.21(a)(1) regarding meeting notice for banks mentioned earlier, we finalize those changes as proposed.

ii. Additional Information for Elections [new § 620.21(b)]

We received two comments on the provision in paragraph (b) requiring the names of the director candidates nominated by the nominating committee to be listed. A bank remarked that it customizes its AMIS based on regions within the territory, providing only that director candidate information applicable to a region. The commenter asked us whether the rule would prohibit this process and also stated that it sends out to all stockholders the nominating committee report 6 weeks before the AMIS is issued.

As stated earlier, the AMIS updates information contained in the annual and quarterly reports, which are available to all stockholders regardless of regional locations. The AMIS is also a tool that voting stockholders can use in the election process. We believe it is important for stockholders to have background information on all incumbent directors and director candidates for their institution. Restricting information on directors to regions inhibits the ability of stockholders to decide whether the composition of the board meets their needs since, once elected, a director represents the entire membership, not just the region from where he or she was nominated. For these reasons, we finalize changes to this paragraph as proposed. We received no other comments objecting to them. We did receive a few comments, including one from the FCC, agreeing with the requirement in § 620.21(b)(3) that procedures for making floor nominations be disclosed in the AMIS.

11. Other Miscellaneous Changes

a. Similar Entity Participation Lending Limit Voting [§ 613.3300]

We received no comments on the proposed clarification to § 613.3300(c)(1)(i)(B) to explain that the stockholder vote for participation lending limits is based on the majority of voting stockholders voting. We finalize this change as proposed.

b. Equityholder Voting on Preferred Stock [§ 615.5230(b)]

We received one comment on the proposed clarification to § 615.5230(b)(1) to explain that the equityholder vote on issuing preferred stock requires the approval of the majority of the shares voting of each class of equities adversely affected by the preference, voting as a class. The commenter expressed appreciation for the clarification. We finalize this change as proposed.

c. Definitions [New § 619.9320]

We received no comments on the proposed clarification that the terms "stockholder" and "shareholder" have the same meaning for purposes of our rules. We finalize this change as proposed.

d. Reorganization of Existing Rules

We received three comments supporting the consolidation of our general director election rules, currently located throughout our rules, into subpart C of part 611, "Election of Directors and Other Voting Procedures." We received no comments on other organizational changes to our rule. We finalize the changes associated with this consolidation and reorganization as proposed, except where noted (e.g., § 615.5230).

e. Technical Corrections

In the process of this rulemaking, we noted cross-citations that were not updated in prior rulemakings and make those corrections now. In a 2006 rulemaking, the paragraphs of § 620.2 were renumbered; however, the cross-citation to § 620.2 contained in § 620.5(i)(2) was not updated to reflect the renumbering of paragraphs.[5] The cross-citation should read "§ 620.2(b)." Likewise, in the process of addressing a comment on cumulative voting in newly redesignated § 615.5230(a)(3), we noted that the rule does not specify the bylaws involved are capitalization bylaws.[6] The original rulemaking is clear that the bylaws involved are capitalization bylaws, but a 1995 rulemaking to this section mistakenly omitted the word "capitalization" from the sentence.[7] Nothing in the 1995 rulemaking indicates this omission was intentional and FCA has consistently interpreted the provision to mean capitalization bylaws. We make that correction now.

We are correcting a grammatical error in our rule at § 615.5330. Paragraph (a)(1) has an "a" when referring to the ratio needed instead of an "at" and paragraph (b)(1) has an "a" instead of an "at" when referring to the percentage needed. We also incorporate changes to § 620.21(a)(3)(ii) made in a prior rulemaking regarding external auditors. These changes became final in July 2009, which was after publication of our proposed rule.

IV. Regulatory Flexibility Act

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

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 613

Agriculture, Banks, banking, Credit, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

[5] *See* 71 FR 76111, December 20, 2006.

[6] *See* 53 FR 40033, October 13, 1988.

[7] *See* 60 FR 57919, November 24, 1995.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, parts 611, 613, 615, 619, and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

■ 2. Add a new subpart A, consisting of §§ 611.100 through 611.110, to read as follows:

Subpart A—General

Sec.
611.100 Definitions.
611.110 Meetings of stockholders.

Subpart A—General

§ 611.100 Definitions.

The following definitions apply for the purpose of this part:

(a) *Mail ballot* means a ballot cast by regular or electronic mail.

(b) *Online meeting* means a meeting that is conducted over the Internet through the use of mediating technologies, such as online services, computer hardware and software, etc., where technology is used to generate objects and environments that are presented to users through a number of senses (e.g., vision and hearing). The mediating technologies allow people or objects at remote locations to appear locally present or at least allow them to be treated that way during the course of the meeting.

(c) *Online meeting space* means an online environment where Farm Credit institutions can hold stockholder meetings that allow stockholders to communicate, collaborate, and share information. Any stockholder with the necessary technology requirements and access (e.g., password-protected meetings) must be allowed to connect to his or her institution's online meeting space.

(d) *Regional election* means the apportionment of a Farm Credit institution's territory into regions in which a director or directors from a region are elected only by those voting stockholders who reside or conduct agricultural or aquatic operations in that same region.

(e) *Stockholder-association* means an association within a Farm Credit bank district holding voting stock in that bank.

(f) *Stockholder-elected director* means a director who is elected by the majority vote of the voting stockholders voting to serve as a member of a Farm Credit institution's board of directors.

§ 611.110 Meetings of stockholders.

(a) *Requirement.* Associations must have annual meetings of stockholders for the purpose of conducting annual director elections. Farm Credit banks are encouraged to hold annual or periodic meetings of stockholders. The bylaws of each Farm Credit bank and association must specify the quorum requirements for stockholder meetings. Associations must elect at least one director at each annual meeting, but the vote on the election of a director or directors by mail ballot may only occur in the period following an annual meeting. An online meeting space may be used in addition to a physical meeting space to conduct a stockholders' meeting or director election. A physical meeting space must always exist for association meetings involving director elections and other stockholders' votes.

(b) *Notice.* Each association, and those Farm Credit banks holding annual meetings, must issue an Annual Meeting Information Statement in accordance with the requirements of §§ 620.20 and 620.21 of this chapter.

(c) *Online meeting.* Each Farm Credit bank and association using an online meeting space as part of a meeting or election must have policies and procedures in place addressing how the online meeting space will be accessed and used by participants. The policies and procedures must specifically identify any technological adaptations necessary to address the confidentiality and security in voting requirements of § 611.340.

Subpart C—Election of Directors and Other Voting Procedures

■ 3. Amend § 611.310 by revising paragraph (b) and adding new paragraphs (e) and (f) to read as follows:

§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

* * * * *

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of any criminal offense involving dishonesty or breach of trust or held liable in damages for fraud.

* * * * *

(e) No person shall be eligible for membership on a Farm Credit bank or association board of directors in the same election cycle for which the Farm Credit institution's nominating committee is identifying candidates if that person was elected to serve on that institution's nominating committee and attended any meeting called by the nominating committee.

(f) Out-of-territory borrowers who hold voting stock in the association may serve as association directors unless prohibited by the association's bylaws. If an association's bylaws prohibit it, that association must inform, in writing and at the time of loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve as directors.

■ 4. Amend § 611.320 by:

■ a. Removing the word "System" and adding the words "Farm Credit" each place it appears in paragraphs (a) and (d);

■ b. Revising paragraphs (c) and (e); and

■ c. Adding a new paragraph (f) to read as follows:

§ 611.320 Impartiality in the election of directors.

* * * * *

(c) No property, facilities, or resources, including information technology and human or financial resources, of any Farm Credit institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates, including floor nominees. For the limited purpose of Farm Credit bank board elections, each Farm Credit bank may allow its stockholder-associations to use stockholder-association property, facilities, or resources in support of bank director candidates. Any Farm Credit bank permitting this activity by its stockholder-associations must have a policy in place approved by its board of directors establishing reasonable standards that stockholder-associations must follow, and those standards must give appropriate consideration to the various sizes of stockholder-associations within a bank's district and include a maximum amount that a stockholder-

association may expend in support of a bank director candidate.

* * * * *

(e) No Farm Credit institution may in any way distribute or mail, whether at the expense of the institution or another, any campaign materials for director candidates. Institutions may request biographical information, as well as the disclosure information required under § 611.330, from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

(f) No director of a Farm Credit institution shall, in his or her capacity as a director, make any statement, either orally or in writing, which may be construed as intending to influence any vote in that institution's director nominations or elections. This paragraph shall not prohibit director candidates from engaging in campaign activities on their own behalf.

■ 5. Revise § 611.325 to read as follows:

§ 611.325 Bank and association nominating committees.

Each Farm Credit bank and association may have only one nominating committee in any one election cycle. Each Farm Credit bank and association's board of directors must establish and maintain policies and procedures on its nominating committee, describing the formation, composition, operation, resources, and duties of the committee, consistent with current laws and regulations. Each nominating committee must conduct itself in the impartial manner prescribed by the policies and procedures adopted by its institution under § 611.320 and this section.

(a) *Composition.* The voting stockholders of each bank and association must elect a nominating committee of no fewer than three members. Unless prohibited by association bylaws, out-of-territory borrowers who hold voting stock may serve as members of an association's nominating committee. If an association's bylaws prohibit it, that association must inform, in writing and at the time of loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve on the association's nominating committee.

(b) *Election.* Farm Credit banks and associations may use in-person (including use of an online medium and proxy ballots) or mail balloting procedures to elect a nominating committee.

(1) Farm Credit banks and associations must provide voting stockholders the opportunity to vote on the candidates for each nominating committee position.

(2) Association nominating committee members may only be elected to a 1-year term. Farm Credit Banks must use weighted voting, with no cumulative voting permitted, when electing members to serve on a nominating committee. Farm Credit banks and associations may permit nominating committee members to be re-nominated and stand for re-election to serve successive terms.

(c) *Conflicts of interest.* No individual may serve on a nominating committee who, at the time of election to, or during service on, a nominating committee, is an employee, director, or agent of that bank or association. A nominating committee member may not be a candidate for election to the board in the same election for which the committee is identifying nominees. A nominating committee member may resign from the committee to run for election to the board only if the individual did not attend any nominating committee meeting.

(d) *Responsibilities.* It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a Farm Credit bank or association board of directors. A nominating committee's responsibilities are limited to the following:

(1) Nominate individuals who the committee determines meet the eligibility requirements to run for open director positions. The committee must endeavor to ensure representation from all areas of the Farm Credit bank's or association's territory and, as nearly as possible, all types of agriculture practiced within the territory.

(2) Evaluate the qualifications of the director candidates. The evaluation process must consider whether there are any known obstacles preventing a candidate from performing the duties of the position.

(3) Nominate at least two candidates for each director position being voted on by stockholders. If two nominees cannot be identified, the nominating committee must provide written explanation to the existing board of the efforts to locate candidates or the reasons for disqualifying any other candidate that resulted in fewer than two nominees.

(4) Maintain records of its meetings, including a record of attendance at meetings.

(5) Identify, evaluate, and nominate eligible individuals for service on the next nominating committee, if permitted by the institution.

(e) *Resources.* Each Farm Credit bank and association must provide its nominating committee reasonable access to administrative resources in order for the committee to perform its duties. Each Farm Credit bank and association must, at a minimum, provide its nominating committee with FCA regulations and guidance on nominating committees, a current list of stockholders, the most recent bylaws, the current director qualifications policy, and a copy of the policies and procedures that the bank or the association has adopted pursuant to § 611.320(a) ensuring impartial elections. On the request of the nominating committee, the institution must also provide a summary of the current board self-evaluation. The bank or association may require a pledge of confidentiality by committee members prior to releasing evaluation documents.

■ 6. Add a new § 611.326 to subpart C to read as follows:

§ 611.326 Floor nominations for open Farm Credit bank and association director positions.

(a) Each floor nominee must be eligible for the director position for which the person has been nominated.

(b)(1) Voting stockholders of associations must be allowed to make floor nominations for every open stockholder-elected director position. Associations using only mail ballots must allow nominations from the floor at every session of an annual meeting. Associations permitting stockholders to cast votes during annual meetings may only allow nominations from the floor at the first session of the annual meeting.

(2) If floor nominations are permitted by a Farm Credit bank's election policies and procedures, voting stockholders must be allowed to make floor nominations for every open stockholder-elected director position and a physical meeting space must exist. Before every director election by a Farm Credit bank, the bank must inform voting stockholders whether floor nominations will be accepted.

(c) Each association's board of directors must adopt policies and procedures for making and accepting floor nominations of candidates to stand for election to its board of directors. Each Farm Credit bank's board of directors allowing nominations from the floor must also adopt policies and procedures for making and accepting floor nominations. Policies and procedures for floor nominations must, at a minimum, provide that:

(1) Floor nominations may only be made after the nominating committee has provided its list of director-nominees.

(2) No more than a second by a voting stockholder to a nomination from the floor is required. After receiving a floor nomination, the floor nominee must state if he or she accepts the nomination.

(3) Floor nominees must make the disclosures required by § 611.330 of this part.

■ 7. Revise §§ 611.330, 611.340, and 611.350 to read as follows:

§ 611.330 Disclosures of Farm Credit bank and association director-nominees.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that ensure a disclosure statement is prepared by each director-nominee. At a minimum, each disclosure statement for each nominee must:

(1) State the nominee's name, city and state of residence, business address if any, age, and business experience during the last 5 years, including each nominee's principal occupation and employment during the last 5 years.

(2) List all business interests on whose board of directors the nominee serves or is otherwise employed in a position of authority and state the principal business in which the business interest is engaged.

(3) Identify any family relationship of the nominee that would be reportable under part 612 of this chapter if elected to the institution's board.

(b)(1) Floor nominees who are not incumbent directors must provide to the Farm Credit bank or association the information referred to in this section and in § 620.5(j) and (k) of this chapter. The information must be provided in either paper or electronic form within the time period prescribed by the institution's bylaws or policies and procedures. If the institution does not have a prescribed time period, each floor nominee must provide this information to the institution within 5 business days of the nomination. If stockholders will not vote solely by mail ballot upon conclusion of the meeting, each floor nominee must provide the information at the first session at which voting is held.

(2) For each nominee who is not an incumbent director or a nominee from the floor, the nominee must provide the information referred to in this section and in § 620.5(j) and (k) of this chapter.

(c) Each Farm Credit bank and association must distribute director-nominee disclosure information to all stockholders eligible to vote in the election. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(1) Disclosure information for each director-nominee must be provided as part of the Annual Meeting Information Statement (AMIS) issued for director elections.

(2) Disclosure information for each director-nominee must be distributed or mailed with ballots or proxy ballots. Farm Credit banks and associations must ensure that the disclosure information on floor nominees is provided to voting stockholders by delivering ballots for the election of directors in the same format as the comparable information contained in the AMIS.

(d) No person may be a nominee for director who does not make the disclosures required by this section.

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) An independent third party tabulating the vote; or

(ii) The Farm Credit Administration.

(4) Provide for the establishment of a tellers committee or an independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not directors, director-nominees, or members of that election cycle's nominating committee.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(d) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting and mail ballots may only be distributed after the conclusion of the meeting. In an election of directors, ballots, proxy ballots, and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(e) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

§ 611.350 Application of cooperative principles to the election of directors.

In the election of directors, each Farm Credit institution shall comply with the following cooperative principles as well as those set forth in § 615.5230 of this chapter, unless otherwise required by statute or regulation.

(a) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders. Each voting stockholder of an agricultural credit bank has only one vote, unless another voting scheme has been

approved by the Farm Credit Administration.

(b) If an association apportions its territory into geographic regions for director nomination or election purposes, out-of-territory voting stockholders must be assigned to a geographic region.

(c) All voting stockholders of a Farm Credit institution have the right to vote in any stockholder vote to remove any director.

Subpart P—Termination of System Institution Status

■ 8. Amend § 611.1210 by revising the first sentence of paragraph (f) to read as follows:

§ 611.1210 Advance notices—commencement resolution and notice to equity holders.

* * * * *

(f) *Special class of stock.* Notwithstanding any requirements to the contrary in § 615.5230(c) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. * * *

■ 9. Revise § 611.1240(e) to read as follows:

§ 611.1240 Voting record date and stockholder approval.

* * * * *

(e) *Voting procedures.* The voting procedures must comply with § 611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

* * * * *

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

■ 10. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

§ 613.3300 [Amended]

■ 11. Amend § 613.3300(c)(1)(i)(B) by removing the words "if a majority of the shareholders" and adding in their place the words "if a majority of voting stockholders voting".

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 12. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

■ 13. Amend § 615.5230 by:
■ a. Revising paragraph (a);
■ b. Redesignating existing paragraph (b) as paragraph (c);
■ c. Adding a new paragraph (b);
■ d. Revising newly redesignated paragraph (c)(1); and
■ e. Removing newly redesignated paragraph (c)(5) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) Voting stockholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles, including those set forth in § 611.350 of this chapter. Except as otherwise required by statute or regulation, and except as modified by paragraphs (b) and (c) of this section, the voting rights of each voting shareholder are as follows:

(1) Each voting stockholder of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders and has the right to vote in the election of each stockholder-elected director and to cumulate such votes and distribute them among the candidates in the stockholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are stockholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote.

(2) Each voting stockholder of an agricultural credit bank has only one vote, unless another voting scheme has been approved by the Farm Credit Administration.

(3) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(b), each voting stockholder of an association or bank for cooperatives has the right to vote in the election of each stockholder-elected director. Unless otherwise provided in the capitalization bylaws, each voting stockholder of an association or bank for cooperatives is allowed to cumulate such votes and distribute them among the candidates in the stockholder's discretion. Cumulative voting is not allowed in the regional election of stockholder-elected directors.

(b) The regional election of stockholder-elected directors is only permitted under the following conditions:

(1) A bylaw establishing regional elections is approved by a majority of voting stockholders, voting in person or by proxy, prior to implementation.

(2) The bylaw provides that the use of regional election of stockholder-elected directors does not prevent all voting stockholders of the institution, regardless of the region where they reside or conduct agricultural or aquatic operations, from voting in any stockholder vote to remove a director.

(3) There are an approximately equal number of voting stockholders in each of the institution's voting regions. Regions will have an approximately equal number of voting stockholders if the number of voting stockholders in any one region does not exceed the number of voting stockholders in any other region by more than 25 percent. At least once every 3 years, the institution must count the number of voting stockholders in each region and, if the regions do not have an approximately equal number of stockholders, the regional boundaries must be adjusted to achieve such result.

(4) An institution may provide for more than one director to represent a region. Institutions providing for more than one director to represent a region will determine the equitability of the regions by dividing the number of voting stockholders in that region by the number of director positions representing that region, and the resulting quotient shall be the number

that is compared to the number of voting stockholders in other regions.

(5) Each voting stockholder is accorded the right to vote in the election of each stockholder-elected director for his or her region.

(c) * * *

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares voting of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

* * * * *

Subpart K—Surplus and Collateral Requirements

§ 615.5330 [Amended]

■ 14. Amend § 615.5330 by removing the words, "a least" and adding in their place, the words "at least" in the first sentence of paragraphs (a)(1) and (b)(1).

PART 619—DEFINITIONS

■ 15. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.17, 5.18, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2252, 2253, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f).

■ 16. Add a new § 619.9320 to read as follows:

§ 619.9320 Shareholder or stockholder.

A holder of any equity interest in a Farm Credit institution.

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 17. The authority citation for part 620 is revised to read as follows:

Authority: Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—General

§ 620.1 [Amended]

■ 18. Amend § 620.1 by removing paragraph (p) and redesignating paragraphs (q) and (r) as paragraphs (p) and (q).

Subpart B—Annual Report to Shareholders

■ 19. Amend § 620.5 by revising the last sentence of paragraph (i)(2) introductory text as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(i) *Compensation of directors and senior officers.*

* * * * *

(2) *Senior officer compensation.* * * * Associations exercising this option must include a reference in the annual report stating that the senior officer compensation information is included in the AMIS and that the AMIS is available for public inspection at the reporting association offices pursuant to § 620.2(b).

* * * * *

Subpart E—Annual Meeting Information Statements and Other Information To Be Furnished in Connection with Annual Meetings and Director Elections

■ 20. Revise the heading of subpart E to read as set forth above.

■ 21. Amend subpart E by adding a new § 620.20 to read as follows:

§ 620.20 Preparing and distributing the information statement.

(a)(1) Each Farm Credit bank and association must prepare and provide an information statement ("statement" or "AMIS") to its shareholders at least 10 business days, but not more than 30 business days, before any annual meeting or any director elections.

(2) Each Farm Credit bank and association must provide the Farm Credit Administration an electronic copy of the AMIS when issued.

(3) In addition to the mailed AMIS, each Farm Credit bank and association may post its AMIS on its Web site. Any AMIS posted on an institution's Web site must remain on the Web site for a reasonable period of time, but not less than 30 calendar days.

(b) Every AMIS must be dated and signed in accordance with the requirements of § 620.3(b) of this part.

(c) Every AMIS must be available for public inspection at all offices of the issuing institution pursuant to § 620.2(b) of this part.

■ 22. Section 620.21 is revised to read as follows:

§ 620.21 Contents of the information statement.

(a) An AMIS must, at a minimum, address the following items:

(1) *Date, time, and place of the meeting(s).* Notice of the date, time, and meeting location(s) must be provided at least 10 business days, but no more than 30 business days, before the meeting. If the Farm Credit bank or association will use an online meeting space as part of its meeting, the notice must also specify the date, time, and means of accessing the online meeting space. This information does not need to be part of an AMIS issued by a Farm Credit bank if no meeting is held.

(2) *Voting shareholders.* For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon. If association directors are nominated or elected by region, describe the regions and state the number of voting shareholders entitled to vote in each region.

(3) *Financial updates.* Each AMIS must reference the most recently issued annual report required by subpart B of this part. The AMIS must also include such other information considered material and necessary to make the required contents of the AMIS, in light of the circumstances under which it is made, not misleading.

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.5(j), or any of the events required to be disclosed in the annual report to shareholders under § 620.5(k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.5(j) and (k) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.5(j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

(ii) If a Farm Credit institution has had a change or changes in its external auditor(s) since the last annual report to shareholders, or if a disagreement with an external auditor has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

(4) *Directors.* State the names and ages of persons currently serving as directors of the institution, their terms of office,

and the periods during which such persons have served. Institutions must also state the type or types of agriculture or aquaculture engaged in by each director. No information need be given with respect to any director whose term of office as a director will not continue after any meeting to which the statement relates.

(i) Identify by name any incumbent director who attended fewer than 75 percent of the board meetings or any meetings of board committees on which he or she served during the last fiscal year.

(ii) If any director resigned or declined to stand for reelection since the last annual meeting because of a policy disagreement with the board, and if the director has provided a notice requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement. If the institution holds a different view of the disagreement, the institution's view may be summarized as well.

(b) An AMIS issued for director elections must also include the information required by this paragraph.

(1) Provide the nominating committee's slate of director-nominees. If fewer than two director-nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(2) Provide, as part of the AMIS, the director-nominee disclosure information collected under § 611.330 of this chapter. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(3) State whether nominations will be accepted from the floor and explain the procedures for making floor nominations.

(c) When the nominating committee will be elected during director elections, notice to voting shareholders of this event must be included in the AMIS. The AMIS must describe the balloting procedures that will be used to elect the nominating committee, including whether floor nominations for committee members will be permitted. The AMIS must state the number of committee positions to be filled and the names of the nominees for the committee.

(d) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, the AMIS must describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition. The AMIS must describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

Dated: March 31, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

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