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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–FV–08–0114; FV09–989–1 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2008–09 Crop Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2008–09 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 87 percent free and 13 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: *Effective Date:* September 28, 2009. The volume regulation percentages apply to acquisitions of NS raisins from the 2008–09 crop until the reserve raisins from that crop are disposed of under the marketing order.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: *Rose.Aguayo@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, 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''.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect the action that established final free and reserve percentages for NS raisins for the 2008–09 crop year, which began August 1, 2008, and ends July 31, 2009.

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 continues in effect the action that established final volume regulation percentages for 2008–09 crop NS raisins covered under the order. The volume regulation percentages are 87 percent free and 13 percent reserve and were established through an interim final rule published on March 9, 2009 (74 FR 9951). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages for NS raisins on December 18, 2008.

Computation of Trade Demand

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate free and reserve percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2008, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments

of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2008–09 trade demand for NS raisins at 273,863 tons as shown below.

COMPUTED TRADE DEMAND

[Natural condition tons]

	NS Raisins
Prior year's shipments	355,680
Multiplied by 90 percent	0.90
Equals adjusted base	320,112
Minus carryin inventory	106,249
Plus desirable carryout	60,000
Equals computed NS trade demand	273,863

Computation of Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop. If the Committee determines that volume regulation is warranted, it must also compute and announce preliminary free and reserve percentages. Section 989.54(c) provides that the Committee may modify the preliminary free and reserve percentages prior to February 15 by announcing interim percentages which release less than the trade demand. Section 989.54(d) requires the Committee to recommend final percentages no later than February 15 which will tend to release the full trade demand. Final percentages are established by USDA through informal rulemaking.

The Committee met on October 9, 2008, and announced a 2008–09 crop estimate of 300,000 tons for NS raisins pursuant to § 989.54(b). NS raisins are the major varietal type of California raisin. The crop estimate of 300,000 tons was higher than the computed trade demand of 273,863 tons. Thus, it was determined that volume regulation for NS raisins was warranted. Preliminary volume regulation percentages computed to 78 percent free and 22 percent reserve to release 85 percent of the computed trade demand.

Pursuant to § 989.54(c), at its December 18, 2008, meeting, the Committee announced a revised crop estimate of 313,231 tons of NS raisins (up from the October estimate of 300,000 tons). The Committee also announced interim volume regulation percentages for NS raisins to release less than the full trade demand at 86.75 percent free and 13.25 percent reserve and recommended final volume regulation percentages of 87 percent free and 13 percent reserve pursuant to § 989.54(d). The Committee's calculations and determinations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins
Trade demand	273,863
Divided by crop estimate	313,231
Equals the free percentage	87.00
100 minus free percentage equals the reserve percentage	13.00

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS raisins for the 2008–09 crop year. Application of the final percentages made 305,541 tons of raisins available to handlers based on actual deliveries of 351,196 tons of raisins through May 30, 2009. In addition, handlers are offered reserve raisins for sale under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available to handlers for free use. Handlers may sell their 10 plus 10 raisins to any market and those who export free tonnage raisins may receive reserve raisins, (*raisin-back*) at a reduced price, or reserve pool cash (*cash-back*) to blend down the value of their exported tonnage.

Based on 2007–08 NS shipments of 355,680 natural condition tons, 71,136 tons should have been made available in the 10 plus 10 offers. However, only about 45,656 tons (.13 × 351,196 tons) of reserve raisins will be available in the 2008–09 crop year, because of the reserve percentage in effect.

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions, such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments during a comparable period of the prior crop year. Pursuant to § 989.67(j), 643 tons of 2007–08 reserve raisins were sold to handlers in June 2008 and released to handlers in August 2008.

Adding the estimated figure of 45,656 tons of raisins offered to handlers through the 10 plus 10 program (35,568 and 10,088 tons) to the 305,541 tons of free tonnage raisins available through applying the volume regulation percentages, plus 106,249 tons of carryin inventory, plus 643 tons of 2007–08 reserve raisins sold pursuant to § 989.67(j) and released during the 2008–09 crop year results in a total supply of 458,089 tons of natural condition raisins, or 432,935 packed tons (.94509 shrink × 458,089 tons). This equates to 129 percent of the 2007–08 shipments of 355,680 natural condition tons or 336,150 packed tons, which exceeds the USDA Guidelines goal of 110 percent.

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 18 handlers of California raisins who are subject to regulation under the order and approximately 3,000 raisin producers in the regulated area. Small agricultural 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. No more than 7 handlers and a majority of producers of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that

can be marketed freely in any outlet by raisin handlers. This volume regulation mechanism is used to stabilize supplies and prices and strengthen market conditions. If the primary market (the normal domestic market) is over-supplied with raisins, grower prices decline substantially.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for the 2008–09 crop year for NS raisins. The volume regulation percentages are 87 percent free and 13 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order. Volume regulation was warranted this season because the crop estimate of 313,231 tons was significantly higher than the 273,863 ton trade demand. As mentioned previously, by the week ending May 30, 2009, acquisitions were at 351,196 tons.

The volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, about 62 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 crop years, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94.

According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $904.60 in 1993–94 to a high of $1,049.20 in 1996–97. Producer prices for the 1998–99 and 1999–2000 crop years increased significantly due to back-to-back short crops during those years. Record large crops followed and producer prices dropped dramatically for the 2000–01 through 2003–04 crop years, as inventories grew while demand stagnated. However, as noted below, producer prices were higher for the 2004–05 through the 2007–08 crop years:

NATURAL SEEDLESS (NATURAL CONDITION) DELIVERIES, FIELD PRICES AND PRODUCER PRICES

Crop year	Deliveries (tons)	Field prices (per ton) [1]	Producer prices (per ton)
2007–08 ...	329,288	$1,210.00	[2] $1,028.50
2006–07 ...	282,999	1,210.00	1,089.00
2005–06 ...	319,126	1,210.00	[2] 998.25
2004–05 ...	265,262	1,210.00	[3] 1,210.00
2003–04 ...	296,864	810.00	567.00
2002–03 ...	388,010	745.00	491.20
2001–02 ...	377,328	880.00	650.94
2000–01 ...	432,616	877.50	603.36
1999–2000	299,910	1,425.00	1,211.25
1998–99 ...	240,469	1,290.00	[3] 1,290.00
1997–98 ...	382,448	1,250.00	946.52
1996–97 ...	272,063	1,220.00	1,049.20
1995–96 ...	325,911	1,160.00	1,007.19
1994–95 ...	378,427	1,160.00	928.27
1993–94 ...	387,007	1,155.00	904.60

[1] Field prices for NS raisins are established by the Raisin Bargaining Association, and are also referred to in the industry as the free tonnage price for raisins.
[2] Return-to-date, reserve pool still open.
[3] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. Domestic shipments generally increased over the years. Although domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in the 1999–2000 crop year, they increased from 174,117 packed tons during the 2000–01 crop year to 193,609 packed tons during the 2007–08 crop year. Export shipments ranged from a high of 107,931 packed tons in 1991–92 crop year to a low of 91,599 packed tons in the 1999–2000 crop year. Since that time, export shipments increased to 106,755 tons of raisins during the 2004–05 crop year, fell to

101,684 tons in 2006–07 crop year, and again increased to 142,541 tons in 2007–08 crop year. This significant increase was due to a short crop in Turkey.

The per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.47 pounds in 2007. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has increased in four of the last five years (as reflected in increased commercial shipments), production has been decreasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 crop year and 299,910 tons in 1999–2000 crop year. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, 388,010 tons for the 2002–03 crop year, 296,864 for the 2003–04 crop year, and 265,262 tons for the 2004–05 crop year. After three crop years of high production and a large 2001–02 carryin inventory, the industry diverted raisin production to other uses or removed bearing vines. Diversions/removals totaled 38,000 acres in 2001; 27,000 acres in 2002; and 8,000 acres of vines in 2003. These actions resulted in declining deliveries of 296,864 tons for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. Although deliveries increased in the 2005–06 crop year to 319,126 tons, this may have been because fewer growers opted to contract with wineries, as raisin variety grapes crushed in 2005–06 crop year decreased by 161,000 green tons, the equivalent of over 40,000 tons of raisins. In the 2006–07 crop year, raisin deliveries were again less than 300,000 tons at 282,999 tons and increased to 329,288 tons in 2007–08 crop year. Deliveries have increased for the 2008–09 crop year, and were at 351,196 tons for the week ending May 30, 2009.

The order permits the industry to exercise volume regulation provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to balance supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

The reserve percentage limits provide for raisins that handlers can market as free tonnage. Data available as of May 30, 2009, showed that deliveries of NS raisins were at 351,196 tons. The 13 percent reserve thus provided handlers with free tonnage of 305,541 natural condition tons (.87 × the 351,196 ton crop).

Adding the estimated figure of 45,656 tons of raisins offered to handlers through the 10 plus 10 program (35,568 and 10,088 tons) to the 305,541 tons of free tonnage raisins available through applying the volume regulation percentages, plus 106,249 tons of carryin inventory, plus 643 tons of 2007–08 reserve raisins sold pursuant to § 989.67(j) and released during the 2008–09 crop year results in a total supply of 458,089 tons of natural condition raisins, or 432,935 packed tons (.94509 shrink × 458,089 tons).

With volume regulation, producer prices are expected to be higher than without volume regulation. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume regulation. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it was determined that volume regulation was warranted for the 2008–09 season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages continue in effect, the release of the full trade demand for Natural Seedless raisins and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 and 2004–05 crop years, small and large raisin producers and handlers have been operating under volume regulation percentages every year since the 1983–84 crop year. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

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.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping requirements are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178, Vegetable and Specialty Crops. 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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the August 15, 2008, October 9, 2008, and December 18, 2008, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Reserve Sales and Marketing Subcommittee met on August 15, 2008, October 9, 2008, and

December 18, 2008, and discussed these issues in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on March 9, 2009. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates, and raisin handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended May 8, 2009. No comments were received during the comment period.

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 9951, March 9, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 74 FR 9951 on March 9, 2009, is adopted as a final rule without change.

Dated: August 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–20766 Filed 8–27–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 600 and 1024

RIN 1991–AB77

Assistance Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Financial Assistance Regulations to update, streamline, and simplify the general rules. DOE also removes regulations governing the DOE Financial Assistance Appeals Board.

DATES: This rulemaking is effective September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Kniskern, Office of Procurement and Assistance Policy, U.S. Department of Energy, at 202–287–1342, or by e-mail at *jacqueline.kniskern@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
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C. Review Under the Paperwork Reduction Act of 1980
D. Review Under the National Environmental Policy Act
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G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under the Treasury and General Government Appropriations Act, 2001
J. Review Under Executive Order 13211
K. Approval by the Office of the Secretary of Energy

I. Background

DOE has been actively engaged in the government-wide effort to streamline and simplify the application, administrative and reporting procedures for Federal financial assistance programs pursuant to the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107.

As part of this initiative, DOE has solicited comments and suggestions from the grant community and made changes to its assistance regulations. In particular, the DOE added to 10 CFR part 600 Subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations, in a rule published in the **Federal Register** at 68 FR 50645 on August 21, 2003.

DOE has also incorporated policy directives issued by the Office of Management and Budget (OMB) that established a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements, established standard data elements for electronically posting synopses of Federal agencies' announcements of funding opportunities, and required Federal agencies to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements on the Grants.gov Web site, *http://www.Grants.gov*. The final rule incorporating these policy directives was published in the **Federal Register** at 69 FR 7865 on February 20, 2004. In addition, DOE developed a standard format for its funding opportunity announcements and revised systems to comply with the new posting requirements.

On May 16, 2008, a Notice of Proposed Rulemaking (NOPR) was published in the **Federal Register** (73 FR 28385) that detailed changes to update, streamline and simplify the general rules in 10 CFR 600, Subpart A of its Financial Assistance Rules. The NOPR also proposed to remove the regulations at 10 CFR part 1024 governing the DOE Financial Assistance Appeals Board. This Board was abolished when DOE's Energy Board of Contract Appeals was merged into the Civilian Board of Contract Appeals as required by Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163.

DOE received no comments from members of the public in response to the NOPR. Nevertheless, DOE made the following technical changes to the text of the rule.

1. Section 600.5(d) is revised to add a reference to Section 600.352 after 600.162 and 600.243.

2. Section 600.7(c) is revised to show the referenced Sections to be 600.144, 60.236 and 600.331.

3. Section 600.25(a)(2) is revised to correct the modifying ''An'' to ''A''.

II. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant

economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published policies and procedures to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's final rule subjects small entities either to requirements that parallel government-wide requirements that OMB Circular A–110 establishes for other assistance awards, or to less burdensome requirements that enable firms from the commercial marketplace to participate in DOE research, development, and demonstration projects. Today's proposed amendments would not alter the substance of the OMB requirements or impose significant additional burdens. On the basis of the foregoing, DOE certifies that this rule does not have a significant economic impact on a substantial number of small entities. DOE did not prepare a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

This regulatory action will not impose any additional reporting or recordkeeping requirements subject to approval under the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule establishes guidelines and procedures for application and review, administration, audit and closeout of assistance instruments, and, therefore, is covered under the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729, (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

This rule amends the assistance regulations to streamline and simplify procedures for soliciting, awarding, and administering financial assistance agreements. The rule does not result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policy Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Approval by the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this final rule.

List of Subjects in 10 CFR Parts 600 and 1024

Administrative practice and procedure, Assistance programs.

Issued in Washington, DC, on August 18, 2009.

Edward R. Simpson,

Director, Office of Procurement and Supply Management, Office of Management, Department of Energy.

Barbara H. Stearrett,

Acting Director, Office of Acquisition and Assistance Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, Part 600 of Chapter II, and Part 1024 of Chapter X, Title 10 of the Code of Federal Regulations, are amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.,* unless otherwise noted.

§ 600.2 [Amended]

■ 2. Section 600.2 is amended in paragraph (a) by removing ''solicitations'' and adding ''funding opportunity announcement'' in its place.

■ 3. Section 600.3 is amended in the definition of ''Amendment'' by capitalizing ''Contracting Officer'', and by adding new definitions in alphabetical order for ''Cost sharing or matching'' and ''Total Project Cost'' to read as follows:

§ 600.3 Definitions.

* * * * *

Cost sharing or matching means that portion of project or programs costs not borne by the Federal Government.

* * * * *

Total Project Cost means all allowable costs, as set forth in the applicable Federal cost principles, incurred in accomplishing the objective of the project during the project period, including the value of contributions made by third parties and costs incurred by Federally Funded Research and Development Centers.

■ 4. Section 600.4 paragraph (a)(1) is amended by revising the second sentence to read as follows:

§ 600.4 Deviations.

(a) *General.* (1) * * * The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with §§ 600.114, 600.212, and 600.304 are not deviations. * * *

* * * * *

§ 600.5 Selection of Award Instrument.

■ 5. Section 600.5, paragraph (d) is amended by removing ''§§ 600.162 and 600.243'' and adding in its place ''§§ 600.162, 600.243 and 600.352''.

■ 6. Section 600.6 is revised to read as follows:

§ 600.6 Eligibility.

(a) *General.* DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the funding opportunity announcement, program rule, or published notice.

(1) If the aggregate amount of DOE funds available for award under a funding opportunity announcement or published notice is $1million or more, unless authorized by statute or program rule, such restriction of eligibility shall be:

(i) Supported by a written determination initiated by the program office;

(ii) Concurred in by legal counsel and the Contracting Officer; and

(iii) Approved by an official no less than one level below the responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority.

(2) Where the amount of DOE funds is less than $1 million, the cognizant HCA and the Contracting Officer may approve the determination.

(c) *Noncompetitive financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the following selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned funding opportunity announcement, and if, as determined by DOE, a competitive funding opportunity announcement would not be appropriate.

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) *Approval requirements.* (1) Where the amount of DOE funds is $1 million or greater, determinations of noncompetitive awards shall be:

(i) Documented in writing;

(ii) Concurred in by the responsible program technical official and local legal counsel; and

(iii) Approved, prior to award, by the responsible program Assistant Secretary, Deputy Administrator, or official of equivalent authority and the Contracting Officer. The approval authority may be delegated to one organizational level below the Assistant Secretary, Deputy Administrator, or official of equivalent authority.

(2) Where the amount of DOE funds is less than $1 million, determinations of noncompetitive awards shall be:

(i) Documented in writing;

(ii) Concurred in by local legal counsel, unless for a particular award or class of awards of $1 million or less, review is waived by legal counsel; and

(iii) Approved by the cognizant HCA and the Contracting Officer.

§ 600.7 [Amended]

■ 7. Section 600.7, paragraph (c) is amended by removing ''Section 600.111 or Section 600.236'' and adding in its place ''§§ 600.144, 600.236 and 600.331''.

■ 8. Section 600.8 is amended as follows:

■ a. The section title is revised as set forth below.

■ b. In paragraph (a) introductory text, the first sentence is amended by removing ''Program announcement'' and adding ''Funding Opportunity Announcements (FOA)'' in its place.

■ c. In paragraph (a)(1), the last sentence is amended by removing ''Solicitations'' and adding ''FOAs'' in its place.

■ d. In paragraph (a)(2) introductory text, the first sentence is amended by removing ''program announcements'' and adding ''FOAs'' in its place.

§ 600.8 Funding Opportunity Announcement.

* * * * *

■ 9. Section 600.10 is amended as follows:

■ a. In paragraph (b), the first sentence is amended by removing ''and in the number of copies''.

■ b. In paragraph (c)(1), the second sentence is amended by removing ''or other approved DOE application form''.

■ c. Paragraph (c)(4) is removed.

■ d. A new paragraph (f) is added to read as follows:

§ 600.10 Form and content of applications,

* * * * *

(f) Registration is required in the Central Contractor Registration (CCR) for all applications. Information on registration can be obtained at *http://www.ccr.gov/Grantees.aspx.*

§§ 600.11 and 600.12 [Removed and Reserved]

■ 10. Sections 600.11 and 600.12 are removed and reserved.

§ 600.14 [Reserved]

■ 11. Section 600.14 is added and reserved.

§ 600.15 [Amended]

■ 12. Section 600.15, paragraph (b)(2) is amended by removing ''solicitation'' and adding ''funding opportunity announcement'' in its place.

■ 13. Section 600.16, is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 600.16 Legal authority and effect of an award.

* * * * *

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes acceptance; however, DOE may require formal acceptance of an award.

* * * * *

■ 14. Section 600.17 is revised to read as follows:

§ 600.17 Contents of Award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award (NFAA) which contains basic identifying and funding information. The NFAA provides the contents of the award including any special terms and conditions, program regulations, the National Policy Assurances, and any other provisions necessary to establish the respective rights, duties, obligations, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

§ 600.18 [Removed and Reserved]

■ 15. Section 600.18 is removed and reserved.

§ 600.19 [Amended]

■ 16. Section 600.19 is amended by removing, in the second sentence, ''briefly'' and ''and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request''.

§ 600.21 [Amended]

■ 17. Section 600.21, paragraph (a) is amended by removing ''§§ 600.153 and 600.242'' and adding in its place ''§§ 600.153, 600.242 and 600.342''.

■ 18. Section 600.22 is amended as follows:

■ a. In the last sentence of paragraph (a), the words ''available in 10 CFR Part 1024'' are removed.

■ b. Paragraphs (d) and (f)(1) are revised.

■ c. Paragraph (e) is amended by removing ''Board'' and adding ''SPE'' in its place, for every occurrence.

The revisions read as follows:

§ 600.22 Disputes and appeals.

* * * * *

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The mailing address for the DOE SPE is Office of Procurement and Assistance Management, 1000 Independence Ave., SW, Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition and Supply Management, 1000 Independence Ave., SW., Washington, DC 20585.

* * * * *

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to §§ 600.114, 600.212, or 600.304;

(ii) DOE denial of a request for a deviation under §§ 600.4, 600.103, 600.205, or 600.303 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.125, 600.127, 600.222, 600.230, 600.315, or 600.317 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.162(a)(1), (2), (3) or (5), 600.243(a)(1), (a)(3), or 600.352(a)(1), (2), (3) or (5) for suspensions only; or §§ 600.162(a)(4), 600.243(a)(4) or 600.352(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under §§ 600.144, 600.236, or 600.331 of this part or under another term or condition of the award;

* * * * *

§ 600.23 [Removed and Reserved]

■ 19. Section 600.23 is removed and reserved.

§ 600.24 [Amended]

■ 20. Section 600.24 is amended in paragraphs (a)(3) and (b) introductory text by removing ''or § 600.243(a)'' and adding ''§§ 600.243(a), 600.312(g), or 600.352(a)'' in its place.

■ 21. Section 600.25 is amended in:

■ a. Paragraph (a)(1) by removing ''or § 600.243(a)'' and adding ''§§ 600.243(a) or 600.352(a)'' in its place.

■ b. Paragraph (a)(2) by removing ''An'' and adding ''A'' in its place and by removing ''§ 600.23'' and adding ''2 CFR 180 and 901'' in its place.

■ c. Paragraph (b) is revised.

■ d. Paragraph (b)(5) by removing ''and §§ 600.250 through 600.252'' and adding ''§§ 600.250 through 600.252 and §§ 600.350 through 600.353'' in its place.

■ e. Paragraph (d) by removing ''or §§ 600.243 through 600.244'' and adding ''§§ 600.243 through 600.244 or §§ 600.350 through 600.353'' in its place.

■ f. Paragraph (f) by removing ''or §§ 600.243 through 600.244'' and adding ''§§ 600.243 through 600.244 or §§ 600.350 through 600.353'' in its place.

The revision reads as follows:

§ 600.25 Suspension and termination.

* * * * *

(b) *Notification requirements.* Except as provided in §§ 600.24, 600.162(a), 600.243(a), or 600.352(a) before suspending or terminating an award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by § 600.24(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate:

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see §§ 600.170 through 600.173, §§ 600.250 through 600.252, and §§ 600.350 through 600.353);

(6) A statement of the awardee's right to appeal a termination for cause pursuant to § 600.22; and

(7) The dated signature of a DOE Contracting Officer.

* * * * *

§ 600.26 [Removed and Reserved]

■ 22. Section 600.26 is removed and reserved.

§ 600.28 [Removed and Reserved]

■ 23. Section 600.28 is removed and reserved.

§ 600.29 [Amended]

■ 24. Section 600.29 is amended as follows:

■ a. In paragraph (b)(1), ''$100,000'' is removed and ''$250,000'' is added in its place.

■ b. In paragraphs (b)(5) and (b)(6) ''Contracting Officer'' is capitalized.

■ 25. Section 600.30 is revised to read as follows:

§ 600.30 Cost sharing.

In addition to the requirements of §§ 600.123, 600.224, or 600.313, the following requirements apply to research, development, demonstration and commercial application activities projects:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program or the small business technology transfer program; or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of the Department, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application program or activity is required unless the Secretary has determined it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

§ 600.31 [Amended]

■ 26. Section 600.31 is amended as follows:

■ a. In paragraph (c), the phrase ''Contracting Officer'' is capitalized in all occurrences.

■ b. In paragraph (d), the phrase ''Contracting Officer'' is capitalized.

■ c. In paragraph (f)(5), the phrase ''Contracting Officer'' is capitalized.

■ 27. Section 600.112 is revised to read as follows:

§ 600.112 Forms for applying for Federal assistance.

(a) *General.* An application for an award shall be on the form or in the format specified in a program rule or in the funding opportunity announcement. When a version of the Standard Form 424 is not used, DOE shall indicate whether the application is subject to review by the State under Executive Order 12372.

(b) *Budgetary information.* DOE may request and the applicant shall submit the minimum budgetary information necessary to evaluate the costs of the proposed project.

(c) DOE may, subsequent to receipt of an application, request additional information from an applicant when necessary for clarification or to make informed preaward determinations.

(d) *Continuation and renewal applications.* DOE may require that an application for a continuation or renewal award be made in the format or on the forms authorized by paragraphs (a) and (b) of this section.

§ 600.113 [Amended]

■ 28. Section 600.113 is amended by removing ''10 CFR part 1036'' and adding ''2 CFR 180 and 901'' in its place.

§ 600.117 [Removed and Reserved]

■ 29. Section 600.117 is removed and reserved.

§ 600.305 [Amended]

■ 30. Section 600.305 is amended by removing ''10 CFR part 1036'' and adding ''2 CFR 180 and 901'' in its place.

PART 1024—[REMOVED]

■ 31. Under the authority of 42 U.S.C. 7254, part 1024 is removed.

[FR Doc. E9–20299 Filed 8–27–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM398; Special Conditions No. 25–390–SC]

Special Conditions: Alenia Aeronautica Model C–27J Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Alenia Model C–27J airplane. This airplane will have novel or unusual design features when compared to the state of technology described in the airworthiness standards for transport-category airplanes. These special conditions pertain to the effects of novel or unusual design features such as effects on the structural performance of the airplane.

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: *Effective Date:* September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1357, facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2006, the European Aviation Safety Agency (EASA) forwarded to the FAA an application from Alenia Aeronautica of Torino, Italy, for U.S. type certification of a twin-engine commercial transport designated as the Alenia model C–27J. The Alenia model C–27J is a twin-turbopropeller, cargo-transport aircraft with a maximum takeoff weight of 67,240 pounds.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17 and the bilateral agreement between the U.S. and Italy, Alenia Aeronautica must show that the Alenia model C–27J meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–87. Alenia also elects to comply with Amendment 25–122, effective September 5, 2007, for § 25.1317.

If the Administrator finds that existing airworthiness regulations do not adequately or appropriately address safety standards for the Alenia model C–27J due to a novel or unusual design feature, we prescribe special conditions under provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Alenia model C–27J 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. In addition, the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Alenia model C–27J incorporates several novel or unusual design features. Because of rapid improvements in airplane technology, the existing airworthiness regulations do not adequately or appropriately address safety standards for these design features. These special conditions for the Alenia model C–27J 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.

These special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (JAA), now replaced by the European Aviation Safety Agency (EASA), and industry. From the initial proposal, the JAA proposed these special conditions in Notice of Proposed Amendment (NPA) 25C–199. When Ente Nazionale per l'Aviazione Civile (ENAC) certified the Alenia model C–27J they applied NPA 25C–199, issued July 3, 1997.

Discussion

The Alenia model C–27J is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology described in the current airworthiness standards. Special conditions are needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, in both the normal and the failed states.

These special conditions require that the airplane meet the structural requirements of subparts C and D of part 25 when the airplane systems are fully operative. These special conditions also require that the airplane meet these requirements taking into consideration failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

Discussion of Comments

Notice of proposed special conditions no. 25–09–01–SC for the Alenia model C–27J airplane was published in the **Federal Register** on May 4, 2009. No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Alenia model C–27J. Should Alenia apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the Alenia model C–27J. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

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 the Alenia model C–27J.

1. General

(a) The Alenia model C–27J is equipped with systems that affect the airplane's structural performance either directly or as a result of failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with requirements of subparts C and D of Title 14 of the Code of Federal Regulations (14 CFR), part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability-augmentation systems, load-alleviation systems, flutter-control systems, fuel-management systems, and other systems that either directly, or as a result of failure or malfunction, affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(b) The criteria defined here address only the direct structural consequences of the system responses and performances, and cannot be considered in isolation, but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system-degraded or inoperative mode, are not provided in these special conditions.

(c) Depending upon the specific characteristics of the airplane, additional studies may be required, that go beyond the criteria provided in these special conditions, to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load-alleviation system.

(d) The following definitions are applicable to these special conditions.

Structural Performance

Capability of the airplane to meet the structural requirements of part 25.

Flight Limitations

Limitations that can be applied to the airplane flight conditions following an in-flight occurrence, and that are included in the flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, *etc.*).

Operational Limitations

Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic Terms

The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure Condition

The term ''failure condition'' here is the same as that used in § 25.1309. However, these special conditions apply only to system-failure conditions that affect the structural performance of the airplane (*e.g.,* system-failure conditions that induce loads, change the response of the airplane to variables such as gusts or pilot actions, or reduce flutter margins).

2. Effects of Systems on Structures

(a) *General.* The following criteria determine the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in Subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength) using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

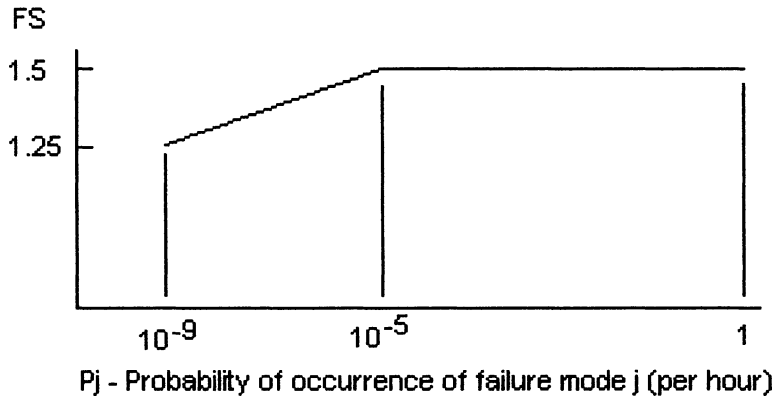
(3) The airplane must meet the aeroelastic-stability requirements of § 25.629.

(c) System in the failure condition. For any system-failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level-flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static-strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1
Factor of safety at the time of occurrence



(ii) For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph (c)(1)(i).

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C, freedom from aeroelastic instability must be shown at increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit-symmetrical-maneuvering conditions specified in § 25.331 and in § 25.345.

(B) The limit-gust-and-turbulence conditions specified in § 25.341 and in § 25.345.

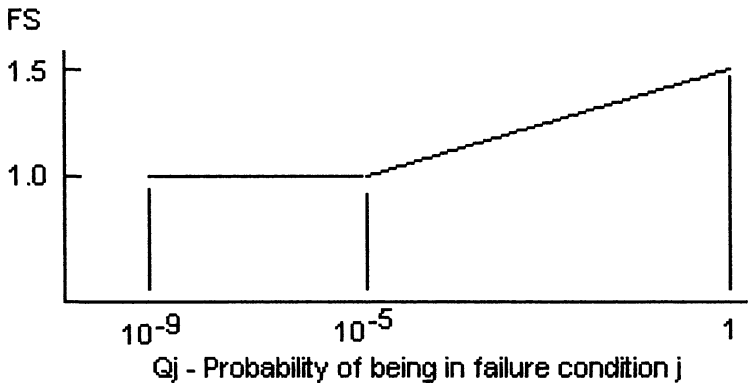
(C) The limit-rolling conditions specified in § 25.349, and the limit-unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit-yaw-maneuvering conditions specified in § 25.351.

(E) The limit-ground-loading conditions specified in § 25.473 and § 25.491.

(ii) For static-strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

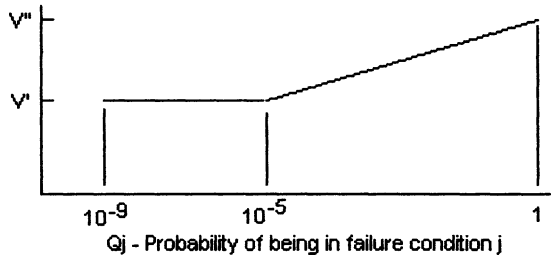
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit-load conditions specified in Subpart C.

(iii) For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph (c)(2)(ii).

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter-clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V''.

(vi) Freedom from aeroelastic instability must also be shown, up to V′ in Figure 3 above, for any probable system-failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other subparts of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Failure indications.* For system-failure detection and indication, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or that significantly reduce the reliability of the remaining system. To the extent practicable, these failures must be detected and annunciated to the flight crew before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal warning systems, and where service history shows that inspections provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight, that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. Failure conditions that result in a factor of safety between the airplane strength and the loads of Subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of § 25.302 must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit-load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on August 20, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20697 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–329I]

RIN 1117–AB23

Schedules of Controlled Substances; Table of Excluded Nonnarcotic Products: Nasal Decongestant Inhalers Manufactured by Classic Pharmaceuticals LLC

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Under this Interim Rule, the Drug Enforcement Administration (DEA) is updating the Table of Excluded

Nonnarcotic Products found in 21 CFR 1308.22 to include the Nasal Decongestant Inhaler/Vapor Inhaler (containing 50 mg Levmetamfetamine) manufactured by Classic Pharmaceuticals LLC and marketed under various private labels (to include the ''Premier Value'' and ''Kroger'' labels). This nonnarcotic drug product, which may be lawfully sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), is excluded from provisions of the Controlled Substances Act (CSA) pursuant to 21 U.S.C. 811(g)(1).

Any interested person may file comments or objections to this order on or before October 27, 2009. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application in light of the comments or objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

DATES: This rulemaking shall become effective on August 28, 2009. Written comments must be postmarked and electronic comments must be submitted on or before October 27, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–329I'' on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: *Posting of public comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Personal Identifying Information'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Confidential Business Information'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

Background

The Controlled Substances Act (CSA) under 21 U.S.C. 811(g)(1) states that the Attorney General shall by regulation exclude any nonnarcotic drug which contains a controlled substance from the application of the CSA, if such drug may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), be lawfully sold over the counter without a prescription. This authority has been delegated to the Administrator of DEA and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control pursuant to 28 CFR 0.100 and Title 28, Part 0, Appendix to Subpart R, 7(g), respectively.

Such exclusions apply only to nonnarcotic products and are only granted following suitable application to the DEA per the provisions of 21 CFR 1308.21. The current Table of Excluded Nonnarcotic Products found in 21 CFR 1308.22 lists those products that have been granted excluded status.

Pursuant to the application process of 21 CFR 1308.21, DEA received application for exclusion from Classic Pharmaceuticals, LLC, the manufacturer of a Nasal Decongestant Inhaler/Vapor Inhaler which contains the schedule II controlled substance Levmetamfetamine. This inhaler is sold over the counter under various private labels (such as the ''Premier Value'' label of the Chain Drug Consortium, Boca Raton, Florida, and ''The Kroger'' label by The Kroger Company of Cincinnati, OH). Based on the application and other information received, including the quantitative composition of the substance and labeling and packaging information, DEA has determined that this product (sold under various private labels) may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription (21 U.S.C. 811(g)(1)).

The Deputy Assistant Administrator finds that this product meets the criteria for exclusion from the CSA in accordance with 21 U.S.C. 811(g)(1). Note that this exclusion only applies to the finished drug product in the form of an inhaler (in the exact formulation detailed in the application for exclusion), which is lawfully sold under the Federal Food, Drug, and Cosmetic Act. The extraction or removal of the

active ingredient (Levmetamfetamine) from the inhaler shall negate this exclusion and result in the possession of a schedule II controlled substance.

This rulemaking adds Classic Pharmaceuticals, LLC product containing 50 mg Levmetamfetamine in a Nasal Decongestant Inhaler/Vapor Inhaler and marketed under various private labels to the list of excluded nonnarcotic products contained in 21 CFR 1308.22. Effective August 28, 2009 this product is excluded from CSA regulatory provisions. Any interested person may file written comments or objections to this order on or before October 27, 2009. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application in light of the comments or objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will not have a significant economic impact on a substantial number of small entities. This rule adds a product to the list of products excluded from the requirements of the CSA.

Executive Order 12866

The Deputy Assistant Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is not ''a significant regulatory action.'' As discussed previously, based on the information received by the manufacturer of the product in question, DEA has determined that this product may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. DEA finds that it is unnecessary and impracticable to seek public comment prior to making the exclusion of this nonnarcotic product from the requirements of the CSA effective. DEA has no discretion in its determination of whether the product may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

The Administrative Procedure Act permits an agency to make a rule effective upon date of publication if it is ''a substantive rule which grants or recognizes an exemption or relieves a restriction'' (5 U.S.C. 553(d)(1)). Since this rule excludes a nonnarcotic drug product from the provisions of the CSA, DEA finds that it meets the criteria set forth in 5 U.S.C. 553(d)(1) for an exception to the effective date requirement.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

■ For the reasons set out above, 21 CFR Part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.22 is amended by adding to the table, in alphabetical order, the product listed below:

§ 1308.22 Excluded substances.

* * * * *

EXCLUDED NONNARCOTIC PRODUCTS

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
*	*	*	*	*	*
Classic Pharmaceuticals LLC	Nasal Decongestant Inhaler/ Vapor Inhaler.		IN	Levmetamfetamine (l-Desoxy-ephedrine).	50.00
*	*	*	*	*	*

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Deputy Chief of Operations, Office of Diversion Control.

[FR Doc. E9–20768 Filed 8–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5331–F–01]

RIN 2501–AD47

Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes a HUD regulation that prohibits the use of project labor agreements in HUD-assisted construction contracts. Executive Order 13502, entitled ''Use of Project Labor Agreements for Federal Construction Projects,'' and signed by President Obama on February 6, 2009, revoked Executive Order 13202, which had prohibited federal agencies from requiring or prohibiting project labor agreements as a condition for award of any federally funded contract or subcontract for construction. Executive Order 13502, which applies to direct federal procurement of construction, encourages federal agencies to consider requiring the use of project labor agreements in connection with federally procured large-scale construction projects. The Executive Order also allows the use of project labor agreements in circumstances not covered by the Order, including projects receiving federal financial assistance.

In a previously published **Federal Register** notice pertaining to HUD's Fiscal Year 2009 (FY 2009) funding, participants in HUD programs and prospective recipients of HUD funds were notified of the issuance of Executive Order 13502, of its removal of the restrictions on the use of project labor agreements, and of the invalidity of the HUD regulation promulgated to enforce the earlier Executive Order. With the revocation of Executive Order 13202, there is no longer a legal basis for HUD's regulation that implemented that executive order with respect to HUD-assisted projects. Therefore, this rule removes the regulation from the Code of Federal Regulations.

DATES: *Effective Date:* September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410; telephone number 202–402–5132 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—Executive Order 13502, ''Use of Project Labor Agreements for Federal Construction Projects''

Executive Order 13502, entitled ''Use of Project Labor Agreements for Federal Construction Projects,'' and signed by President Barack Obama on February 6, 2009, while directed to federal agency procurement of construction, also allows federal agencies to consider requiring the use of project labor agreements in connection with large-scale federally assisted construction projects. (Executive Order 13502 was subsequently published in the **Federal Register** on February 11, 2009 (74 FR 6985).) The Executive Order revokes Executive Order 13202, ''Preservation of Open Competition and Government Neutrality towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects,'' which prohibited federal agencies from requiring or prohibiting project labor agreements as a condition for award of any federally funded contract or subcontract for construction.[1] In order to bind participants in HUD programs to the provisions of Executive Order 13202, HUD established regulations at 24 CFR 5.108 that barred recipients of HUD funds from requiring or prohibiting project labor agreements in their procurements using HUD funds. The HUD regulations applied to HUD-assisted construction contracts. Construction contracts awarded directly by HUD were covered separately by provisions in the government-wide Federal Acquisition Regulation (FAR).

Executive Order 13502 restores to federal agencies the discretion to determine when project labor agreements may be appropriate and beneficial in federally assisted construction projects, through the revocation of Executive Order 13202. As a result of the revocation, Executive Order 13502 also removes the prohibition on recipients of HUD funds from requiring the use of project labor agreements in their procurements. Because the foundation for HUD's regulation in 24 CFR 5.108 was the prior Executive Order, which has been revoked, the rule no longer has effect. Accordingly, in an update of requirements applicable to HUD funding for FY 2009, published in the **Federal Register** on April 16, 2009 (74 FR 17685), HUD notified prospective recipients and participants in HUD programs that the new Executive Order revoked Executive Order 13202 and that the regulation in 24 CFR 5.108 was no longer in effect.

Executive Order 13502 was issued to address the challenges to efficient and timely procurement presented to the federal government by large-scale construction projects. Because construction employers often do not have a permanent workforce, it can be difficult for them to predict labor costs when bidding on contracts and to ensure a steady stream of labor on contracts being performed. Often, multiple employers are involved at a single location, and a labor dispute concerning even one employer can delay an entire project. A lack of coordination between employers or uncertainties about the terms and conditions of employment of various groups of workers can create friction and disputes in the absence of an agreed-upon resolution mechanism. Project labor agreements can present a means for addressing these problems by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of federal construction contracts.

Executive Order 13502 declares that it is the policy of the federal government to encourage the executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in federal procurement. The Executive Order, however, does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by the Order, including leasehold arrangements and projects receiving federal financial assistance. The Executive Order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

[1] (Executive Order 13202 was signed by President George W. Bush on February 17, 2001 (published in the **Federal Register** on February 22, 2001 (66 FR 11225)) and later amended by Executive Order 13208, signed by President Bush on April 6, 2001 (published in the **Federal Register** on April 11, 2001 (66 FR 18717)).

II. This Final Rule

In addition to removing the prohibition on the use of project labor agreements in federal and federally assisted construction contracts, Executive Order 13502 directs agencies to revoke any regulations based on the prior Executive Order 13202. Consistent with those directions and the lack of a legal foundation for HUD's regulation in 24 CFR 5.108, this rule removes that regulatory section from the Code of Federal Regulations.

Executive Order 13502 further directs the Director of the Office of Management and Budget (OMB), in consultation with the Secretary of Labor and with other officials, as appropriate, to provide recommendations to the President, within 180 days of the signing of Executive Order 13502, on whether broader use of project labor agreements with respect to both construction projects undertaken under federal contracts and construction projects receiving federal financial assistance would help to promote the economical, efficient, and timely completion of such projects. HUD is therefore deferring any rulemaking to implement Executive Order 13502 in HUD-assisted construction contracts, pending OMB's recommendations on this issue.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' In this case, HUD has determined that prior public comment is unnecessary. Because this final rule removes a rule for which the legal basis has been revoked, HUD is left with no discretion on which public comment could be considered on the subject of removal of the regulation.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

■ Accordingly, for the reasons described in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d).

§ 5.108 [Removed]

■ 2. Remove § 5.108.

Dated: August 24, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9–20831 Filed 8–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR–4998–F–05]

RIN 2501–AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: HUD is delaying the effective date of the rule entitled ''Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs'' published in the **Federal Register** on January 27, 2009. The January 27, 2009, final rule, which was scheduled to become effective on September 30, 2009, will become effective on January 31, 2010. Today's action will provide the Department with the necessary additional time to review the subject matter of the January 27, 2009, final rule and to consider the public comments on HUD's February 11, 2009, **Federal Register** notice that

solicited public comments on the regulatory amendments made by the January 27, 2009 final rule.

DATES: *Effective Date:* The effective date of the final rule, which was published on January 27, 2009 (74 FR 4832), delayed March 27, 2009 (74 FR 13339), is further delayed until January 31, 2010.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Program Advisor for the Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 4226, Washington, DC 20410, telephone number 202–402–4267. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 6138, Washington, DC 20410, telephone number 202–402–2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 2009 (74 FR 4832), HUD published a final rule, entitled ''Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs.'' The January 27, 2009, final rule revises HUD's public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies (PHAs) and owners and management agents. The January 27, 2009, final rule was originally scheduled to become effective on March 30, 2009, but provided multifamily housing owners and management agents with an additional six months (until September 30, 2009) to implement use of the EIV system.

On February 11, 2009 (74 FR 6839), HUD published a notice in the **Federal Register** seeking public comment on whether to delay the effective date of the January 27, 2009, final rule. The February 11, 2009, notice was issued in accordance with the memorandum of January 20, 2009, from the assistant to the President and Chief of Staff, entitled ''Regulatory Review'' and subsequently published in the **Federal Register** on January 26, 2009 (74 FR 4435). The notice explained that HUD was considering a temporary 60-day delay in the effective date to allow the Department an opportunity for further review and consideration of new regulations, consistent with the Chief of Staff memorandum of January 20, 2009. In addition to soliciting comments specifically delaying the effective date, the February 11, 2009, notice also requested comment generally on the January 27, 2009 final rule.

The comment period on the February 11, 2009 notice closed on March 13, 2009. HUD received 50 public comments. Comments were submitted by a variety of organizations including PHAs, property owners, management agents, program training organizations, legal aid organizations, community development organizations, and public interest organizations. The majority of comments were supportive of a delayed effective date, but also raised additional questions and comments about various aspects of the January 27, 2009, final rule. Among other issues, commenters requested that HUD clarify the definition of annual income, questioned how the rule would affect participants that might have difficulty obtaining social security numbers for their children, and noted confusion regarding the use of HUD's EIV system.

Following publication of the February 11, 2009, **Federal Register** notice, HUD issued a final rule on March 27, 2009 (74 FR 13339) that delayed the effective date of the January 27, 2009, final rule to September 30, 2009, for the purpose of providing HUD with time to review the public comments received in response to the February 11, 2009 notice (March 2009 extension final rule).

II. This Final Rule

Through this final rule published in today's **Federal Register**, HUD further delays the effective date of the January 27, 2009, final rule until January 31, 2010. The two HUD Assistant Secretaries with responsibility for the programs affected by the rule were only recently confirmed. HUD seeks to ensure that these two officials have sufficient time to review the subject matter of this rule, and to review and consider the public comments received in response to HUD's February 11, 2009, **Federal Register** notice.

HUD notes that it generally publishes regulatory changes, including revisions to the effective date of its rules, for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' Given the possibility of changes to the provisions of the January 27, 2009, final rule and the fast approaching September 30, 2009, effective date of the regulatory amendments, HUD has determined that it would be contrary to the public interest to delay issuance of today's rule for effect. A delay in the extension of the effective date of the January 27, 2009, final rule would compel PHAs, owners and management agents, and residents of HUD-assisted housing to bear the burden of compliance with regulatory requirements that may be subject to further amendment in the near-term. Moreover, and as noted above, the 50 public comments received on HUD's February 11, 2009, notice raised several substantive questions and concerns regarding the provisions of the final rule. It would be contrary to the public interest to defer extending the effective date and require compliance with the January 27, 2009, final rule before the appropriate and newly confirmed HUD officials have the opportunity to review and consider the issues raised by the commenters.

The Department remains committed to the implementation of the EIV system and continues to believe that the use of upfront income verification will help to identify and cure inaccuracies in public and assisted housing rental determinations. Given the number of public comments submitted in response to the February 11, 2009 notice, and the concerns and questions raised in those comments, the additional time provided by today's final rule will allow the Department to carefully weigh available policy options and to help ensure the successful implementation of the enhanced income and rent verification procedures. Should HUD determine that additional rulemaking is necessary or appropriate, HUD will provide the public with the opportunity to comment on any proposed changes to the regulations in the January 27, 2009 final rule.

Therefore, the effective date of the final rule, which was published on January 27, 2009 (74 FR 4832), delayed March 27, 2009 (74 FR 13339), is further delayed until January 31, 2010.

Dated: August 25, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9–20879 Filed 8–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS NEW MEXICO (SSN 779) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 28, 2009 and is applicable beginning 20 August 2009.

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

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

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NEW MEXICO (SSN 779) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the height placement of the masthead light above the hull; Annex I, paragraph 2(k), pertaining to the height and relative positions of the anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

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

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

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

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by adding, in alpha numerical order, by vessel number, an entry for USS NEW MEXICO (SSN 779); and

■ B. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS NEW MEXICO (SSN 779).

The additions read as follows:

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

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i), Annex I
* * * * *	*	*
USS NEW MEXICO	SSN 779	2.76
* * * * *	*	*

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	*
USS NEW MEXICO	SSN 779	.....	.....	206.4°	4.37	11.05	2.8	0.30 below.
*	*	*	*	*	*	*	*	*

* * * * *

Approved: August 20, 2009.

M. Robb Hyde,

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

[FR Doc. E9–20746 Filed 8–27–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN16

Presumption of Service Connection for Osteoporosis for Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to establish a presumption of service connection for osteoporosis for former Prisoners of War (POWs) who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. The amendment implements a decision by the Secretary to establish such a presumption based on scientific studies.

VA is additionally amending its adjudication regulations to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for any period of time, have a diagnosis of posttraumatic stress disorder (PTSD), and whose osteoporosis is at least 10 percent disabling. This amendment reflects statutory provisions of the Veterans' Benefits Improvement Act of 2008.

DATES: *Effective Dates:* September 28, 2009.

Applicability Dates: For information concerning the dates of applicability for certain provisions, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725.

SUPPLEMENTARY INFORMATION: On January 14, 2009, VA published a proposal in the **Federal Register** (74 FR 2016) to amend VA's regulations at 38 CFR 3.309(c)(2) to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. Interested persons were invited to submit written comments on or before February 13, 2009. We received one comment based on the proposed rule.

38 CFR 3.309(c)(2)

The commenter stated that the proposed rule creating a presumption of service connection for POWs for osteoporosis does not eliminate the possibility that service connection may be denied under 38 CFR 3.307(d), Rebuttal of service incurrence or aggravation. Section 3.307(d) states that a presumption may be rebutted if the evidence is of the nature that would, in ''sound medical reasoning and in consideration of all evidence of record, support a conclusion that the disease was not incurred in service.'' The commenter stated that, for example, if a veteran who was a POW claimed service connection for osteoporosis and also used corticosteroids, VA could deny the veteran's claim under § 3.307(d) based on medical treatises that state that osteoporosis is a common problem associated with corticosteroids. The commenter stated that the rule ''seems to be another example of the Secretary offering to grant service connection knowing that he will never have to actually [sic] do so.'' The commenter inquires about whether VA will ''grant service connection for osteoporosis in a veteran with a history of treatment with corticosteroids.''

As stated in the proposed rulemaking, VA has established a policy to grant presumptive service connection for osteoporosis that is at least 10 percent disabling for POWs detained or interned for at least 30 days. We make no change based on this comment because VA is obligated to follow Congress' directive in 38 U.S.C. 1113, which is implemented by 38 CFR 3.307(d), to deny service connection ''[w]here there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities within the purview of [38 U.S.C. 1112, 1116, 1117, or 1118], has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct.'' Additionally, Congress has directed that ''the Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary.'' 38 U.S.C. 5107(a). VA, therefore, may not ignore any evidence relevant to deciding a claim.

However, we are making a change to the proposed regulation text by adding language specifying the date on which the rule will be applicable to avoid confusion with the amendment to 38 CFR 3.309(c)(1) discussed *infra*, which implements section 106 of the Veterans Benefits Improvement Act of 2008, Public Law 110–389, 122 Stat. 4145, 4149. The amendment at 38 CFR 3.309(c)(2) applies to all applications for benefits that are received by VA on or after the effective date of September 28, 2009, or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit

on the effective date of this rule. In accordance with 38 U.S.C. 5110(g), the effective date of benefits awarded under § 3.309(c)(2) cannot be earlier than the effective date of this rule or the date 1 year prior to the date of application, whichever is later.

Based on the rationale stated in the notice of proposed rulemaking and in this document, the proposed rule is adopted as a final rule with the change noted above.

38 CFR 3.309(c)(1)

On October 10, 2008, Public Law 110–389 was enacted. Section 106 of Public Law 110–389 amended 38 U.S.C. 1112(b)(2) by adding a new subparagraph (F) that creates a presumption of service connection for osteoporosis that becomes manifest to a degree of 10 percent for POWs if the Secretary determines that the veteran has PTSD.

Section 1112(b)(2) is implemented by VA at § 3.309(c)(1). To conform to the statutory amendment, we are adding ''On or after October 10, 2008, Osteoporosis, if the Secretary determines that the veteran has posttraumatic stress disorder (PTSD)'' to the list of diseases at § 3.309(c)(1).

As noted above, we are including the applicability dates in the amended regulations to avoid confusion. The amendment regarding a presumption of service connection for osteoporosis for POWs with PTSD at 38 CFR 3.309(c)(1) is mandated by section 106 of Public Law 110–389 and is therefore to be applied retroactively to all applications for benefits that are received by VA on or after October 10, 2008, the effective date of Public Law 110–389, or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this rule. In accordance with 38 U.S.C. 5110(g), the effective date of benefits awarded under § 3.309(c)(1) cannot be earlier than the effective date of Public Law 110–389 or the date 1 year prior to the date of application, whichever is later.

Administrative Procedure Act

The substantive change to § 3.309(c)(1) made by this final rule merely reflects a statutory requirement. Accordingly, there is a basis for dispensing with prior notice and comment and a delayed effective date under the provisions of 5 U.S.C. 553. Use of those procedures would be impracticable, unnecessary, and contrary to the public interest.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this amendment to § 3.309(c) will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule does not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

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

Approved: June 9, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

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

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

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

■ 2. Amend § 3.309(c) as follows:

■ a. In paragraph (c)(1), in the list of diseases, add ''On or after October 10, 2008, Osteoporosis, if the Secretary determines that the veteran has posttraumatic stress disorder (PTSD).'' after ''Stroke and its complications.''.

■ b. In paragraph (c)(2)(ii), in the list of diseases, add ''On or after September 28, 2009, Osteoporosis.'' after ''Cirrhosis of the liver.''.

■ c. Revising the authority citation.

The revision reads as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(c) * * *

(2) * * *

(Authority: 38 U.S.C. 501(a) and 1112(b))

[FR Doc. E9–20790 Filed 8–27–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL68

Medication Prescribed by Non-VA Physicians

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends and adopts an interim final rule that governs the provision of medications to veterans when medication is prescribed by physicians who are not employees of nor are they providing care under contract with the Department of Veterans Affairs (VA). In a document published in the **Federal Register** on July 25, 2003, VA issued an interim final rule establishing a temporary program while also maintaining the program that it had in place before the interim final rule. Because the need cited in the interim final rule has abated and because the provisions added by the interim final rule were self-limiting in time and scope, we are removing these provisions which established the now obsolete temporary program.

DATES: *Effective Date:* August 28, 2009.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy, Office of Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202–461–6759. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 25, 2003 (68 FR 43927), VA issued an interim final rule that amended 38 CFR 17.96, a regulation allowing VA to fill certain prescriptions ordered by non-VA physicians.

When the interim final rule was published, VA was experiencing increases in enrollment and demand for health care services. The increased demand was caused, at least in part, by veterans enrolling in the VA health care system to obtain pharmacy benefits at no cost or at a reasonable cost. Consistent with the primary purpose of VHA, which is to provide integrated comprehensive health care for veterans, and not simply to act as a conduit for providing prescription medications, VA usually provides only medications prescribed by VA physicians or VA contractors retained for that purpose. When a veteran first enrolls in the VA health care system and requests an appointment for care, VA schedules an initial appointment with a primary care physician. Among other things, during that first appointment the physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for medication, and writes prescriptions for any needed medication.

Due to the increased demand for health care services, VA was unable to provide some initial primary care visits in a timely manner. In certain locations, veterans were placed on a wait list for an initial primary care visit. Many of those veterans had existing prescriptions, written by non-VA physicians, that VA primary care physicians could confirm and renew when the veterans were able to have initial primary care visits. The interim final rule, in paragraphs (a) through (h), set forth rules that established a temporary program to fill prescriptions ordered by non-VA physicians prior to the veteran's initial primary care visit. The temporary program was limited to veterans who were enrolled in the VA health care system prior to July 25, 2003 and who requested an initial primary care appointment prior to July 25, 2003 with the next available appointment date more than 30 days from the date of the request. By 2004, VA had virtually eliminated the primary care wait list so there was no longer a need for the temporary program. In addition, no veterans remain eligible for the temporary program in any event.

Paragraph (i) of the interim final rule restated verbatim what had been § 17.96 before the publication of the interim final rule. These original and continuing provisions apply to the filling of prescriptions by non-VA physicians for veterans receiving increased compensation or pension, without regard to whether the veteran has had an initial primary care visit.

We received one comment during the interim final rule's comment period, which ended on September 8, 2003. The commenter, the National Association of Chain Drug Stores, stressed the importance of pharmacy medication reviews as well as the need to ensure complete and accurate information is obtained regarding a patient's prescription and medical history. VA shares this view and has policies and procedures in place to coordinate care and ensure patient safety. It is unnecessary to further amend the regulation to reflect existing policies.

This final rule removes paragraphs (a) through (h) of the interim final rule, thus returning the law to the state that it was in before the interim final rule was promulgated. We are also making non-substantive changes to restore the original organization of § 17.96.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Because this rule merely removes provisions rendered obsolete by their own terms and continues provisions in effect prior to the promulgation of the interim final rule, this rulemaking is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Unfunded Mandates

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

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The interim final rule contained collections of information which were approved by OMB under the following OMB control number: 2900–0646 (Medication Prescribed by Non-VA Physicians). VHA allowed OMB control number 2900–0646 to expire in August 2006 because the temporary program had been discontinued.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation, Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 7, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

§ 17.96 [Amended]

■ 2. Amend § 17.96 by:

■ a. Removing paragraphs (a) through (h);

■ b. Redesignating paragraphs (i) introductory text, (i)(1), (i)(1)(i), (i)(1)(ii) and (i)(2) as the introductory text to the section and paragraphs (a) introductory text, (a)(1), (a)(2), and (b) respectively; and

■ c. In newly designated introductory text to the section, removing the heading ''Medications for veterans receiving increased compensation or pension.''

[FR Doc. E9–20792 Filed 8–27–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0385; FRL–8948–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving these local rules that address changes for clarity and consistency.

DATES: This rule is effective on October 27, 2009 without further notice, unless EPA receives adverse comments by September 28, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0385, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	1020	Definitions	01/15/09	03/17/09
SBCAPCD	102	Definitions	01/15/09	03/17/09

On April 20, 2009, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a version of SJVUAPCD Rule 1020 into the SIP on February 3, 2000 (65 FR 5262) and SBCAPCD Rule 102 on May 6, 2009 (74 FR 20872).

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires States to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

SJVUAPCD Rule 1020, Definitions, is amended to modify the definition of Volatile Organic Compound (VOC) in Section 3.53 of the rule. Changes include exemption of chemical compounds tertiary butyl-acetate and methyl formate as volatile organic compounds (VOC). Both compounds will require submittals of documents when used in excess of one gallon per year, per facility. Tertiary butyl-acetate will be exempt for VOC emission limitation but not from recordkeeping and reporting. The southern boundary of the San Joaquin Valley Air Basin is also clarified in this rule.

SBCAPCD Rule 102, Definitions, is amended by modifying the definitions of ''*gasoline''* and ''*organic solvents''* to update the referenced test methods and to improve rule clarity. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 28, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2009. This will incorporate these rules into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such

grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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 final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective *September 28, 2009.*

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *October 27, 2009.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 11, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(363) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(363) New and amended regulations were submitted on March 17, 2009 by the Governor's designee.

(i) Incorporation by Reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 1020, ''Definitions,'' adopted on June 18, 1992 and amended on January 15, 2009.

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102, ''Definitions,'' adopted on October 18, 1971 and amended on January 15, 2009.

* * * * *

[FR Doc. E9–20804 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0079; FRL–8945–1]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from leaking components at facilities such as oil refineries and chemical manufacturing plants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). At the same time, we are also approving an AVAQMD Negative Declaration and removing rules from the SIP.

DATES: This rule is effective on October 27, 2009 without further notice, unless EPA receives adverse comments by September 28, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0079, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rule we are approving, Rule 1173, with the date that it was adopted by the local air agency and submitted by the California Air Resources Board along with the rules we are removing from the SIP, Rules 465, 466, 466.1, and 467.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1173	Fugitive Emissions of VOCs	06/17/08	10/20/08

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	465	Vacuum Producing Devices or Systems	11/01/91	10/20/08
AVAQMD	466	Pumps & Compressors	10/07/83	10/20/08
AVAQMD	466.1	Valves & Flanges	03/16/84	10/20/08
AVAQMD	467	Pressure Relief Devices	03/05/82	10/20/08

On November 18, 2008, EPA found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review can begin.

B. Are there other versions of this rule?

EPA has approved and incorporated into the SIP the May 13, 1994 version of Rule 1173 (see 59 **Federal Register** (FR) 43751, August 25, 1994). CARB has made no intervening submittals of this rule since 1994. The remaining rules, 465, 466, 466.1, and 467 are part of the SIP and were submitted for the purpose of rescinding them; please see the discussion below.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 1173 is a rule designed to reduce fugitive VOC emissions from leaking components at industrial sites handling and manufacturing VOC laden liquids and gases. The rule establishes inspection, component replacement, re-inspection requirements, maintenance, repair periods, and replacement or retrofit requirements for leaking components at these facilities. Finally, the rule has associated administrative and recordkeeping requirements, such as an inspection log, and test methods for determining compliance.

With its creation in 1997 the AVAQMD inherited the applicable South Coast Air Quality Management District Rule Book as of this date. As a result, the AVAQMD Rule Book included Rule 1173 as well as Rules 465, 466, 466.1, and Rule 467. The May 13, 1994 version of SCAQMD 1173 that AVAQMD inherited contained a sunset provision that sources subject to Rules 465, 466, 466.1, and 467 must comply with Rule 1173 by February 1, 1991. In its June 17, 2008 action, the AVAQMD board rescinded Rules 465, 466, 466.1, and 467 and adopted a Federal Negative Declaration stating that there are no major sources within the AVAQMD subject to Rule 465 and the non-leak provisions of the remaining rules. Rule 1173 was retained and amended to ensure that any applicable leak requirements in Rules 466, 466.1, and 467 remained in the SIP within Rule 1173. For further discussion, see EPA's Technical Support Document and the AVAQMD Final Staff Report.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The AVAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1173 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Compound Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing,'' EPA–450/3–83–006, USEPA, December 1983.
5. ''Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants,'' EPA–450/3–83–007, USEPA, December 1983.

B. Does the rule meet the evaluation criteria?

We believe that Rule 1173, the companion rescission of Rules 465, 466, 466.1, 467, and the AVAQMD Negative Declaration are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

We have no further recommendations for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 1173, approving the AVAQMD Negative Declaration, and rescinding Rules 465, 466, 466.1, and 467 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 28, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2009. This will incorporate Rule 1173 into the Federally enforceable SIP and remove Rules 465, 466, 466.1, and 467 from the SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

imposed by State law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 13, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(361)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(361) * * *

(i) * * *

(B) Antelope Valley Air Quality Management District

(1) Rule 1173, ''Fugitive Emissions of Volatile Organic Compounds,'' adopted July 7, 1989 and amended June 17, 2008.

* * * * *

[FR Doc. E9–20827 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XQ90

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment and quota transfer.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September, October-November, and December time periods of the 2009 fishing year, based on consideration of the determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT). NMFS has also determined that a quota transfer to allow continued fishing in the Harpoon category is appropriate, and therefore transfers 25 metric tons (mt) from the Reserve to the Harpoon category for the remainder of the 2009 fishing year. This action applies to Atlantic Tunas Harpoon category permitted vessels.

DATES: The effective dates for the adjusted BFT daily retention limits are September 1, 2009, through December 31, 2009. The quota transfer to the Harpoon category is effective August 28, 2009, through November 15, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by

persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The latest (2008) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,034.9 mt for 2009.

The 2009 fishing year began on January 1, 2009, and ends December 31, 2009. The General category fishery is open until December 31, 2009, or until the General category quota is reached. The Harpoon category fishery is open until November 15, 2009, or until the Harpoon category quota is reached.

Adjustment of General Category Daily Retention Limit

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS published final specifications on June 1, 2009 (74 FR 26110), and increased the default General category daily retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel to three large medium or giant BFT per vessel for June 1 through August 31, 2009. In addition, NMFS stated that it would consider adjustment of retention limits for future time periods, if warranted.

As of July 31, 2009, 53.5 mt of the adjusted 2009 General category quota have been landed, and landings rates remain less than 1.0 mt per day. Starting on September 1, 2009, the General category daily retention limit, located at 50 CFR 635.23(a)(2), is scheduled to revert back to the default daily retention limit of one large medium or giant BFT per vessel. This scheduled retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high. In consideration of the rollover of unused quota from the January and June-August time periods, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2009, NMFS anticipates the full 2009 fishing year General category quota will not be harvested. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota. Excessive rollover is undesirable because it effectively changes the time-period subquota allocation percentages established in the Consolidated HMS FMP and may contribute to excessive carryovers to subsequent fishing years.

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the remainder of the 2009 fishing year. Based on these considerations, NMFS has determined that the General category retention should be adjusted to allow for retention of the established General category quota. Therefore, NMFS increases the General category retention limit from the default limits effective September 1, 2009, through December 31, 2009. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

In August 2008, NMFS followed a similar course of action and raised the General category retention limits via inseason action to allow for a three BFT daily retention limit throughout 2008 (73 FR 50885, August 29, 2008). NMFS would address the January 2010 General category daily retention limit via a separate inseason action later in the year, if necessary. In December 2008, NMFS set the January 2009 General category BFT daily retention limit at two BFT per vessel via an inseason action (73 FR 76972, December 18, 2008), after considering dealer reports, daily landing trends, the winter fishery performance over the last few years, BFT availability, and the relatively small January General category baseline subquota.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

Inseason Transfer to the Harpoon Category

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve to any category quota in the fishery, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8).

The 2009 annual BFT quota specifications (74 FR 26110, June 1, 2009) provide for an adjusted quota of 51.6 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the Harpoon category quota. As of August 11, 2009, Harpoon category landings totaled 37.7 mt, with 13.9 mt available for the remainder of the season.

After considering the factors for making transfers between categories and from the Reserve, NMFS has determined that 25 mt of the 180.4 mt of Reserve should be transferred to the Harpoon category. Thus, the Harpoon category quota is adjusted to 76.6 mt for the 2009 fishing year. Once the adjusted Harpoon category quota has been reached, or November 15, 2009, whichever comes first, the Harpoon category will be closed.

Monitoring and Reporting

NMFS selected the General category daily retention limit and the duration after examining an array of data as it

pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures of the General and Harpoon categories or subsequent adjustments to the General category daily retention limit, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at *www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing the daily retention limit would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment to the retention limit must be effective September 1, 2009, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities from fishermen who only have access to the fishery during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction by increasing the General category retention limit from the default of one fish per vessel/trip to three fish per vessel/trip, the AA also finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness. This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 24, 2009.

Kristen C. Koch,

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

[FR Doc. E9–20806 Filed 8–25–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XR20

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 2009, through 1200 hrs, A.l.t., October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA is 3,550 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 2,071 mt, to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 630. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 630 is 1,479 mt (3,550 mt minus 2,071 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2009 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,469 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS

was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 21, 2009.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 24, 2009.

Emily H. Menashes,

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

[FR Doc. E9–20802 Filed 8–25–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 166
Friday, August 28, 2009

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 984

[Doc. No. AMS–FV–09–0020; FV09–984–3 PR]

Walnuts Grown in California; Increased Assessment Rate and Changes to Regulations Governing Reporting and Recordkeeping

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Walnut Board (Board) for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. This rule would also change reporting and recordkeeping regulations in conformance with amendments made on March 3, 2008, to the marketing order that regulates the handling of walnuts grown in California. The Board locally administers the marketing order. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 28, 2009.

ADDRESSES: 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 document number and the date and page number of this issue of the **Federal Register** and will be 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: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Debbie.Wray@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on September 1, 2009, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. Such 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 would increase the assessment rate established for the Board for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. It would also make conforming changes to reporting and recordkeeping regulations, which are needed to reflect recent marketing order amendments.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0131 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 18, 2009, and unanimously recommended 2009–10 expenditures of $5,894,100 and an assessment rate of $0.0177 per

kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $3,809,000. The assessment rate of $0.0177 is $0.0046 per pound higher than the rate currently in effect. The increased assessment rate is necessary to cover increased expenses for domestic market promotion, research activities, and administrative expenses. The higher assessment rate should generate sufficient income to cover anticipated 2009–10 expenses.

The following table compares major budget expenditures recommended by the Board for the 2008–09 and 2009–10 marketing years:

Budget expense categories	2008–09	2009–10
Employee Expenses	$410,500	$535,000
Travel/Board Expenses	100,000	120,000
Office Costs/Annual Audit	142,500	164,750
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Estimate	110,000	120,000
Production Research *	805,000	805,000
Contingency-Research Issues	30,000	100,000
Domestic Market Development	2,135,000	4,030,500
Reserve for Contingency	71,000	13,850

* Includes Research Director's compensation.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 333,000,000 kernelweight pounds, which should provide $5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

The estimate for merchantable shipments is based on historical data, which is an average of the three prior years' production of 370,000 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (370,000 tons × 2,000 pounds per ton × .45).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2009–10 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

Recent amendments to the order (73 FR 11328, March 3, 2008) changed the Board's name to ''California Walnut Board'' (CWB), changed the Board's marketing year from August 1 through July 31 to September 1 through August 31, and replaced the term ''handler carryover'' with the term ''handler inventory.'' To reflect these changes, the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at a meeting on February 27, 2009.

Section 984.456(a) would be revised to specify that beginning on September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts in that marketing year. Section 984.471 would be revised by changing the term ''carryover'' to ''inventory'', by requiring handlers to report September 1 inventory information by September 15, and by changing the names of the related inventory forms to ''CWB Form No. 4'' and ''CWB Form No. 5.'' Section 984.476 would be revised to require that handlers file reports of walnut import receipts with the Board by December 5 for receipts between September 1 and November 30, by March 5 for receipts between December 1 and the end of February, by June 5 for receipts between March 1 and May 31, and by September 5 for receipts between June 1 and August 31; and to change the name of the reporting form to ''CWB Form No. 7.'' Section 984.480(d) would be revised to specify that inventories of all walnut quantities held on September 1 must be reported to the Board. The acronym ''WMB'' would be replaced with ''CWB'' in form names described in the following sections not previously listed above: §§ 984.456(b), 984.464(c), 984.472(a), and 984.472(b). Finally, in order to update the regulations, gender-specific language would be changed in §§ 984.456(b) and 984.472(a) to replace ''he'' and ''his'' with ''he/she'' and ''his/her.''

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 the 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 currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production 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 growers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.50 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at $2,290 per ton, which is considerably higher than the previous five-year average of $1,384 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.50 tons per acre would have been expected to produce about 150 tons of walnuts during 2007–08. At $2,290 per ton, that farm's production would have had an approximate value of $344,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $344,000 in 2007–08. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2009–10 and subsequent marketing years from $0.0131 to $0.0177 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2009–10 expenditures of $5,894,100 and an assessment rate of $0.0177 per kernelweight pound. The proposed assessment rate of $0.0177 is $0.0046 higher than the 2008–09 rate. The quantity of assessable walnuts for the 2009–10 marketing year is estimated at 370,000 tons. Thus, the $0.0177 rate should provide $5,894,100 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2008–09 and 2009–10 marketing years:

Budget expense categories	2008–09	2009–10
Employee Expenses	$410,500	$535,000
Travel/Board Expenses	100,000	120,000
Office Costs/Annual Audit	142,500	164,750
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Estimate	110,000	120,000
Production Research *	805,000	805,000
Contingency-Research Issues	30,000	100,000
Domestic Market Development	2,135,000	4,030,500
Reserve for Contingency	71,000	13,850

* Includes Research Director's compensation.

The Board reviewed and unanimously recommended 2009–10 expenditures of $5,894,100. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 333,000,000 kernelweight pounds, which should provide $5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower prices for the years 2006 and 2007 were $1,630 and $2,290 per ton, respectively. Although no official NASS data is yet available regarding the 2008 average grower price, the 2006 and 2007 prices provide a range within which the 2008–09 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.815 to $1.15. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2008–09 price range estimate of $1.81 to $2.56 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0177 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2009–10 marketing year as a percentage of total grower revenue would thus likely range between 0.691 and 0.978 percent.

As a result of amendments to the order on March 3, 2008 (73 FR 11328), the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at its meeting on February 27, 2009. These conforming changes reflect amendments to the marketing year, terminology, and Board name. The conforming changes include the date when a handler may become an agent of the Board to dispose of reserve walnuts. Conforming changes would also change the term ''carryover'' to ''inventory'' and modify the first of three dates in a marketing year when handlers are required to report their inventory to the Board. Further conforming changes include the dates that handlers must report to the Board their receipts of walnuts from outside of the United States and for what periods. Another conforming change would modify the first of three dates in a marketing year

wherein handlers must indicate in their books and records the quantity of walnuts they held. Finally, there would be conforming changes to replace the Board name acronym ''WMB'' with ''CWB'' in form numbers. In addition to these conforming changes, gender-specific language would also be changed from ''he'' and ''his'' to ''he/she'' and ''his/her''. There are no viable alternatives to these proposed conforming changes.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meetings were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the May 18, 2009, and February 27, 2009, meetings were public meetings, 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.

This proposed rule would require minor conforming changes to several Board forms currently approved by the Office of Management and Budget (OMB), under OMB No. 0581–0178, Vegetable and Specialty Crops. These changes will not affect the burden currently approved under that collection. The revised forms are being submitted to OMB through a change of worksheet. This action would impose no additional reporting or recordkeeping requirements on either small or large California walnut 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 rule.

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber 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 proposed rule. Thirty days is deemed appropriate because: (1) The 2009–10 marketing year begins on September 1, 2009, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) conforming changes made to the reporting and recordkeeping regulations should be implemented as quickly as possible to assure program continuity.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2009, an assessment rate of $0.0177 per kernelweight pound is established for California merchantable walnuts.

3. Amend § 984.456 by revising paragraphs (a) and (b) to read as follows:

§ 984.456 Disposition of reserve walnuts and walnuts used for reserve disposition credit.

(a) Beginning September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts of such marketing year. The agency shall be established upon execution of an ''Agency Agreement for Reserve Walnuts'' setting forth the terms and conditions specified by the Board for the sale of reserve walnuts in authorized outlets.

(b) Any handler who desires to transfer disposition credit in excess of his/her reserve obligation to another handler shall submit a request to the Board for such transfer on CWB Form No. 17 signed by both handlers and the Board shall credit such transfer.

* * * * *

4. Amend § 984.464 by revising paragraph (c) to read as follows:

§ 984.464 Disposition of substandard walnuts.

* * * * *

(c) Each handler who disposes of substandard walnuts to an approved crusher, livestock feed manufacturer or livestock feeder shall upon shipment report to the Board on CWB Form No. 20, the quantities disposed of or shipped.

5. Section 984.471 is revised to read as follows:

§ 984.471 Reports of handler inventory.

Reports of handler inventory as of September 1, January 1, and April 1 of each marketing year shall be submitted to the Board on CWB Form No. 4 for inshell walnuts and on CWB Form No. 5 for shelled walnuts, on or before September 15, January 15, and April 15 respectively, of that marketing year.

6. Section 984.472 is revised to read as follows:

§ 984.472 Reports of merchantable walnuts shipped.

(a) Reports of merchantable walnuts shipped during a month shall be submitted to the Board on CWB Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts the quantity shipped, whether they were shipped into domestic or export channels, and for exports, the quantity by country of destination. If a handler makes no shipments during any month he/she shall submit a report marked ''None.'' If a handler has completed his/her shipments for the season, he/she shall mark the report ''Completed,'' and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of

walnuts purchased and the quantity inspected and certified as merchantable walnuts.

7. Section 984.476 is revised to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

8. Amend § 984.480 by revising paragraph (d) to read as follows:

§ 984.480 Books and other records.

* * * * *

(d) The quantities held on September 1, January 1, and April 1 of each marketing year.

Dated: August 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–20770 Filed 8–27–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS–FV–09–0045; FV09–987–2 PR]

Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Date Administrative Committee (Committee) for the 2009–10 and subsequent crop years from $0.60 to $0.75 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 28, 2009.

ADDRESSES: 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** and will be 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: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, California, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable dates beginning October 1, 2009, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. Such 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 would increase the assessment rate established for the Committee for the 2009–10 and

subsequent crop years from $0.60 to $0.75 per hundredweight of dates.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2009, and unanimously recommended 2009–10 expenditures of $200,000 and an assessment rate of $0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were $176,384. The assessment rate of $0.75 is $0.15 higher than the rate currently in effect. The Committee recommended a higher assessment rate to cover increased expenses including increased marketing and promotion efforts, and nutritional research. Income generated through the higher assessment rate combined with reserve funds should be sufficient to cover anticipated 2009–10 expenses.

Section 987.72(c) states that the reserve may not exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years. With the higher expenses, the reserve at the end of the 2009–10 crop year is not projected to exceed this limit.

Income from sales of cull dates are deposited in a surplus account for subsequent use by the Committee to cover the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the Committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the Committee from the disposal of surplus dates. For the 2009–10 crop year, the Committee estimated that $1,500 from the surplus account would be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2009–10 crop year include $60,000 for general and administrative programs, $97,000 for promotional programs, and $28,000 for marketing and media consulting. The Committee also budgeted $15,000 to conduct nutritional research.

By comparison, expenditures recommended by the Committee for the 2008–09 crop year include $66,384 for general and administrative programs, $82,000 for promotional programs, $28,000 for marketing and media consulting.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A= 2008–09 estimated reserve on 09/30/09 ($65,566);

B= 2009–10 estimated reserve on 09/30/10 ($39,566);

C= 2009–10 expenses ($200,000);

D= Cull Surplus Fund ($1,500);

F= 2009–10 expected shipments (23,000,000 pounds).

$[(C–A+B–D)/F] \times 100$.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this proposed assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2009–10 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

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 85 producers of dates in the production area and 9 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year, 2008, indicates that about 3.34 tons, or 6,680 pounds, of dates were produced per acre. The 2008 grower price published by NASS was $1,470 per ton, or $.735 per pound. Thus, the value of date production in 2008 averaged about $4,909 per acre (6,680 pounds per acre times $.735 per pound). At that average price, a producer would have to have over 152 acres to receive an annual income from dates of $750,000 ($750,000 divided by $4,909 per acre equals 152.7 acres).

According to committee staff, the majority of California date producers farm less than 152 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the committee, the majority of handlers of California dates may also be considered small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent crop years from $0.60 to $0.75 per hundredweight of dates handled. The Committee unanimously recommended 2009–10 expenditures of $200,000 and an assessment rate of $0.75 per hundredweight of dates. The proposed assessment rate of $0.75 is $0.15 higher than the 2008–09 rate currently in effect. The quantity of assessable dates

for the 2009–10 crop year is estimated at 23,000,000 pounds. Thus, the $0.75 rate should provide $172,500 in assessment income and, with reserve funds of $65,566 and the $1,500 contribution from the surplus program, will be adequate to meet the 2009–10 crop year expenses.

The major expenditures recommended by the Committee for the 2009–10 crop year include $60,000 for general and administrative programs, $97,000 for promotional programs, and $28,000 for marketing and media consulting. The Committee also budgeted $15,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

The Committee reviewed and unanimously recommended 2009–10 crop year expenditures of $200,000. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee. Alternative expenditure levels were an option available to the Committee, but the Committee ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of $0.75 per hundredweight of dates was then derived, based upon the Committee's estimates of the incoming reserve, income, and anticipated expenses.

As previously noted, according to the NASS data, the season average grower price for 2008 crop dates is projected at $1,470 per ton, or $73.50 per hundredweight. No official NASS estimate is available yet for 2009. The average grower price for the period of 2005–08 is $1,833.00 per ton, or $91.65 per hundredweight.

To calculate the percentage of grower revenue represented by the assessment rate for 2009, the assessment rate of $0.75 (per hundredweight) divided by the estimated average grower price. This results in estimated assessment revenue for 2008 crop dates as a percentage of grower revenue of 1.02 percent ($0.75 divided by $73.50 per hundredweight). As previously mentioned, NASS data for 2009 is not yet available.

However, applying the same calculations above using the average grower price for the period of 2005–08 would result in estimated assessment revenue as percentage total grower revenue of 0.82 percent for the 2008–09 crop year ($0.75 divided by $91.65 per hundredweight). Thus, the assessment revenue should be less than 1 percent of estimated grower revenue in 2009.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 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 rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California date 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 rule.

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber 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 proposed rule. Thirty days is deemed appropriate because: (1) The 2009–10 crop year begins on October 1, 2009, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 997—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2009, an assessment rate of $0.75 per hundredweight is established for California dates.

Dated: August 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–20769 Filed 8–27–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–STD–0019]

RIN 1904–AB90

Energy Conservation Standards for Residential Clothes Washers: Public Meeting and Availability of the Framework Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The U.S. Department of Energy (DOE) will hold an informal public meeting to discuss and receive comments on issues that it will address in this rulemaking proceeding. The Department is requesting information from interested parties to assist in establishing energy conservation standards for residential clothes washers. The Department also encourages written comments on any subject within the scope of this proceeding. To inform interested parties and facilitate this process, DOE has prepared a draft framework document, available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html.*

DATES: The Department will hold a public meeting on September 21, 2009, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statements to be given at the public meeting before 4 p.m., Monday, September 14, 2009. Written comments are welcome, especially following the public meeting, and should be submitted by September 28, 2009.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room #1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon a possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested parties may submit comments, identified by docket number EERE–2008–BT–STD–0019 and/or Regulation Identifier Number (RIN) 1904–AB90, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *E-mail: RCW-2008-STD-0019@ee.doe.gov*. Include docket number EERE–2008–BT–STD–0019 and/or RIN 1904–AB90 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Residential Clothes Washers, Docket No. EERE–2008–BT–STD–0019 and/or RIN 1904–AB90, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the DOE docket number EERE–2008–BT–STD–0019 or RIN 1904–AB90.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–7463. E-mail: *stephen.witkowski@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–9507. E-mail: *michael.kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6291 *et seq.,* established an energy conservation program for major household appliances, which includes residential clothes washers. This program authorizes the Department to establish technologically feasible, economically justified energy efficiency regulations for certain consumer products.

The amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, established prescriptive energy conservation standards for residential clothes washers, as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(g))

EPCA, as amended by NAECA, required that all rinse cycles of clothes washers manufactured after January 1, 1988, shall include an unheated water option, but may have a heated water rinse option, and further required that DOE conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295(g)(2) and (4)) In addition to these design standards, DOE published a Notice of Proposed Rulemaking (NOPR) seeking comments on establishing performance standards for these products. 54 FR 32744 (Aug. 9, 1989). Shortly thereafter, DOE published an advance notice of proposed rulemaking (ANOPR) for the second standards rulemaking required by Congress. 55 FR 39624 (Sept. 28, 1990).

After the closing of the first standards rulemaking's NOPR comment period, however, DOE became aware of a design option (horizontal-axis wash tub in a top-loading washer) available in Europe. This option was not considered during the course of this first standards rulemaking. As a result, when the final rule was published on May 14, 1991, DOE announced its intention to accelerate the second energy conservation standards rulemaking for clothes washers to take this design option into account. 56 FR 22250 (May 1991 Final Rule). The standards established by the first rulemaking became effective on May 14, 1994. 56 FR 22279.

Responding to this ANOPR for the second standards rulemaking, a number of interested parties requested that DOE delay the completion of this second rulemaking until a 1995–1996 time frame. These parties requested additional time in order to allow manufacturers time to meet the standards in the May 1991 Final Rule, and to fully evaluate new, more energy efficient technologies such as top-loading horizontal-axis clothes washers. On February 26, 1992, DOE published a letter to interested parties granting this request.

On November 14, 1994, DOE published another ANOPR to restart the second energy conservation standards rulemaking for clothes washers, dishwashers, and clothes dryers. 59 FR 56423. However, Congress imposed a moratorium on proposed or final rules for appliance energy conservation standards for Fiscal Year 1996. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, Section 320 (April 26, 1996). During this time, DOE revised the standards-setting process and on July 15, 1996, published a final rule that elaborated on the procedures, interpretations, and policies that would guide DOE as it established new or revised energy conservation standards for consumer products. (See 61 FR 36974 (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products); 10 CFR part 430, subpart C, appendix A). DOE determined to use its revised standards-setting process in the development of the revised clothes washer standards, and reopened the second energy conservation standards rulemaking for these products on November 19, 1998, by publishing a supplemental ANOPR. On January 12, 2001, DOE published a final rule revising the energy conservation standards, which became effective in two phases—January 1, 2004 and January 1, 2007. 66 FR 3314. By completing this second standards rulemaking, DOE fulfilled its legislative requirement to conduct two cycles of standards rulemakings.

As part of its priority-setting activities for fiscal year 2006, DOE conducted analyses for residential clothes washers to estimate the energy savings potential of amended standards. DOE determined that amended standards could result in energy savings for residential clothes washers of 5.5 quads cumulative over the period of 2004–2030. A summary of these analyses is available on DOE's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/2006_activities_data_sheets.pdf.*

Subsequently, Congress enacted the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, which revised the energy conservation standards for residential clothes washers. The revised standards established a maximum water factor of 9.5 and become effective on January 1, 2011. See EISA 2007, Section 311(a)(2), codified at 42 U.S.C. 6295(g)(9). EISA 2007 further required that DOE publish a final rule no later than December 31, 2011, to determine whether to amend the standards in effect for clothes washers manufactured on or after January 1, 2015. (42 U.S.C. 6295(g)(9)(B)(i)) DOE is embarking on a standards rulemaking for these products to comply with these EISA 2007 requirements.

To begin the required rulemaking process, the Department has prepared a framework document to explain the issues, analyses, and process that it is considering for the development of amended energy conservation standards for residential clothes washers. This document will be publicly available for review. Additionally, DOE will hold a public meeting to focus on the analyses and issues contained in various sections of the framework document. For each item listed, the Department will make a presentation with discussion to follow. The Department will also make a brief presentation on the rulemaking process for these products.

The Department encourages anyone who wishes to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents. A copy of the draft framework document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html.* However, public meeting participants need not limit their comments to the topics identified in the framework document. The Department is also interested in receiving views on other relevant issues that participants believe would affect energy conservation standards for these products. The Department welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by September 28, 2009, comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for residential clothes washers.

DOE will conduct the public meeting in an informal, conference style. A court reporter will record the minutes of the meeting. The discussion will not include proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, the Department will begin collecting data, conducting the analyses as discussed at the public meeting, and reviewing public comments.

Anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about residential clothes washers should contact Ms. Brenda Edwards at (202) 586–2945.

Issued in Washington, DC, on August 21, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–20803 Filed 8–27–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0778; Directorate Identifier 2009–CE–040–AD]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690, 690A, and 690B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Twin Commander Aircraft Corporation Models 690, 690A, and 690B airplanes. This proposed AD would require you to inspect between the surface of the left-hand (LH) and right-hand (RH) upper wing skins and the engine mount beam support straps for any signs of corrosion, replace the upper steel straps with parts of improved design, and modify both wings. This proposed AD results from reports that corrosion was found between the mating surfaces of the wing upper skin surface and the engine mount beam support straps. We are proposing this AD to detect and correct corrosion on the engine mount beam support straps and the upper wing skins, which could result in failure of the engine mount beam support straps. This failure could lead to loss of the engine and possible loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 13, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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 Twin Commander Aircraft, LLC, 19010 59th Drive, NE., Arlington, WA 98223, *telephone:* (360) 435–9797; *fax:* (360) 435–1112; *Internet: www.twincommander.com.*

FOR FURTHER INFORMATION CONTACT: Vince Massey, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *telephone:* (425) 917–6475; *fax:* (425) 917–6590; *e-mail: vince.massey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–0778; Directorate Identifier 2009–CE–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 concerning this proposed AD.

Discussion

We have received a report that corrosion was found between the mating surfaces of the wing upper skin surface and the engine mount beam support straps. These straps carry engine loads from the support beams into the upper wing skins and wing internal support structure. Severe corrosion of the straps can lead to inability to carry engine loads.

This condition, if not corrected, could result in failure of the engine mount beam support straps. This failure could lead to loss of the engine and possible loss of control of the airplane.

Relevant Service Information

We have reviewed Twin Commander Aircraft LLC Alert Service Bulletin No. 237, dated May 13, 2005. The service information describes procedures for inspecting the surface of the LH and RH upper wing skins and the engine mount beam support straps for any signs of corrosion, replacing the upper steel straps with parts of improved design, and modifying both wings.

We have reviewed Twin Commander Aircraft Corporation Custom Kit No. 150, dated July 8, 1994. The service information describes procedures for installing inspection access holes in the LH and RH upper wing skins.

We have reviewed Gulfstream American Corporation Service Bulletin No. 182, dated March 2, 1981. The service information describes procedures for installing additional wing fasteners on the LH and RH wing.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to inspect between the surface of the LH and RH upper wing skins and the engine mount beam support straps for any signs of corrosion, replace the upper steel straps with parts of improved design, and modify both wings.

Costs of Compliance

We estimate that this proposed AD would affect 275 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
80 work-hours × $80 per hour = $6,400	Not applicable	$6,400	$1,760,000

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

SHORT MODIFICATION—OPTION A*

Labor cost	Parts cost	Total cost per airplane per side
250 work-hours × $80 per hour = $20,000 per side	$9,170 per kit per side	$29,170

MIDDLE MODIFICATION—OPTION B*

Labor cost	Parts cost	Total cost per airplane per side
280 work-hours × $80 per hour = $22,400 per side	$9,170 per kit per side	$31,570

LONG MODIFICATION—OPTION C*

Labor cost	Parts cost	Total cost per airplane per side
320 work-hours × $80 per hour = $25,600 per side	$9,170 per kit per side	$34,770

Note: *Depending on airplane configuration, airplanes with rectangular plates would need the Plate and Hardware Kit (SB237–4) at $2,090 per side. Labor to install this kit is included in Options A, B, and C.

STRAP ONLY REPLACEMENT—OPTION D

Labor cost	Parts cost	Total cost per airplane per side
75 work-hours × $80 per hour = $6,000 per side	$6,190 per strap per side	$12,190

We estimate the following costs to do the proposed installation of access holes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
30 work-hours × $80 per hour = $2,400	$1,293	$3,693	$1,015,575

We estimate the following costs to do the proposed wing fastener modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8.5 work-hours × $80 per hour = $680	$250	$930	$255,750

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

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:

Twin Commander Aircraft Corporation: Docket No. FAA–2009–0778; Directorate Identifier 2009–CE–040–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by October 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos. (S/Ns)
690	All S/Ns.
690A	All S/N except 11195 and 11279.
690B	All S/Ns except 11361, 11383, 11527, and 11536.

Unsafe Condition

(d) This AD results from reports that corrosion was found between the mating surfaces of the wing upper skin surface and the engine mount beam support straps. We are issuing this AD to detect and correct corrosion on the engine mount beam support straps and upper wing skins, which could result in failure of the engine mount beam support straps. This failure could lead to loss of the engine and possible loss of control of the airplane.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect between the surface of the left-hand (LH) and right-hand (RH) upper wing skins and the engine mount beam support straps for any signs of corrosion and determine the extent of any corrosion found.	Within the next 150 hours time-in-service after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.	Follow Twin Commander Aircraft LLC Alert Service Bulletin No. 237, dated May 13, 2005, pages 1 through 14.
(2) Install modification access holes in the LH and RH lower wing skins.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow the Accomplishment Instructions, steps 1 through 4 and 6 through 9, of Twin Commander Aircraft Corporation Custom Kit No. 150, dated July 8, 1994, as specified in Twin Commander Aircraft LLC Alert Service Bulletin No. 237, dated May 13, 2005.
(3) If corrosion damage is found during the inspection required in paragraph (e)(1) of this AD, perform necessary modification.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow Twin Commander Aircraft LLC Alert Service Bulletin No. 237, dated May 13, 2005, Part II, Options A, B, or C, on pages 15 through 29, and 31.
(4) If corrosion damage is not found during the inspection required in paragraph (e)(1) of this AD, do the upper steel strap replacements.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow Twin Commander Aircraft LLC Alert Service Bulletin No. 237, dated May 13, 2005, Part II, Option D, on pages 30 and 31.
(5) Install additional wing fasteners on the LH and RH wing.	Before further flight after the inspection required in paragraph (e)(1) of the AD.	Follow Gulfstream American Corporation Service Bulletin No. 182, dated March 2, 1981.

Note: Although not required by this AD, we highly recommend compliance with Twin Commander Aircraft Corporation Service Bulletin No. 217, Revision No. 1, dated May 26, 1993, Engine Nacelle Firewall Reinforcement; and Twin Commander Aircraft LLC Alert Service Bulletin No. 239, dated February 13, 2006, Outboard Flap—Inboard Hinge Inspection & Reinforcement.

Alternative Methods of Compliance (AMOCs)

(f) 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:* Vince Massey, Aerospace Engineer, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *telephone:* (425) 917–6475; *fax:* (425) 917–6590; *e-mail: vince.massey@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Twin Commander Aircraft, LLC, 19010 59th Drive, NE., Arlington, WA 98223, *telephone:* (360) 435–9797; *fax:* (360) 435–1112; *Internet: www.twincommander.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on August 21, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20789 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0797; Directorate Identifier 2009–CE–032–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models 58, 58A, 58P, 58PA, 58TC, 58TCA, 95–B55, 95–B55A, A36, A36TC, B36TC, E55, E55A, F33A, and V35B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 91–18–19, which applies to certain Hawker Beechcraft Corporation (Hawker) (Type Certificate Numbers 3A15, 3A16, and A23CE formerly held by Raytheon Aircraft Company; formerly held by Beech Aircraft Corporation) Models 58, 58A, 58P, 58PA, 58TC, 58TCA, 95–B55, 95–B55A, A36, A36TC, B36TC, E55, E55A, F33A, and V35B airplanes. AD 91–18–19 currently requires you to do a one-time inspection of the pilot and copilot shoulder harnesses for an incorrect washer and replace any incorrect washer with the correct washer. Since we issued AD 91–18–19, we have found that the applicability of AD 91–18–19 was incorrectly stated when the Model A36TC airplane was omitted from the Applicability section. Consequently, this proposed AD would retain the actions and the serial number (SN) applicability of AD 91–18–19 and realign the SN applicability for Models A36TC and B36TC airplanes. We are proposing this AD to detect and correct an incorrect washer installed in the pilot and copilot shoulder harnesses. This failure could result in a malfunctioning shoulder harness. Such a failure could lead to occupant injury.

DATES: We must receive comments on this proposed AD by October 27, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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 Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *http://pubs.hawkerbeechcraft.com.*

FOR FURTHER INFORMATION CONTACT: Steve Potter, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–0797; Directorate Identifier 2009–CE–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 concerning this proposed AD.

Discussion

Reports of incorrect washers installed in the pilot and copilot shoulder harnesses on certain Beech 33, 35, 36, 55, 58, and 95 series airplanes caused us to issue AD 91–18–19, Amendment 39–8022 (56 FR 42224, August 24, 1991). AD 91–18–19 currently requires the following on Models 58, 58A, 58P, 58PA, 58TC, 58TCA, 95–B55, 95–B55A, A36, B36TC, E55, E55A, F33A, and V35B airplanes:

- Inspecting the pilot and copilot shoulder harnesses for incorrect washers; and
- Replacing any incorrect washers found with a part number (P/N) 100951X060YA washer.

The FAA has identified that the applicability of AD 91–18–19 was incorrectly stated when the Model A36TC airplane was omitted from the Applicability section. Further, SNs of the Model A36TC airplane were incorrectly aligned to the Model B36TC airplane.

This condition, if not corrected, could result in an incorrect washer installed in the pilot and copilot shoulder harnesses. This failure could result in a malfunctioning shoulder harness. Such a failure could lead to occupant injury.

Relevant Service Information

We have reviewed Beechcraft Mandatory Service Bulletin No. 2394, dated December 1990.

The service information describes procedures for:

- Inspecting the pilot and copilot shoulder harnesses for incorrect washers; and
- Replacing any incorrect washers found with a P/N 100951X060YA washer.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 91–18–19 with a new AD that would incorporate the actions in the previously-referenced service information. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 4,792 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$383,360

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 per hour = $80	$5	$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 91–18–19, Amendment 39–8022 (56 FR 42224, August 24, 1991), and adding the following new AD:

Hawker Beechcraft Corporation (Type Certificate Numbers 3A15, 3A16, and A23CE formerly held by Raytheon Aircraft Company; formerly held by Beech Aircraft Corporation):Docket No. FAA–2009–0797; Directorate Identifier 2009–CE–032–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by October 27, 2009.

Affected ADs

(b) This AD supersedes AD 91–18–19, Amendment 39–8022.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

(1) *Group 1 Airplanes* (retains the actions and applicability from AD 91–18–19):

Model	Serial Nos. (SNs)
58, 58A	TH–733 through TH–1609.
58P, 58PA	TJ–3 through TJ–497.
58TC, 58TCA	TK–1 through TK–151.
95–B55, 95–B55A.	TC–1947 through TC–2456.
A36	E–825 through E–2578.
B36TC	EA–242 and EA–273 through EA–509.
E55, E55A	TE–1078 through TE–1201.
F33A	CE–634 through CE–1536.
V35B	D–9862 through D–10403.

(2) *Group 2 Airplanes* (aligns certain SNs applicability to Models A36TC airplanes):

Model	SNs
A36TC	EA–1 through EA–241 and EA–243 through EA–272.

Unsafe Condition

(d) This AD results from reports of incorrect washers installed in the pilot and copilot shoulder harnesses on certain Beech 33, 35, 36, 55, 58, and 95 series airplanes. We are issuing this AD to detect and correct an incorrect washer installed in the pilot and copilot shoulder harnesses. This failure could result in a malfunctioning shoulder harness. Such a failure could lead to occupant injury.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the washers on the "D" ring of the pilot and copilot shoulder harnesses for correct metal, inner and outer diameter, and thickness.	(i) *For Group 1 Airplanes:* Within the next 100 hours time-in-service (TIS) after October 21, 1991 (the effective date of AD 91–18–19). (ii) *For Group 2 Airplanes:* Within the next 100 hours TIS after the effective date of this AD.	Follow Beechcraft Mandatory Service Bulletin No. 2394, dated December 1990.
(2) If you find, as a result of the inspection required by paragraph (e)(1) of this AD, any washer does not meet the criteria for correct metal, inner and outer diameter, and thickness, replace the incorrect washer with part number 100951X060YA washer.	Before further flight, after the inspection required by paragraph (e)(1) of this AD.	Follow Beechcraft Mandatory Service Bulletin No. 2394, dated December 1990.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Steve Potter, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) In reviewing the docket and project files, we found no AMOCs submitted for AD 91–18–19. Since there are no AMOCs approved for AD 91–18–19 to approve for this AD, transfer of AMOCs to this AD does not apply.

Related Information

(h) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *http://pubs.hawkerbeechcraft.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on August 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20832 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2009–0598; FRL–8950–6]

Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station: Advanced Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency is providing an Advanced Notice of Proposed Rulemaking (ANPR)

concerning the anticipated visibility improvements and the cost effectiveness for different levels of air pollution controls as Best Available Retrofit Technology (BART) for two coal-fired power plants, Four Corners Power Plant (FCPP) and Navajo Generating Station (NGS), located on the Navajo Nation. This ANPR briefly describes the provisions in Part C, Subpart II of the Clean Air Act (CAA or Act), EPA's implementing regulations, and the Tribal Authority Rule (TAR) for promulgating Federal Implementation Plans (FIPs) to protect visibility in national parks and wilderness areas known as Class I Federal areas.

The specific purpose of this ANPR is for EPA to collect additional information that we may consider in modeling the degree of anticipated visibility improvements in the Class I areas surrounding FCPP and NGS and for determining whether BART controls are cost effective at this time. EPA is also requesting any additional information that any person believes the agency should consider in promulgating a FIP establishing BART for FCPP and NGS.

EPA intends to publish separate FIPs proposing our BART determinations for FCPP and NGS approximately 60 days after receiving information from this ANPR. EPA will not respond to comments or information submitted in response to this ANPR. The information submitted in response to this ANPR will be used in developing the subsequent proposed FIPs containing our detailed BART determinations for FCPP and NGS.

The FCPP and NGS FIP proposals following this ANPR will request further public comment. During the public comment period for the proposed FIPs containing the FCPP and NGS BART determinations, EPA intends to hold separate public hearings at locations to be determined near each facility.

EPA will not hold a public hearing for this ANPR. This ANPR also serves to begin EPA's 60-day consultation period with the Federal Land Managers (FLMs) within the Departments of Interior and Agriculture. Information necessary to initiate consultation is contained in this ANPR and supporting documentation included in the docket for this ANPR. EPA will address any matters raised by the FLMs in this 60-day consultation period when we propose the BART FIPs for FCPP and NGS.

DATES: Comments on this ANPR must be submitted no later than September 28, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0598, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: lee.anita@epa.gov.*

3. *Mail or delivery:* Anita Lee (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972–3958, *lee.anita@epa.gov.*

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

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I. Background

A. Statutory and Regulatory Framework for Addressing Visibility

Part C, Subsection II, of the Act, establishes a visibility protection program that sets forth ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from man-made air pollution.'' 42 U.S.C. 7491A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. Id. 7491A(g)(6). A fundamental requirement of the program is for EPA, in consultation with the Secretary of the Interior, to promulgate a list of ''mandatory Class I Federal areas'' where visibility is an important value. Id. 7491A(a)(2). These areas include national wilderness areas and national parks greater than six thousand acres in size. Id. 7472(a).

On November 30, 1979, EPA identified 156 mandatory Class I Federal areas, including for example: Grand Canyon National Park in Arizona (40

CFR 81.403); Mesa Verde National Park and La Garita Wilderness Area in Colorado (Id. 81.406); Bandolier Wilderness Area in New Mexico (Id. 81.421); and Arches, Bryce Canyon, Canyonlands and Capitol Reef National Parks in Utah (Id. 81.430). All of these mandatory Class I Federal areas and many others are within a 300-km radius of either FCPP or NGS.

On December 2, 1980, EPA promulgated what it described as the first phase of the required visibility regulations, codified at 40 CFR 51.300–51.307 (45 FR 80084). The 1980 regulations deferred regulating regional haze from multiple sources finding that the scientific data was inadequate at that time. Id. at 80086.

Congress added Section 169B to the Act in the 1990 Amendments, requiring EPA to take further action to reduce visibility impairment in broad geographic regions. 42 U.S.C. 7492. In 1993, the National Academy of Sciences released a comprehensive study [1] required by the 1990 Amendments concluding that ''current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility.''

EPA first promulgated regulations to address regional haze on April 22, 1999. 64 FR 35765 (April 22, 1999). EPA's 1999 regional haze regulations included a provision requiring States to review BART-eligible sources for potentially mandating further air pollution controls. Congress defined BART-eligible sources as ''each major station stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date'' which emits pollutants that are reasonably anticipated to cause or contribute to visibility impairment. 42 U.S.C. 7479(b)(2)(A).

EPA's 1999 regulations followed the five factor approach set forth in the statutory definition of BART. However, the regulations treated the fifth factor, the degree of visibility improvement, on an area-wide rather than source specific basis. 64 FR 35741. The Court remanded the 1999 regulations to EPA on that issue. *American Corn Growers Assoc.* v. *EPA,* 291 F.3d 1 (DC Cir. 2002). EPA promulgated revisions to the regulations in June 2003, which were remanded on narrow grounds not relevant to this action. *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653 (DC Cir. 2005). Finally, EPA revised regional haze regulations in March 2005, which were upheld by the Court of Appeals for the District of Columbia Circuit. *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (DC Cir. 2006).

B. Statutory and Regulatory Framework for Addressing Sources Located on Tribal Lands

The 1990 Amendments included Section 301(d)(4) of the Act directing EPA to promulgate regulations for controlling air pollution on Tribal lands. EPA promulgated regulations to implement this Congressional directive, known as the Tribal Authority Rule (TAR), in 1998. 63 FR 7264 (1998) codifed at 40 CFR 49.1–49.11. *See generally Arizona Public Service* v. *EPA,* 211 F.3d 1280 (DC Cir. 2000).

Section 49.11 of the TAR authorizes EPA to promulgate a FIP when EPA determines such regulations are ''necessary or appropriate'' to protect air quality. 40 CFR 49.11(a). Pursuant to the authority in the TAR, EPA promulgated a source specific FIP for FCPP 2006. The Court of Appeals for the Tenth Circuit considered the regulatory language in 40 CFR 49.11(a) and concluded that ''[i]t provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate such rulemaking.'' *Arizona Public Service* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009).

C. Statutory and Regulatory Framework for BART Determinations

FCPP and NGS are the only BART eligible sources located on the Navajo Nation. EPA's guidelines for evaluating BART are set forth in Appendix Y to 40 CFR Part 51. The Guidelines include a ''five factor'' analysis for BART determinations. Id. at IV.A. Those factors, from the definition of BART, are: (1) Costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any pollution control equipment in use or in existence at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A).

D. EPA's Intended Action Subsequent to the ANPR

After receiving information from this ANPR, EPA intends to propose separate FIPs for FCPP and NGS containing our determination of what level of control technology is BART for each power plant. EPA has determined it has authority to promulgate these FIPs under CAA Section 301(d)(4), 40 CFR Part 49.11, and 40 CFR 51.308(e). Any person may submit information concerning EPA's authority during the 30 day comment period for this ANPR.

As discussed more fully below, EPA is specifically seeking information in this ANPR on two of the listed considerations in the five factor test: (1) The data inputs to model the degree of improvement in visibility which may reasonably be anticipated from different levels of air pollution controls as BART and (2) the costs of compliance of those potential BART controls. We anticipate that those two factors will generate the most comments on our subsequent proposed BART FIPs for FCPP and NGS. Information on the other three factors in the five factor test may also be submitted in response to this ANPR.

E. Factual Background

1. Four Corners Power Plant

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Nation Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity of 2060 megawatts (MW). Units 1, 2, and 3 at FCPP are owned entirely by Arizona Public Service (APS), which serves as the facility operator, and are rated to 170 MW (Units 1 and 2) and 220 MW (Unit 3). Units 4 and 5 are each rated to a capacity of 750 MW, and are co-owned by six entities: Southern California Edison (48%), APS (15%), Public Service Company of New Mexico (13%), Salt River Project (SRP) (10%), El Paso Electric Company (7%), and Tucson Electric Power (7%).

Based on 2006 emissions data from the EPA Clean Air Markets Division,[2] FCPP is the largest source of NO_X emissions in the United States (nearly 45,000 tons per year (tpy) of NO_X).

FCPP, located near the Four Corners region of Arizona, New Mexico, Utah, and Colorado, is within 300 kilometers (km) of sixteen mandatory Class I areas: Arches National Park (NP), Bandolier National Monument (NM), Black Canyon of the Gunnison Wilderness Area (WA), Canyonlands NP, Capitol Reef NP, Grand Canyon NP, Great Sand Dunes NP, La Garita WA, Maroon Bells-Snowmass WA, Mesa Verde NP, Pecos WA, Petrified Forest NP, San Pedro Parks WA, West Elk WA, Weminuche WA, and Wheeler Park WA. APS

[1] ''Protecting Visibility in National Parks and Wilderness Areas'', Committee on Haze in National Parks and Wilderness Areas, National Research Council, National Academy Press (1993).

[2] ''Clean Air Markets—Data and Maps'' at *http://camddataandmaps.epa.gov/gdm/.*

provided information relevant to a BART analysis to EPA on January 29, 2008. The information consisted of a BART engineering and cost analysis conducted by Black and Veatch (B&V) dated December 4, 2007 (Revision 3), a BART visibility modeling protocol prepared by ENSR Corporation (now called AECOM and will be referred to as AECOM throughout this document) dated January 2008, a BART visibility modeling report prepared by AECOM dated January 2008, and APS BART Analysis conclusions, dated January 29, 2008. APS provided supplemental information on cost and visibility modeling in correspondence dated May 28, 2008, June 10, 2008, November 2008, and March 16, 2009.

2. Navajo Generating Station

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. The facility is co-owned by six different entities: U.S. Bureau of Reclamation (24.3%), SRP, which also acts as the facility operator (21.7%), Los Angeles Department of Water and Power (21.2%), APS (14%), Nevada Power Company (11.3%), and Tucson Electric Power (7.5%).

Based on 2006 emissions data from the EPA Clean Air Markets Division, NGS is the fourth largest source of NO_X emissions in the United States (nearly 35,000 tpy). NGS, in northern Arizona, is located within 300 km of eleven Class I areas: Arches NP, Bryce Canyon NP, Canyonlands NP, Capitol Reef NP, Grand Canyon NP, Mazatzal WA, Mesa Verde NP, Petrified Forest NP, Pine Mountain WA, Sycamore Canyon WA, and Zion NP.

SRP submitted to EPA a BART modeling protocol prepared by AECOM dated September 2007, and a BART Analysis, conducted by AECOM, dated November 2007. SRP provided supplemental information regarding cost on July 29, 2008, a revised BART Analysis, dated December 2008, and additional information regarding modeling and emission control rates on June 3, 2009.

3. Relationship of NO_X and PM to Visibility Impairment

Particulate matter (PM) less than 10 microns (millionths of a meter) in size interacts with light. The smallest particles in the 0.1 to 1 micron range interact most strongly as they are about the same size as the wavelengths of visible light. The effect of the interaction is to scatter light from its original path. Conversely, for a given line of sight, such as between a mountain scene and an observer, light from many different original paths is scattered into that line. The scattered light appears as whitish haze in the line of sight, obscuring the view.

PM emitted directly into the atmosphere, also called primary PM, for example from materials handling, tends to be coarse, *i.e.* around 10 microns, since it is created from the breakup of larger particles of soil and rock. PM that is formed in the atmosphere from the condensation of gaseous chemical pollutants, also called secondary PM, tends to be fine, *i.e.* smaller than 1 micron, since they are formed from the buildup of individual molecules. Thus, secondary PM tends to contribute more to visibility impairment than primary PM because it is in the size range where it most effectively interacts with visible light. NO_X and ammonia are two examples of precursors to secondary PM.

NO_X is a gaseous pollutant that can be oxidized to form nitric acid. In the atmosphere, nitric acid in the presence of ammonia can form particulate ammonium nitrate. The formation of ammonium nitrate is also dependent on temperature and relative humidity. Particulate ammonium nitrate can grow into the size range that effectively interacts with light by coagulating together and by taking on additional pollutants and water. The same principle applies to SO_2 and the formation of particulate ammonium sulfate.

In air quality models, secondary PM is tracked separately from primary PM because the amount of secondary PM formed depends on weather conditions and because it can be six times more effective at impairing visibility. This is reflected in the equation used to calculate visibility impact from concentrations measured by the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network covering Class I areas.[3]

II. Request for Public Comment

A. Factor 1: Cost of Compliance

1. FCPP

a. Estimated Cost of Controls

APS, through its contractor B&V, evaluated the BART cost of compliance analysis using the EPA Coal Utility Environmental Cost (CUECost) program, information supplied by equipment vendors, estimates from previous projects, and projected costs from FCPP. The cost estimates provided by APS (updated in the March 16, 2009 submission to EPA) are included in Table 1 for four different levels of control technology to reduce NO_X and in Table 2 for four different levels of control options to reduce PM on Units 1–3. The NO_X control technology options in Table 1 are: (1) Low NO_X Burners (LNB) on Units 1 and 2 and LNB plus overfire air (OFA) on Units 3–5; (2) selective catalytic reduction (SCR) on all units (units 1–5); (3) SCR plus LNB on all units (Units 1–5); and (4) SCR plus LNB + OFA on all units (units 1–5). The PM control options for Units 1–3 [4] are: (1) Electrostatic precipitators (ESP) upstream of current air quality control equipment, *i.e.,* venturi scrubbers; (2) pulse jet fabric filter (baghouse) upstream of current air quality control equipment; (3) wet metal ESP downstream of venturi scrubber, and (4) wet membrane ESP downstream of venturi scrubber.

TABLE 1—FCPP COSTS OF COMPLIANCE FOR NO_X BASED ON APS'S ANALYSIS

	LNB/LNB + OFA [5]	SCR	SCR + LNB	SCR + LNB + OFA
		Total Capital Investment		
Unit 1 ...	$4,109,000	$110,664,000	$111,609,000	$112,058,000
Unit 2 ...	4,109,000	119,010,000	121,066,000	121,496,000
Unit 3 ...	4,701,000	113,084,000	115,420,000	114,851,000
Unit 4 ...	15,260,000	265,406,000	273,892,000	279,444,000

[3] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, U.S. Environmental Protection Agency'', EPA–454/B–03–005, September 2003; *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

[4] PM emissions from Units 4 and 5 at FCPP are already controlled by baghouses.

TABLE 1—FCPP COSTS OF COMPLIANCE FOR NO_X BASED ON APS'S ANALYSIS—Continued

	LNB/LNB + OFA [5]	SCR	SCR + LNB	SCR + LNB + OFA
Unit 5 ...	15,260,000	265,406,000	273,892,000	279,444,000
Total Annual Costs				
Unit 1 ...	$922,000	$22,297,000	$21,764,000	$21,685,000
Unit 2 ...	922,000	23,634,000	23,468,000	23,385,000
Unit 3 ...	1,055,000	23,173,000	23,010,000	22,729,000
Unit 4 ...	3,447,000	55,755,000	56,883,000	57,237,000
Unit 5 ...	3,447,000	55,755,000	56,883,000	57,237,000

TABLE 2—FCPP COSTS OF COMPLIANCE FOR PM BASED ON APS'S ANALYSIS

	Upstream [6] ESP	Upstream baghouse	Wet metal ESP	Wet membrane ESP
Total Capital Investment				
Unit 1 ...	$37,236,000	$50,515,000	$32,136,000	$23,360,000
Unit 2 ...	45,702,000	60,992,000	32,879,000	23,901,000
Unit 3 ...	40,135,000	59,594,000	59,594,000 [7]	26,988,000
Total Annual Costs				
Unit 1 ...	$10,169,000	$13,950,000	$8,781,000	$5,652,000
Unit 2 ...	11,011,000	14,481,000	8,972,000	6,658,000
Unit 3 ...	10,925,000	16,559,000	10,309,000	7,557,000

b. Cost Effectiveness of Controls

To determine the cost effectiveness of controls, typically expressed in cost per ton of pollutant reduced ($/ton), estimating the amount of NO_X and PM that will be reduced from the various control options is necessary. The estimated reduction of the pollutant is determined by establishing the baseline emissions and the degree of emissions reduction from the control technology. 40 CFR Part 51, App. Y, Step 4, c.

APS estimated NO_X emissions reductions by starting with baseline emission rates of NO_X of: 0.78 pounds of NO_X per million BTU heat input (lb/MMBtu) for Unit 1; 0.64 lb/MMBtu for Unit 2; 0.59 lb/MMBtu for Unit 3; and 0.49 lb/MMBtu from Units 4 and 5 each. For the four control technology options, APS estimated FCPP could achieve the following emissions reductions: (1) LNB on Units 1 and 2 would reduce NO_X 45% and 33%, respectively and LNB + OFA on Units 3, and 4–5 would reduce NO_X 44% and 29%, respectively; (2) SCR on Units 1–5 would reduce NO_X approximately 88–91%; (3) SCR + LNB on Units 1–5 would reduce NO_X by 88–93%; and (4) SCR + LNB + OFA on Units 1–5 would reduce NO_X by approximately 88—93%.

APS estimated PM emissions reductions using baseline emission rates of PM of: 0.025 lb/MMBtu for Unit 1; 0.029 lb/MMBtu for Unit 2; and 0.029 lb/MMBtu for Unit 3. APS estimated that the four different PM control options would all achieve 52% control on Unit 1 and 59% control on Units 2 and 3.

Table 3 lists the reduction in NO_X emissions and cost effectiveness estimated by APS for the four control technology options listed in Table 1. Table 4 provides the corresponding estimates for PM.

TABLE 3—FCPP EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR NO_X

	LNB/LNB + OFA [8]	SCR	SCR + LNB	SCR + LNB + OFA
Tons of NO_X Reduced per Year (tpy)				
Unit 1 ...	2,569	5,138	5,285	5,285
Unit 2 ...	1,573	4,344	4,344	4,344
Unit 3 ...	2,465	5,025	5,025	5,023
Unit 4 ...	3,798	11,665	11,665	11,665
Unit 5 ...	3,798	11,665	11,665	11,665
Cost Effectiveness of Controls ($/ton)				
Unit 1 ...	359	4,343	4,118	4,103
Unit 2 ...	586	5,484	5,403	5,384
Unit 3 ...	428	4,582	4,579	4,523

[5] Capital and annual cost values are for LNB on Units 1 and 2, and LNB + OFA on Units 3–5.

[6] Upstream refers to a location before the existing venturi scrubbers.

[7] This estimate was reported by APS in their December 2007 analysis. EPA believes this value was reported by APS in error because it is unlikely a wet ESP would equal the cost of a baghouse for Unit 3, but not Units 1 and 2.

TABLE 3—FCPP EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR NO_X—Continued

	LNB/LNB + OFA [8]	SCR	SCR + LNB	SCR + LNB + OFA
Unit 4 ...	908	4,872	4,780	4,907
Unit 5 ...	908	4,872	4,780	4,907

TABLE 4—FCPP EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR PM

	Upstream ESP	Upstream baghouse	Wet metal ESP	Wet membrane ESP
Tons of PM Reduced per Year (tpy)				
Unit 1 ...	95	95	95	95
Unit 2 ...	127	127	127	127
Unit 3 ...	161	161	161	161
Cost Effectiveness of Controls ($/ton)				
Unit 1 ...	106,571	146,195	92,024	59,233
Unit 2 ...	86,485	113,739	70,470	52,294
Unit 3 ...	67,785	102,741	63,963	46,888

EPA's regulations recommend using the EPA's Office of Air Quality Planning and Standards' Air Pollution Cost Control Manual (Sixth Edition, January 2002) for estimating costs of compliance. 40 CFR Part 51, App. Y, Step 4.a.4. The Air Pollution Cost Control Manual provides guidance and methodologies for developing accurate and consistent estimates of cost for air pollution control devices. The costs that may be estimated include capital costs, operation and maintenance expenses, and other annual costs. Chapter 2 (Cost Estimation: Concepts and Methodology) states that total capital costs may include equipment costs, freight, sales tax, and installation costs. For existing facilities, retrofit costs should also be considered, and may include auxiliary equipment, handling and erection, piping, insulation, painting, site preparation, off-site facilities, engineering, and lost production revenue. Finally, annual costs are estimated from costs of raw materials, maintenance labor and materials, utilities, waste treatment and disposal, replacement materials, overhead, property taxes, insurance, and administrative charges.

For the estimated costs that FCPP submitted, in Tables 1 & 2 above, APS provided line-item estimates for the direct and indirect capital costs, as well as direct and indirect annual costs. APS's estimate, however, included several costs that are not included in the EPA Air Pollution Cost Control Manual, including costs of unintended consequences, such as new Continuous Emission Monitors (CEMs) and costs of Relative Accuracy Test Audits (RATA) for the CEMs. Additionally, FCPP included costs of performance tests and ''owner's costs'' in the indirect capital investment, such as financing, project management, and construction support costs, as well as legal assistance, permits and offsets, and public relations costs.

In reviewing APS's estimate, EPA found that the ratio of annual costs to the total capital costs for all control technologies projected by APS are considerably higher than those projected by other facilities that were amortized over the same 20 year time frame. For example, the total capital investment of SCR for Units 4 and 5 at FCPP is comparable to the most costly SCR retrofit (Unit 2) at NGS. However, total annual costs for FCPP are approximately 20% of the total capital costs for NO_X control, and approximately 17–28% of total capital costs for PM control. In contrast, the total annual cost estimates by NGS for LNB and SCR are approximately 12–14% of the total capital costs. Other facilities in Arizona, New Mexico, and Oregon presented annual costs that ranged from 12–15% of total capital investments.

In Tables 5 and 6, EPA re-calculated the total annual cost of the NO_X and PM control technologies based on an annual to capital cost ratio of 15% to be consistent with annual costs estimated by other facilities. EPA did not adjust APS's estimates for capital costs.

TABLE 5—FCPP COSTS OF COMPLIANCE FOR NO_X BASED ON EPA REVISIONS

	LNB/LNB + OFA	SCR	SCR + LNB	SCR + LNB + OFA
Total Annual Costs				
Unit 1	$616,350	$16,599,600	$16,741,350	$16,808,700
Unit 2	616,350	17,851,500	18,159,900	18,224,400
Unit 3	705,150	16,962,600	17,313,000	17,227,650
Unit 4	2,289,000	39,810,900	39,810,900	41,916,600
Unit 5	2,289,000	39,810,900	39,810,900	41,916,600

[8] Capital and annual cost values are for LNB on Units 1 and 2, and LNB + OFA on Units 3–5.

TABLE 6—FCPP COSTS OF COMPLIANCE FOR PM BASED ON EPA REVISIONS

	Upstream ESP	Upstream baghouse	Wet metal ESP	Wet membrane ESP
Total Annual Costs				
Unit 1	$5,585,400	$7,577,250	$4,820,400	$3,504,000
Unit 2	6,855,300	9,148,800	4,931,850	3,585,150
Unit 3	6,020,250	8,939,100	8,939,100	4,048,200

In addition to the total annual cost, other factors, such as estimated control efficiency and how the emissions reductions are calculated influence the cost effectiveness of controls. See 40 CFR Part 51, App. Y, Step 4.a.4. APS estimated that SCR could achieve NO_X control of approximately 90% or greater from the baseline emissions. For new facilities, 90% or greater reduction in NO_X from SCR can be reasonably expected. See May 2009 White Paper on SCR from Institute of Clean Air Companies.[9] For SCR retrofits on an existing coal-fired power plant, Arizona Department of Environmental Quality (ADEQ) determined that 75% control from SCR (following upstream reductions by LNB) was appropriate for the Coronado Generating Station in Arizona.[10] Based on this data, EPA has determined that an 80% control efficiency for SCR alone, rather than the 90+% control assumed by APS, is appropriate. Accordingly, EPA calculated post-SCR control NO_X emissions from FCPP to be higher than the values of 0.06 and 0.08 lb/MMBtu used by APS, ranging from 0.10 lb/MMBtu from Units 4 or 5 to a maximum of 0.16 lb/MMBtu from Unit 1.

APS reported baseline PM emissions from Unit 3 to be 0.029 lb/MMBtu, however, EPA has determined that 0.05 lb/MMBtu for Unit 3 is the appropriate emission rate to use based on source test information collected in October 2007. PM emissions determined from three one-hour test runs on October 19, 2007 were 0.041 lb/MMbtu, 0.372 lb/MMbtu, and 0.121 lb/MMbtu. APS shut down Unit 3 for repairs after receiving the test results. Subsequent testing when the unit was brought back on line showed the unit barely met its 0.05 lb/MMbtu emission limit. Prior year test results for Unit 3 have also shown emissions at or near the 0.05 lb/MMBtu limit.

Tables 7 and 8 contain EPA's re-calculated emissions reductions and cost effectiveness for NO_X and PM based on adjusting the annual costs, the NO_X control efficiency for SCR and the baseline PM emissions as discussed above.

TABLE 7—FCPP COST EFFECTIVENESS FOR NO_X BASED ON EPA REVISIONS

	LNB/LNB + OFA	SCR	SCR + LNB	SCR + LNB + OFA
Tons of NO_X Reduced per Year (tpy)				
Unit 1	2,478	4,417	5,097	5,097
Unit 2	1,524	3,716	4,210	4,210
Unit 3	2,563	4,652	5,224	5,224
Unit 4	3,275	9,171	10,060	10,060
Unit 5	3,284	9,195	10,086	10,086
Cost Effectiveness of Controls ($/ton)				
Unit 1	249	3,758	3,284	3,298
Unit 2	404	4,803	4,314	4,329
Unit 3	275	3,646	3,314	3,298
Unit 4	699	4,341	3,957	4,167
Unit 5	697	4,330	3,947	4,156

TABLE 8—FCPP COST EFFECTIVENESS FOR PM BASED ON EPA REVISIONS

	Upstream ESP	Upstream baghouse	Wet metal ESP	Wet membrane ESP
Tons of PM Reduced per Year (tpy)				
Unit 1	92	92	92	92
Unit 2	123	123	123	123
Unit 3	375	375	375	375
Cost Effectiveness of Controls ($/ton)				
Unit 1	60,691	82,334	52,378	38,074
Unit 2	55,556	74,143	39,968	29,054
Unit 3	16,074	23,867	23,867	10,808

[9] White Paper: Selective Catalytic Reduction (SCR) Control of NO_X Emissions from Fossil Fuel-Fired Electric Power Plants, Prepared by Institute of Clean Air Companies Inc., May 2009.

[10] See *http://www.azdeq.gov/environ/air/permits/download/pastmonth.pdf.*

The National Park Service (NPS) calculated the cost effectiveness of SCR using only the estimates and allowed categories of costs from EPA's Air Pollution Control Costs Manual. The NPS costs of compliance and cost effectiveness are shown in Table 9. NPS assumed post-SCR NO_X emissions of 0.06 lb/MMBtu. The capital and annual costs of SCR the NPS estimated using the EPA Control Cost Manual are considerably lower than those estimated by APS.

TABLE 9—NPS'S ESTIMATED SCR COSTS OF COMPLIANCE FOR FCPP

	Total capital cost	Total annual cost	Cost effectiveness (ton)
Unit 1	$18,508,764	$2,983,004	$1,558
Unit 2	18,508,764	3,052,010	1,469
Unit 3	22,187,577	3,497,117	1,684
Unit 4	52,788,968	9,838,997	1,185
Unit 5	52,788,968	9,213,942	1,357

In Tables 10 and 11, EPA has calculated the expected increase in electricity generation costs to be borne by consumers in terms of dollars per kilowatt hour ($/kWh), assuming 85% capacity. The calculation is based on EPA's annual cost estimates in Tables 5 and 6. DOE provides information on the average cost of electricity by state in a given year.[11] In 2009, the average cost of electricity in Arizona for residential consumers was $0.0994/kWh, which was below the U.S. average ($0.1128/kWh) and the continental U.S. maximum of $0.1993/kWh in Connecticut.

TABLE 10—INCREASE IN ELECTRICITY COSTS FROM NO_X CONTROLS AT FCPP

	LNB/LNB + OFA kWh	SCR kWh	SCR + LNB kWh	SCR + LNB + OFA kWh
Unit 1	$0.001	$0.015	$0.015	$0.015
Unit 2	0.001	0.016	0.016	0.016
Unit 3	0.001	0.011	0.012	0.012
Unit 4	0.001	0.009	0.009	0.009
Unit 5	0.001	0.009	0.009	0.009

TABLE 11—INCREASE IN ELECTRICITY COSTS FROM PM CONTROLS AT FCPP

	Upstream ESP kWh	Upstream baghouse kWh	Wet metal ESP kWh	Wet membrane ESP kWh
Unit 1	$0.005	$0.007	$0.004	$0.003
Unit 2	0.006	0.008	0.004	0.003
Unit 3	0.004	0.006	0.006	0.003

EPA requests comments on the data used to estimate the cost of compliance for the different levels of control for NO_X and PM for FCPP.

2. NGS

a. Cost of Compliance

The cost estimates provided by SRP (updated in the 2008 submissions to EPA) are included in Table 12 for different control options for NO_X. The NO_X control options included in Table 12 are (1) LNB plus Separated Overfire Air (SOFA) on all three units, (2) SCR on Units 1 and 3, LNB + SOFA on Unit 2, and (3) SCR + LNB + SOFA on all three units.

TABLE 12—NGS COSTS OF COMPLIANCE FOR NO_X BASED ON SRP ANALYSIS

	LNB + SOFA (All units)	SCR + LNB + SOFA (Units 1 & 3); LNB + SOFA (Unit 2)	SCR + LNB + SOFA (All units)
Total Capital Investment			
Unit 1	$14,000,000	$212,000,000	$212,000,000
Unit 2	14,000,000	14,000,000	281,000,000
Unit 3	14,000,000	212,000,000	212,000,000

[11] *http://www.eia.doe.gov/cneaf/electricity/epm/table5_6_b.html*

TABLE 12—NGS COSTS OF COMPLIANCE FOR NO_X BASED ON SRP ANALYSIS—Continued

	LNB + SOFA (All units)	SCR + LNB + SOFA (Units 1 & 3); LNB + SOFA (Unit 2)	SCR + LNB + SOFA (All units)
Total Annual Cost			
Unit 1	1,622,000	28,951,500	28,951,500
Unit 2	1,622,000	36,945,000	36,945,000
Unit 3	1,622,000	28,951,500	28,951,500

The higher retrofit cost of SCR on Unit 2 compared to Units 1 and 3 is a result of the physical layout of the coal conveyor and its supports in relation to Unit 2. Because of limited access for construction cranes and equipment, and to make room for the SCR and fans by demolishing the remainder of the old Unit 2 chimney, costs for the Unit 2 retrofit are anticipated to be higher than for Units 1 and 3.[12]

b. Cost Effectiveness

In determining the cost effectiveness of controls, SRP estimated NO_X emissions reductions using baseline emission rates of: 0.49 lb/MMBtu for Unit 1; 0.45 lb/MMBtu for Unit 2; 0.46 lb/MMBtu for Unit 3. For the various control options, SRP estimated emissions reductions from: LNB + SOFA of 47–51% to achieve 0.24 lb/MMBtu; and from SCR of 82–84% to achieve 0.08 lb/MMBtu.

Table 13 lists the reduction in NO_X emissions and cost effectiveness estimated by SRP for the three control scenarios listed in Table 12.

TABLE 13—SRP EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR NO_X

	LNB + SOFA (All units)	SCR + LNB + SOFA (Units 1 & 3); LNB + SOFA (Unit 2)	SCR + LNB + SOFA (All units)
NO_X Emissions Reductions (tpy)			
Unit 1	9,631	15,794	15,794
Unit 2	8,667	8,667	15,271
Unit 3	8,824	15,241	15,241
Cost Effectiveness ($/ton)			
Unit 1	168	1,833	1,833
Unit 2	187	187	2,419
Unit 3	184	1,900	1,900

Appendix Y of the BART Guidelines states that average cost effectiveness should be based on the annualized cost and the difference between baseline annual emissions and annual emissions with the control technology. In calculating the cost effectiveness, it appears SRP used the same 24-hour average actual emission rate from the highest emitting day used for its modeling inputs, rather than an annual average rate. Therefore, EPA has revised SRP's estimated NO_X emissions reductions by starting with baseline emission rates for NO_X averaged over 2004–2006 of: 0.35 lb/MMBtu for Unit 1; 0.37 lb/MMBtu for Unit 2; 0.31 lb/MMBtu for Unit 3. The revised emission reductions and cost effectiveness estimates are provided in Table 14.

TABLE 14—EPA EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR NO_X

	LNB + SOFA (All units)	SCR + LNB + SOFA (Units 1 & 3); LNB + SOFA (Unit 2)	SCR + LNB + SOFA (All units)
NO_X Emissions Reductions (tpy)			
Unit 1	3,658	9,643	9,643
Unit 2	4,208	4,208	9,888
Unit 3	2,284	8,158	8,158
Cost Effectiveness ($/ton)			
Unit 1	443	3,002	3,002
Unit 2	385	385	3,736

[12] See July 29, 2008 Letter from Kevin Wanttaja (SRP) to Deborah Jordan (EPA) and its attachment: July 25, 2008 Final Report for SCR and SNCR Cost Study, prepared by Sargent and Lundy.

TABLE 14—EPA EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR NO_X—Continued

	LNB + SOFA (All units)	SCR + LNB + SOFA (Units 1 & 3); LNB + SOFA (Unit 2)	SCR + LNB + SOFA (All units)
Unit 3	710	3,549	3,549

The NPS calculated the cost effectiveness of SCR + LNB + SOFA using only the estimates and allowed categories of costs from EPA's Air Pollution Control Costs Manual. The NPS costs of compliance and cost effectiveness are shown in Table 15. NPS assumed post-SCR NO_X emissions of 0.05 lb/MMBtu. NPS accounts for the higher retrofit costs associated with Unit 2 by applying a larger retrofit factor associated with physically difficult retrofits on Unit 2 compared to Units 1 and 3. Note that the capital and annual costs of SCR estimated using the EPA Control Cost Manual are considerably lower than those estimated by SRP.

TABLE 15—NPS COSTS OF CONTROLS AND COST EFFECTIVENESS FOR SCR

	Total capital cost	Total annual cost	Cost effectiveness (ton)
Unit 1	$71,983,100	$12,065,299	$1,059
Unit 2	66,138,162	14,589,766	1,528
Unit 3	68,642,323	11,870,003	1,317

EPA calculated the expected increase in electricity generation costs to consumers in $/kWh, assuming 85% capacity in Table 16.

TABLE 16—INCREASE IN ELECTRICITY COSTS FROM NO_X CONTROLS AT NGS

	LNB + SOFA (All Units) kWh	SCR + LNB + SOFA (Units 1&3); LNB + SOFA (Unit 2) kWh	SCR + LNB + SOFA (All Units) kWh
Unit 1	$0.0003	$0.006	$0.006
Unit 2	0.0003	0.0003	0.007
Unit 3	0.0003	0.006	0.006

In addition to the three NO_X control scenarios, EPA considered another SCR control option that was not addressed by SRP. Based on EPA's understanding of the location of the coal-feed line and the physical layout of Unit 2, EPA is requesting comment on the application of half an SCR to Unit 2. As configured, the flue gas from Unit 2 is split in half with each half containing its own separate hot-side ESP and FGD. Because the flue gas is already split, and because the coal-feed line impedes only one side of the Unit 2 split, SCR may be applied to half of Unit 2 so that the difficult retrofit associated with the relocation of the coal-feed line can be avoided. EPA estimates that the application of half-SCR on Unit 2 would require a total capital investment of $106 million, a total annual cost of $14.5 million, result in NO_X reductions of over 7000 tpy (based on control to 0.14 lb/MMBtu) with a cost effectiveness of $2000/ton and an increased electricity generation cost of $0.003/kWh.

In the November 2007 BART Analysis, SRP states that PM emissions controlled by hot-side ESPs in combination with wet scrubbers effectively limited PM emissions to less than 0.03 lb/MMBtu and did not include a BART analysis for further retrofit controls for PM_{10}. In a letter dated December 12, 2008, NGS proposed a BART emission limit for PM of 0.05 lb/MMBtu. No additional discussions of modeling or other analyses for PM control at NGS are included in this ANPR.

EPA requests comment on the data provided above to estimate the costs of compliance for BART controls at NGS.

B. Factor 5: Degree of Visibility Improvement

1. FCPP

a. Visibility Modeling Scenarios

APS's contractor, AECOM, conducted visibility modeling using CALPUFF [13] based on a number of selected inputs. APS used its modeling results to estimate anticipated visibility improvement from the four different control technology options at the mandatory Class I Federal areas within a 300 km radius.

EPA disagrees with and is requesting comment on a number of the inputs APS used for modeling. EPA has selected alternative inputs that we have determined are more representative. We have also modeled the resulting visibility improvement at the Class I areas based on our revised inputs. EPA is specifically requesting comment on EPA's and APS's selection of inputs. EPA's modeled results, also using CALPUFF, are presented below in Tables 17–21. The modeling scenarios are:

[13] CALPUFF is the model that is recommended for use in predicting visibility impact under the Regional Haze Guidelines. 40 CFR Part 51, App. Y, III.A.3 (''CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment and is currently the only EPA-approved model for use in estimating single source pollutant concentrations resulting from the long range transport of primary pollutants. [note omitted]'').

A. Baseline Visibility Impact (modeled by APS and EPA)
B. Wet ESP for PM Control on Units 1–3 (modeled by APS and EPA)
C1. LNB + OFA for NO_X on Units 1–5 (modeled by APS)
C2. LNB for NO_X on Units 1 and 2 and LNB + OFA on Units 3–5 (modeled by EPA)
D. SCR for NO_X on Units 3–5 (modeled by EPA)
E1. SCR + LNB + OFA for NO_X on Units 1–5 (modeled by APS)
E2. SCR for NO_X on Units 1–5 (modeled by EPA)

APS and EPA modeled baseline and control scenarios using meteorological data from 2001–2003. The baseline scenario uses heat input and pollutant emission rates based on the 24-hour average actual emission rate from the highest emitting day of the meteorological period. The modeling scenarios listed above in C1/C2 and E1/E2 are based on the application of the same, or similar, control technologies but are listed as distinct modeling scenarios because EPA used different emission inputs than APS.

b. EPA Modifications to Emission Rate Inputs

The Appendix Y BART Guidelines state that baseline heat input and pollutant emission rates should be based on the 24-hour average actual emission rate from the highest emitting day of the meteorological period modeled. Although the modeling period for the BART analysis submitted by APS is 2001–2003, APS used heat input, NO_X, SO_2, and PM emission rates from 2002–2006. Based on our review of the 2001–2003 emissions data that APS reported to the EPA Clean Air Markets Division (CAMD), we have determined that the heat input and baseline NO_X emission rates inputs were generally appropriate, except that several of the highest emitting days for NO_X and heat input occurred in 2001. Therefore, EPA revised the highest heat input rate for Units 1, 3, and 5 based on the 2001–2003 meteorological period. For NO_X emissions, the highest emitting days for Units 1,2, 3, and 5 occurred in 2001 (over the 2001–2003 period), therefore, we also revised the baseline NO_X emission rate for those units. Data from CAMD for Unit 2 and 4 generally agreed with emission inputs used by APS. For SO_2 emissions, because the SO_2 control efficiency for Units 4 and 5 recently increased to 88%, EPA considers it more appropriate to rely on a more recent period (2006–2007) for SO_2 emissions for Units 4 and 5, rather than using SO_2 data from the 2001–2003 meteorological period.

CALPUFF modeling requires additional inputs, including SO_4, representing condensable inorganic PM and fine and coarse filterable PM. For SO_4, APS estimated that the condensable inorganic PM was entirely represented by sulfuric acid (H_2SO_4) formed during the combustion process (Scenarios A—C), or from the combustion process together with reactions on the SCR catalyst (Scenarios D and E). APS and EPA both relied on the H_2SO_4 calculation methodology provided by the Electric Power Research Institute (''EPRI''). [14] The EPRI method relies on characterization of various sources and sinks of H_2SO_4 in the boiler and downstream components, such as the air preheater, and particulate matter (PM) and SO_2 control devices. For the baseline and non-SCR emissions scenarios (Scenarios A–C), the main difference between APS's and EPA's calculations for H_2SO_4 arises from the assumed loss of H_2SO_4 in the air preheater. APS used a penetration factor [15] of 0.9 whereas EPA used a penetration factor of 0.49, which is consistent with the 2008 EPRI guidelines.

Because CAMD data is not available for PM, we relied on filterable PM emissions used in APS's revised modeling analysis (Supplemental submitted November 2008), based on the maximum of six stack test results from the 2002–2006 period for each unit. APS additionally provided the stack test results in a spreadsheet for each unit over 2002–2006. Although APS reported using the worst-case stack test values in their Supplemental Modeling Report, the lb/MMBtu PM values in Table 5–2 do not match the highest stack test results in the APS's spreadsheet. Therefore, EPA revised the filterable PM values for Units 1–3. We then applied values from AP–42 that estimate for a dry bottom boiler with scrubber (Units 1–3), 71% of filterable PM is PM_{10}, and 51% of filterable PM is fine PM_{10} (*i.e.,* $PM_{2.5}$), thus 20% of filterable PM is coarse PM_{10}, *i.e.,* 71%–51%. For a dry bottom boiler with a baghouse (Units 4 and 5), AP–42 estimates that 92% of filterable PM is PM_{10}, and 53% of filterable PM is fine PM_{10} (*i.e.,* $PM_{2.5}$), thus 39% of filterable PM is coarse PM_{10}, *i.e.,* 92%–53%. APS also estimated elemental carbon (EC) to be 3.7% of the $PM_{2.5}$, based on Table 6 of a 2002 draft report prepared for EPA.[16]

In addition to the estimates for PM fine described above, EPA additionally revised the modeling inputs for PM fine to include emissions of hydrogen chloride (HCl) and hydrogen fluoride (HF). AP–42 (1.1 Bituminous and Subbituminous Coal Combustion) provides a single emission factor each for HCl and HF from all coal and boiler types. APS assumed H_2SO_4 to be the only contributor to condensable inorganic PM, and the NPS raised concerns about the exclusion of HCl and HF and recommended these two compounds be factored into the CPM–IOR (SO_4) modeling input. Method 202 for measuring condensable PM does not capture HCl and HF, therefore, EPA added these emissions to PM fine rather than SO_4.

HCl and HF emission factors in AP–42 (Table 1.1–15) are based on a lb/ton coal basis (1.2 lbs HCl per ton of coal and 0.15 lb HF per ton of coal, which converts to 0.016 lb HCl/mmbtu and 0.007 lb HF/mmbtu using 10496 Btu/lb coal). Footnote (a) to Table 1.1–15 in AP–42 states that these factors apply to both controlled and uncontrolled sources. The HCl and HF emission factors refer to a 1985 report on HCl and HF prepared for the NAPAP inventory.[17] This 1985 report shows that the uncontrolled and controlled emission factors for HCl and HF were considered to be the same only because wet scrubbers and FGD systems, which are the only controls used on boilers that have a significant effect on HCl and HF removal, were (at the time) used to control only a small percentage of coal burned in utility boilers (see footnote (a) from Tables 3–6 and 3–7 from the 1985 report). Given that 2 units at FCPP use wet FGD and 3 units use venturi scrubbers for SO_2 control, EPA did not apply the AP–42 emission factor ''as is'' to FCPP. Furthermore, given that the chlorine content of the coal used by FCPP is much lower than coal from other parts of the U.S., we scaled the HCl emission factor (based on 46 sites from several parts of the country [18]) for subbituminous coal to account for the low Cl content of FCPP coal compared to average Cl content of U.S. coal.

[14] *Estimating Total Sulfuric Acid Emissions from Stationary Power Plants—Technical Update,* Electric Power Research Institute (EPRI), Palo Alto, CA, 2008. EPRI Product ID: 1016384.

[15] We use penetration factor as 1-control factor, such that a penetration factor of 0.9 means 90% of the sulfuric acid penetrates through the control equipment.

[16] Battye, W, and Boyer, K. *Catalog of Global Emissi113on Inventories and Emission Inventory Tools for Black Carbon*. EPA Contract No. 68–D–98–046, 2002.

[17] *Hydrogen Chloride and Hydrogen Fluoride Emission Factors for the NAPAP Inventory,* EPA–600/7–85–041, U.S. Environmental Protection Agency, October 1985.

[18] See Reference 1 of Table A–1 from the 1985 EPA report.

From the emission factor of 1.9 lb HCl/ton, EPA scaled the emission factor to 0.13 lb HCl/ton coal. Table 3–2 of the 1985 report shows that average Cl content of coal by coal type ranges from 63–1064 ppm (by weight) with lignite and eastern bituminous coals contributing the low and high values, respectively. Table 3–3 shows that average Cl content of coal ranges from 20–1900 ppm (by weight), with Montana coal and Illinois coal contributing the low and high values, respectively. The average bituminous coal Cl content from the values reported in Table 3–2 is 736 ppm. From chlorine coal content data collected for the Clean Air Mercury Rule,[19] FCPP coal was determined to have 50 ppm Cl. Therefore, we scaled the HCl emission factor of 1.9 by the Cl content ratio of FCPP to bituminous US coal (50/736) yielding an emission factor of 0.13 lb HCl/ton coal.

For the fluorine content of coal, Tables 3–2 and 3–3 from the 1985 report show that average F content ranges from 28–141 ppm depending on coal type (lignite and eastern bituminous, respectively), and from 45–124 depending on the region in the U.S. (Northern Great Plains and Gulf Province, respectively). Based on trace element data reported in the U.S. Coal Quality Database,[20] coal burned by FCPP (from the Navajo Mine) has an average F content of 80 ppm.[21] We scaled the HF emission factor of 0.23 lb/ton by the F content ratio of FCPP coal to total US (80/102), resulting in an FCPP emission factor for HF of 0.18 lb HF/ton coal.

Using the scaled emission factors of 0.13 lb HCl/ton coal and 0.18 lb HF/ton coal, EPA accounted for additional loss of HCl and HF from the use of flue gas desulfurization (FGD) or venturi scrubbers. Page 19 of the 1985 EPA report describes that wet scrubbers are expected to provide approximately 80% control of HCl and HF from coal-fired utility boilers, and removal of HCl from flue gases with FGD systems is very high (with sodium bicarbonate systems providing 95% control), but little data are available to quantify the HF removal efficiency of FGD systems. We assumed the FGD and venturi scrubbers provided 80% control of HCl and HF. Thus, our HCl and HF emission factors for FCPP are 0.015 lb HCl/MMBtu and 0.0020 lb HF/MMBtu. These HCl and HF emissions were applied as inputs to PM fine for all modeling scenarios.

TABLE 17—APS AND EPA BASELINE EMISSION RATES

[Scenario A]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
APS Modeling Inputs for Baseline Case (all units in lb/hr)					
SO_2	464.17	615.12	995.26	2,026.10	2,130.76
SO_4	3.35	3.78	4.65	1.03	1.03
NO_X	1,841.37	1,567.66	1,926.23	5,015.98	4,444.04
SOA	8.35	9.41	11.58	32.00	32.00
PM fine	30.74	47.87	52.90	100.93	48.00
PM coarse	12.52	19.49	21.54	77.12	36.67
EC	1.18	1.84	2.03	3.88	1.84
EPA Modeling Inputs for Baseline Case (all units in lb/hr)					
SO_2	522.54	615.12	1,042.09	2,026.10	2,131.85
SO_4	2.06	2.06	2.65	0.51	0.51
NO_X	2,020.14	1,599.47	1,970.80	5,015.98	4,508.56
SOA	9.40	9.41	12.13	32.00	32.20
PM fine	46.29	65.99	70.18	128.93	76.20
PM coarse	15.50	23.52	24.26	77.12	36.69
EC	1.46	2.22	2.29	3.88	1.85

TABLE 18—APS AND EPA EMISSION FOR PM CONTROL ON UNITS 1–3

[Scenario B]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
APS Modeling Inputs for Baseline Case (all units in lb/hr)					
SO_2	464.17	615.12	995.26	2,026.10	2,130.76
SO_4	0.34	0.38	0.47	1.03	1.03
NO_X	1,841.37	1,567.66	1,926.23	5,015.98	4,444.04
SOA	8.35	9.41	11.58	32.00	32.00
PM fine	15.34	20.39	22.54	100.93	48.00
PM coarse	11.72	15.58	17.22	77.12	36.67
EC	0.59	0.78	0.87	3.88	1.84
EPA Modeling Inputs for Baseline Case (all units in lb/hr)					
SO_2	522.54	615.12	1,042.09	2,026.10	2,131.85
SO_4	0.21	0.21	0.27	0.51	0.51
NO_X	2,020.14	1,599.47	1,970.80	5,015.98	4,508.56
SOA	9.40	9.41	12.13	32.00	32.20

[19] Electric Utility Mercury Information Collection Request (OMB Control Number 2060–0396): *http://www.epa.gov/ttn/atw/combust/utiltox/utoxpg.html#DA2*.

[20] *http://energy.er.usgs.gov/coalqual.htm#submit*.

[21] Based on samples D176206 and D202211.

TABLE 18—APS AND EPA EMISSION FOR PM CONTROL ON UNITS 1–3—Continued

[Scenario B]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
PM fine	25.49	28.63	34.21	128.93	76.20
PM coarse	13.19	15.58	18.03	77.12	36.69
EC	0.66	0.78	0.91	3.88	1.85

TABLE 19—APS AND EPA EMISSION FOR PM CONTROL ON UNITS 1–3

[Scenario C]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
APS Modeling Inputs for LNB + OFA (Scenario C1) (in lb/hr)					
SO_2	464.17	615.12	995.26	2,026.10	2,130.76
SO_4	3.35	3.78	4.65	1.03	1.03
NO_X	1,010.91	1,051.90	1,078.69	3,561.35	3,155.27
SOA	8.35	9.41	11.58	32.00	32.00
PM fine	30.74	47.87	52.90	100.93	48.00
PM coarse	12.52	19.49	21.54	77.12	36.67
EC	1.18	1.84	2.03	3.88	1.84
EPA Modeling Inputs for LNB/OFA (Scenario C2) (in lb/hr)					
SO_2	522.54	615.12	1,042.09	2,026.10	2,131.85
SO_4	2.06	2.06	2.65	0.51	0.51
NO_X	1,109.06	1,073.25	1,103.65	3,561.35	3,201.08
SOA	9.40	9.41	12.13	32.00	32.20
PM fine	46.29	65.99	70.18	128.93	76.20
PM coarse	15.50	23.52	24.26	77.12	36.69
EC	1.46	2.22	2.29	3.88	1.85

EPA also disagrees with APS's evaluation of sulfuric acid emissions. Sulfuric acid emissions are estimated to increase as a result of operating an SCR due to additional oxidation of SO_2 to SO_3 on the SCR catalyst. APS used a 1% conversion rate from the SCR catalyst. Yet a Prevention of Significant Deterioration (PSD) permit issued June 2, 2009, to Coronado Generating Station by the ADEQ [22] required the use of an ultra-low conversion catalyst (0.5% conversion) as Best Available Control Technology (BACT). EPA has determined that APS could also use an ultra-low conversion catalyst. Therefore, in our calculation of H_2SO_4 emissions from the addition of the SCR, we accounted for a 0.5% conversion of SO_2 to SO_3.

For emissions of ammonia (NH_3) resulting from SCR, EPA followed the calculation methodology APS used in its supplemental modeling analysis for FCPP (dated November 2008).

TABLE 20—EPA EMISSIONS FOR SCR ON UNITS 3–5

[Scenario D]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
EPA Modeling Inputs for SCR on Units 3–5, No Control Units 1 and 2 (in lb/hr)					
SO_2	522.54	615.12	1,042.09	2,026.10	2,131.85
SO_4	2.06	2.06	12.52	2.52	2.54
NO_X	2,020.14	1,599.47	472.99	1,203.84	1,082.05
SOA	9.40	9.41	12.13	32.00	32.20
PM fine	46.29	65.99	70.18	128.93	76.20
PM coarse	15.50	23.52	24.26	77.12	36.69
EC	1.46	2.22	2.29	3.88	1.85

TABLE 21—APS AND EPA EMISSIONS FOR SCR ON UNITS 1–5

[Scenario E]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
APS Modeling Inputs for SCR + LNB + OFA (Scenario E1) (in lb/hr)					
SO_2	464.17	615.12	995.26	2,026.10	2,130.76

[22] See *http://www.azdeq.gov/environ/air/permits/download/pastmonth.pdf.*

TABLE 21—APS AND EPA EMISSIONS FOR SCR ON UNITS 1–5—Continued

[Scenario E]

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
SO_4	30.71	34.61	42.61	9.53	9.58
NO_X	147.31	141.09	192.62	601.92	533.29
SOA	8.35	9.41	11.58	32.00	32.00
PM fine	30.74	47.87	52.90	100.93	48.00
PM coarse	12.52	19.49	21.54	77.12	36.67
EC	1.18	1.84	2.03	3.88	1.84
EPA Modeling Inputs for SCR (Scenario E2) (in lb/hr)					
SO_2	522.54	615.12	1,042.09	2,026.10	2,131.85
SO_4	9.70	9.71	12.52	2.52	2.54
NO_X	484.83	383.87	472.99	1,203.84	1,082.05
SOA	9.40	9.41	12.13	32.00	32.20
PM fine	46.29	65.99	70.18	128.93	76.20
PM coarse	15.50	23.52	24.26	77.12	36.69
EC	1.46	2.22	2.29	3.88	1.85

c. Ammonia Background

In addition to the different CALPUFF emission rates described above, EPA additionally revised some post-processor settings from those originally used by APS. The USFS indicated that the ammonia background concentrations modeled by APS were underestimated compared to observed concentrations.[23] EPA agrees and has used a similar back-calculation methodology to the one referenced by the USFS for estimating ammonia background values.

Ammonia is important because it is a precursor to particulate ammonium sulfate and ammonium nitrate which degrades visibility. It is present in the air from both natural and anthropogenic sources. The latter may include ammonia slip from the use of ammonia in SCR and SNCR technologies to control NO_X emissions.

In our modeling input for ammonia, EPA assumed that the remaining ammonia in the flue gas following SCR reacts to form ammonium sulfate or ammonium bisulfate before exiting the stack. This particulate ammonium is represented in the modeling as sulfate (SO_4) emissions. Thus, EPA addressed ammonia solely as a background concentration.

Very little monitored ammonia data is available. The default recommended ammonia background value for arid regions is 1 ppb, as described in the *IWAQM Phase 2* document.[24] Alternative levels may be used if supported by data. To address concerns expressed by APS in their January 2008 BART modeling protocol (p. 4–1) that CALPUFF over-predicts ammonium nitrate in winter, EPA estimated ammonia background for all Class I areas (except Mesa Verde National Park, see below) by back-calculating from measurements at monitors in the areas run by the IMPROVE program.[25] IMPROVE monitors do not measure ammonia directly; rather, they measure particulate sulfate and nitrate. In the atmosphere, particulate sulfate and nitrate are essentially all in the form of ammonium sulfate and ammonium nitrate, respectively. Applying their chemical formulas, EPA estimated a lower bound on the amount of ammonia that must have been present to combine with gaseous sulfate and nitrate in order to form the measured particulate sulfate and nitrate.

EPA performed this back-calculation using 2005–2007 data for all 14 IMPROVE monitors at Class I areas in the modeling domains. For each monitor, EPA used the maximum calculated value for each calendar month to represent the month. Then, for each month, EPA averaged over all monitors, resulting in a single value for each of the 12 calendar months. For the months of May and July, this back-calculation resulted in a somewhat lower value than the *IWAQM* default of 1 ppb which was also used by APS; for these months EPA used 1 ppb. The back-calculation results ranged from 0.7 ppb in the winter to 1 ppb in summer, except the value of 1.3 ppb in June.

Ammonia background concentrations for Mesa Verde National Park were derived from measured ammonia concentrations in the Four Corners area, as described in Sather *et al.*, (2008).[26] Monitored data was available within park, but because particulate formation happens within a pollutant plume as it travels, rather than instantaneously at the Class I area, EPA also examined data at locations outside the park itself. Monitored 3-week average ammonia at the Substation site, some 30 miles south of Mesa Verde, were as high as 3.5 ppb, though generally levels were under 1.5 ppb. Maximum values in Mesa Verde were 0.6 ppb, whereas other sites' maxima ranged from 1 to 3 ppb, but generally values were less than 2 ppb. EPA used values estimated from Figure 5 of Sather *et al.*, (2008), in the mid-range of the various stations plotted. The results ranged from 1.0 ppb in winter to 1.5 ppb in summer. See Table 22.

TABLE 22—AMMONIA BACKGROUND CONCENTRATION IN PPB (POSTUTIL PARAMETER BCKNH3) FOR FCPP

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
IWAQM default	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

[23] Letter from Rick Cables (Forest Service R2 Regional Forester) and Corbin Newman (Forest Service R3 Regional Forester) to Deborah Jordan (EPA Region 9 Air Division Director) dated March 17, 2009.

[24] Interagency Workgroup On Air Quality Modeling (IWAQM) Phase 2 Summary Report And Recommendations For Modeling Long Range Transport Impacts (EPA–454/R–98–019), EPA OAQPS, December 1998, *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf*.

[25] http://vista.cira.colostate.edu/improve/.

[26] Mark E. Sather *et al.*, 2008. ''Baseline ambient gaseous ammonia concentrations in the Four Corners area and eastern Oklahoma, USA''. Journal of Environmental Monitoring, 2008, 10, 1319–1325, DOI: 10.1039/b807984f.

TABLE 22—AMMONIA BACKGROUND CONCENTRATION IN PPB (POSTUTIL PARAMETER BCKNH3) FOR FCPP—Continued

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
APS values	0.2	0.2	0.5	0.5	1.0	1.0	1.0	1.0	1.0	0.5	0.5	0.2
EPA values	0.8	0.7	0.7	1.0	1.0	1.3	1.0	1.0	1.0	1.0	1.0	0.9
EPA values for Mesa Verde	1.0	1.0	1.3	1.3	1.3	1.3	1.5	1.5	1.5	1.5	1.3	1.0

d. Natural Background

The BART determination guidelines recommend that impacts of sources should be estimated in deciviews relative to natural background. CALPOST, a CALPUFF post-processor, uses background concentrations of various pollutants to calculate the natural background visibility impact. EPA used background concentrations from Table 2–1 of ''Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule.'' [27] Although the concentration for each pollutant is a single value for the year, this method allows for monthly variation in its visibility impact, which changes with relative humidity. The resulting deciviews differ by roughly 1% from those resulting from the method originally used by APS.

TABLE 23—NATURAL BACKGROUND CONCENTRATIONS FOR FCPP AND NGS

CALPOST parameter	Pollutant	Concentration ($\mu g/m^3$)
BKSO4	ammonium sulfate	0.12
BKNO3	ammonium nitrate	0.10
BKPMC	coarse particulates	3.00
BKOC	organic carbon	0.47
BKSOIL	soil	0.50
BKEC	elemental carbon	0.02

e. Visibility Modeling Results

To assess results from the CALPUFF model and post-processing steps, EPA used a least-squares regression analysis of all visibility modeling output from the 2001–2003 modeling period to determine the percent improvement in visibility (measured in deciviews) compared to the baseline resulting from the application of control technologies. Table 24 shows EPA's modeled predicted visibility improvements at the 16 Class I areas within a 300 km radius of FCPP.

APS presented visibility improvement by comparing the 98th percentile (8th highest) of the daily maximum deciview (dv) values from CALPUFF per Class I area, averaged over 2001–2003. As outlined in the 1999 Regional Haze rule (64 FR 35725, July 1, 1999), a one deciview change in haziness is a small but noticeable change in haziness under most circumstances when viewing scenes in a Class I area. Table 25 presents the visibility impacts of the 98th percentile of daily maxima for each Class I area for each year, averaged over 2001–2003, determined for FCPP by APS. Table 26 presents the visibility impacts of the 98th percentile of daily maxima from 2001–2003 for each Class I area determined by EPA.[28]

TABLE 24—PERCENT IMPROVEMENT IN DECIVIEW IMPACTS FROM EPA MODELING AT EACH CLASS I AREA FROM PM AND NO_X CONTROLS AT FCPP

	Scenario B (Wet ESP) (%)	Scenario C2 (LNB) (%)	Scenario D (SCR 3–5) (%)	Scenario E2 (SCR 1–5) (%)
Arches	0.4	17	31	49
Bandolier	0.5	20	37	52
Black Canyon	0.3	22	39	55
Canyonlands	0.4	15	28	45
Capitol Reef	0.3	17	30	46
Grand Canyon	0.4	19	33	50
Great Sand Dunes	0.4	24	44	42
La Garita	0.4	24	43	42
Maroon Bells	0.4	25	43	59
Mesa Verde	0.6	14	27	42
Pecos	0.5	21	39	53
Petrified Forest	0.4	20	35	51
San Pedro	0.6	18	32	47
West Elk	0.3	24	42	58
Weminuche	0.5	22	50	55
Wheeler Peak	0.5	22	40	55

[27] U.S. Environmental Protection Agency, EPA–454/B–03–005, September 2003, on web page *http://www.epa.gov/ttn/oarpg/t1pgm.html,* with direct link *http://www.epa.gov/ttn/oarpg/t1/memoranda/rh_envcurhr_gd.pdf.*

[28] EPA did not average the 98th percentiles from each year as did APS, rather EPA used the 98th percentile from all three years taken together. This does not significantly impact the overall results.

TABLE 25—IMPACTS OF FCPP ON VISIBILITY (98TH PERCENTILE OF DAILY MAXIMUM DV) AT SIXTEEN CLASS I AREAS AS MODELED BY APS

	Baseline	Visibility impact (dv) after applying:		
		Wet ESP (B)	LNB (C1)	SCR (E1)
Arches	1.98	1.96	1.74	1.23
Bandolier	1.71	1.70	1.57	1.12
Black Canyon	1.44	1.43	1.21	0.75
Canyonlands	2.25	2.23	2.06	1.67
Capitol Reef	1.74	1.73	1.53	1.15
Grand Canyon	1.07	1.07	0.95	0.66
Great Sand Dunes	1.02	1.02	1.02	0.62
La Garita	1.36	1.36	1.08	0.58
Maroon Bells	1	0.81	0.66	0.35
Mesa Verde	3.17	3.14	3.01	2.73
Pecos	1.55	1.54	1.31	0.88
Petrified Forest	1.21	1.20	1.05	0.68
San Pedro	2.21	2.18	2.04	1.51
West Elk	1.22	1.21	1.03	0.56
Weminuche	1.90	1.68	1.66	0.94
Wheeler Peak	1.20	1.19	0.97	0.64
Sum of Class I areas	26.03	25.45	22.89	16.07

TABLE 26—IMPACTS OF FCPP ON VISIBILITY (98TH PERCENTILE DV) ON SIXTEEN CLASS I AREAS AS MODELED BY EPA

	Baseline	Visibility Impact (dv) after applying:			
		Wet ESP	LNB (C2)	SCR(D)	SCR (E2)
Arches	4.03	4.02	3.24	2.55	1.83
Bandolier	2.91	2.90	2.25	1.81	1.38
Black Canyon	2.36	2.36	1.89	1.44	1.01
Canyonlands	4.89	4.87	4.21	3.76	2.66
Capitol Reef	3.21	3.20	2.44	1.87	1.48
Grand Canyon	1.63	1.63	1.31	0.96	0.81
Great Sand Dunes	1.21	1.20	0.91	0.67	0.54
La Garita	1.71	1.71	1.28	1.05	0.73
Maroon Bells	1.04	1.04	0.77	0.57	0.43
Mesa Verde	6.48	6.45	5.47	4.90	3.89
Pecos	2.11	2.10	1.65	1.34	1.06
Petrified Forest	1.51	1.51	1.14	0.97	0.81
San Pedro	3.81	3.80	3.13	2.53	2.01
West Elk	1.86	1.86	1.41	1.06	0.75
Weminuche	2.79	2.77	2.16	1.58	1.17
Wheeler Peak	1.50	1.50	1.17	0.93	0.74
Sum of Class I areas	43.05	42.90	34.43	27.99	21.29

EPA used higher values for ammonia background concentration than APS, which resulted in higher modeled visibility impacts of FCPP and larger percent visibility improvement of controls compared to APS modeling. Although the different inputs used by EPA changed the absolute deciview values, it did not change the relative ranking of the controls in terms of deciview benefit. The different natural background concentrations EPA used compared to APS did not significantly change the visibility modeling results.

In their March 16, 2009 letter to EPA, the USFS discusses the need for a more comprehensive characterization of a facility's impacts, particularly, for facilities like FCPP and NGS that affect visibility at multiple Class I areas. To account for cumulative impacts, the USFS suggested accounting for the total dv impact by summing across all days for all Class I areas. EPA agrees that alternative visibility metrics may assist in evaluating the visibility improvement associated with various control options at FCPP and NGS, including taking an average of the 98th percentile of all Class I areas or summing over all days for all Class I areas. Table 27 presents an alternative visibility metric that takes into account the size of the area over which controls provide visibility benefits. The 98th percentile for each Class I area is multiplied by its land area in km^2 and then summed. EPA is requesting comment on this, and other alternative visibility metrics. These metrics can then be used as an adjunct to cost effectiveness expressed in $/ton to assist EPA in evaluating the effectiveness of controls at FCPP and NGS on visibility improvement, as expressed in terms of dollar per deciview ($/dv) or $/dv-$km^2$.

TABLE 27—ALTERNATIVE VISIBILITY METRIC

	A (Baseline)	Visibility Impact (dv-km²) after applying:			
		B (Wet ESP)	C2 (LNB)	D (SCR 3–5)	E2 (SCR 1–5)
Arches	1,014	1,012	816	615	461
Bandolier	249	246	193	156	119
Black Canyon	121	121	89	76	53
Canyon-lands	4,991	4,964	4,419	3,961	2,794
Capitol Reef	2,433	2,427	1,849	1,405	1,113
Grand Canyon	6,443	6,416	4,870	3,714	3,174
Great Sand Dunes	119	119	88	69	56
La Garita	699	697	518	394	295
Maroon Bells	571	569	415	315	238
Mesa Verde	1,112	1,109	939	818	666
Pecos	1,574	1,570	1,225	974	780
Petrified Forest	469	467	374	322	259
San Pedro	505	503	430	347	265
West Elk	2,996	2,988	2,221	1,614	1,207
Weminuche	1,525	1,522	1,170	860	636
Wheeler Peak	121	121	92	74	59
Sum over all areas	24,943	24,852	19,708	15,716	12,175

2. NGS

a. Visibility Modeling Scenarios

SRP conducted visibility modeling for NGS using CALPUFF based on estimated emission rates of various pollutants as inputs for the model. EPA conducted its own CALPUFF modeling using inputs that we determined were more representative.

EPA then modeled anticipated visibility improvements for four different options for installed control technologies. NGS's and EPA's modeling inputs are set forth in Tables 28–32 below. The modeling scenarios are:

A. Baseline Visibility Impact (modeled by NGS and EPA),

B. LNB + SOFA on Units 1–3 (modeled by NGS and EPA),

C. SCR + LNB + SOFA on Units 1 and 3, LNB + SOFA on Unit 2 (modeled by NGS and EPA),

D. SCR + LNB + SOFA on Units 1 and 3, Half-SCR + LNB + SOFA on Unit 2 (modeled by EPA),

E. SCR on Units 1–3 (modeled by NGS and EPA).

Scenarios C and E modeled by SRP and EPA were not listed as discrete modeling scenarios as they were for FCPP because the emission inputs for NGS from SRP and EPA, though different for PM fine and SO_4, are more similar to each other in terms of NO_X control than for FCPP. For Scenario E, SRP assumed NO_X emissions to be 0.08 lb/MMBtu, whereas EPA assumed 0.06 lb/MMBtu.

b. EPA Modifications to Emission Rate Inputs

Similar to FCPP, for the baseline and non-SCR emissions scenarios (Scenarios A and B), the main difference between SRP and EPA calculations for H_2SO_4 were from the assumed loss of H_2SO_4 in the air preheater. SRP used a penetration factor of 0.9 whereas EPA used a penetration factor of 0.49, which is consistent with the 2008 EPRI guidelines. Similarly for H_2SO_4 emissions resulting from the SCR scenarios, EPA used a 0.5% SO_2 to SO_3 conversion rate based on the application of an ultra-low oxidation catalyst.

For all modeling scenarios, EPA included HCl and HF emissions as PM fine modeling inputs and scaled them in a similar manner described for FCPP. For HCl, EPA used a scaled emission factor of 0.0025 lb/MMBtu, and for HF, EPA used a scaled emission factor of 0.00086 lb/MMBtu.

TABLE 28—SRP AND EPA BASELINE EMISSION RATES (SCENARIO A)

	Unit 1	Unit 2	Unit 3
SRP Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	4.18	4.48	4.36
NO_X	4,271.42	4,207.50	4,181.67
SOA	35.18	37.69	36.63
PM fine	63.86	55.27	79.28
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05
EPA Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	3.62	3.87	3.76
NO_X	4,271.42	4,207.50	4,181.67
SOA	35.18	37.69	36.63
PM fine	93.41	86.93	110.05
PM coarse	86.89	75.20	107.87

TABLE 28—SRP AND EPA BASELINE EMISSION RATES (SCENARIO A)—Continued

	Unit 1	Unit 2	Unit 3
EC	2.45	2.12	3.05

TABLE 29—SRP AND EPA EMISSIONS FOR LNB + SOFA (SCENARIO B)

	Unit 1	Unit 2	Unit 3
SRP Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	4.18	4.48	4.36
NO_X	2,110.74	2,261.63	2,197.78
SOA	35.18	37.69	36.63
PM fine	63.86	55.27	79.28
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05
EPA Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	3.62	3.87	3.76
NO_X	2,110.74	2,261.63	2,197.78
SOA	35.18	37.69	36.63
PM fine	93.41	86.93	110.05
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05

TABLE 30—SRP AND EPA EMISSIONS FOR SCR + LNB + SOFA ON UNITS 1 AND 3, LNB + SOFA ON UNIT 2 (SCENARIO C)

	Unit 1	Unit 2	Unit 3
SRP Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	64.01	4.48	66.65
NO_X	703.58	2,261.63	732.59
SOA	35.18	37.69	36.63
PM fine	63.86	55.27	79.28
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05
EPA Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	19.90	3.87	20.72
NO_X	615.63	2,261.63	641.02
SOA	35.18	37.69	36.63
PM fine	93.41	86.93	110.05
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05

TABLE 31—EPA EMISSIONS FOR SCR + LNB + SOFA ON UNITS 1 AND 3, HALF-SCR + LNB + SOFA ON UNIT 2 (SCENARIO D)

	Unit 1	Unit 2	Unit 3
EPA Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	19.90	12.60	20.72
NO_X	615.63	1,696.22	641.02
SOA	35.18	37.69	36.63
PM fine	93.41	86.93	110.05
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05

TABLE 32—SRP AND EPA EMISSIONS FOR SCR + LNB + SOFA ON UNITS 1—3 (SCENARIO E)

	Unit 1	Unit 2	Unit 3
SRP Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	64.01	68.59	66.65
NO_X	703.58	753.88	732.59
SOA	35.18	37.69	36.63
PM fine	63.86	55.27	79.28
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05
EPA Baseline Modeling Inputs (in lb/hr)			
SO_2	487.75	526.92	576.17
SO_4	19.90	21.32	20.72
NO_X	615.63	659.64	641.02
SOA	35.18	37.69	36.63
PM fine	93.41	86.93	110.05
PM coarse	86.89	75.20	107.87
EC	2.45	2.12	3.05

c. Ammonia Background and Natural Background

For ammonia background values at the Class I areas impacted by NGS, EPA used the same ammonia values listed in Table 22 above and the same natural background values listed in Table 23. See discussion of ammonia back-calculation methodologies and changes to natural background conditions described in Section II.B.1.

d. Visibility Modeling Results

To assess results from the CALPUFF model and post-processing steps, EPA used a least-squares regression analysis of all visibility modeling output from the 2001–2003 modeling period to determine the percent improvement in visibility compared to the baseline resulting from the application of control technologies. Table 33 shows EPA's modeled predicted visibility improvements at the 11 Class I areas within a 300 km radius of NGS.

SRP presented visibility improvement by comparing the 98th percentile (8th highest) of daily maximum deciview (dv) values from CALPUFF per Class I area, averaged over 2001–2003. Table 34 presents the visibility impacts of the 98th percentile of daily maxima for each Class I area for each year, averaged over 2001–2003, determined for NGS by SRP.

Table 35 presents the visibility impacts of the 98th percentile of daily maxima over 2001–2003 for each Class I area determined by EPA. Table 36 presents the alternative visibility metric determined by EPA for each Class I area.

TABLE 33—PERCENT IMPROVEMENT IN DECIVIEW IMPACTS FROM EPA MODELING AT EACH CLASS I AREA FROM NO_X CONTROLS AT NGS

	Scenario B (LNB) (percent)	Scenario C (SCR: 1&3) (percent)	Scenario D (½ SCR 2) (percent)	Scenario E (SCR: 1–3) (percent)
Arches	36	60	65	74
Bryce Canyon	26	47	53	63
Canyonlands	32	56	62	71
Capitol Reef	25	48	53	63
Grand Canyon	22	43	48	58
Mazatzal	38	60	65	72
Mesa Verde	40	63	68	76
Petrified Forest	36	60	65	74
Pine Mountain	38	59	64	71
Sycamore Canyon	36	59	64	72
Zion	31	54	60	69

TABLE 34—VISIBILITY IMPACTS (98TH PERCENTILE DV) OF NGS ON ELEVEN CLASS I AREAS AS MODELED BY SRP

	Baseline	Visibility Impact (dv) after applying:		
		LNB (B)	SCR (C)	SCR (E)
Arches	2.05	1.51	1.19	0.99
Bryce Canyon	2.00	1.58	1.36	1.23
Canyonlands	2.47	1.96	1.53	1.35
Capitol Reef	2.68	2.31	2.06	1.89
Grand Canyon	2.56	2.29	2.25	2.29
Mazatzal	0.71	0.47	0.41	0.38
Mesa Verde	1.42	1.04	0.77	0.58

TABLE 34—VISIBILITY IMPACTS (98TH PERCENTILE DV) OF NGS ON ELEVEN CLASS I AREAS AS MODELED BY SRP—Continued

	Baseline	Visibility Impact (dv) after applying:		
		LNB (B)	SCR (C)	SCR (E)
Petrified Forest	1.52	1.14	0.92	0.76
Pine Mountain	0.66	0.46	0.38	0.34
Sycamore Canyon	1.31	0.92	0.78	0.63
Zion	1.83	1.47	1.26	1.10
Sum of Class I areas	19.29	15.15	12.88	11.54

TABLE 35—VISIBILITY IMPACTS (98TH PERCENTILE DV) OF NGS ON ELEVEN CLASS I AREAS AS MODELED BY EPA

	Baseline	Visibility Impact (dv) after applying:			
		LNB (B)	SCR (C)	SCR (D)	SCR (E)
Arches	3.25	2.08	1.33	1.16	0.89
Bryce Canyon	3.66	2.44	1.57	1.39	1.10
Canyonlands	4.37	2.98	1.90	1.65	1.25
Capitol Reef	5.48	4.08	2.97	2.71	2.04
Grand Canyon	5.41	4.35	3.34	3.06	2.46
Mazatzal	1.16	0.73	0.48	0.45	0.37
Mesa Verde	2.24	1.33	0.78	0.67	0.52
Petrified Forest	2.62	1.54	1.00	0.86	0.66
Pine Mountain	1.08	0.64	0.42	0.38	0.32
Sycamore Canyon	1.96	1.28	0.80	0.71	0.59
Zion	3.73	2.65	1.65	1.44	1.05
Sum of Class I areas	34.95	24.10	16.25	14.48	11.23

TABLE 36—ALTERNATIVE VISIBILITY METRIC

	A (Baseline)	Visibility Impact (dv-km2) after applying:			
		B (LNB)	C (SCR: 1&3)	D (½ SCR 2)	E (SCR: 1–3)
Arches	812	514	336	293	223
Bryce Canyon	495	324	212	187	147
Canyonlands	4,649	3,071	2,022	1,741	1,320
Capitol Reef	4,184	3,127	2,233	2,031	1,566
Grand Canyon	21,399	17,219	13,157	12,033	9,698
Mazatzal	978	618	410	367	297
Mesa Verde	383	226	135	115	87
Petrified Forest	847	515	313	270	217
Pine Mountain	72	44	28	25	22
Sycamore Canyon	390	235	162	144	120
Zion	1,574	1,104	739	649	494
Sum over all areas	24,943	19,708	19,708	15,716	19,708

C. Factor 2: Energy and Non-Air Quality Impacts

1. FCPP

The application of LNB and LNB + OFA to control NO_X by staging combustion to reduce boiler temperatures will result in reduced NO_X formation as well as reduced combustion efficiency. The reduced combustion temperatures thus result in increased emissions of carbon monoxide (CO), volatile organic compounds (VOCs), and increased unburned carbon in the fly ash, known as loss of ignition (LOI). Increases in CO, and potential increases in VOC, from LNB or LNB + OFA, may trigger the Prevention of Significant Deterioration (PSD) permitting requirements, including the application of Best Available Control Technology (BACT) if the emission increases exceed the 100 tpy CO and 40 tpy VOC significance thresholds. Increased LOI in fly ash may reduce the desirability of the fly ash for sale and reuse.

Emissions of sulfuric acid (H_2SO_4) from coal fired power plants result from the conversion of sulfur in the coal into SO_2 and further oxidation to SO_3 during the combustion process in the boiler. SO_3 can then combine with moisture (H_2O) in the flue gas to form H_2SO_4. Fuels high in vanadium can catalyze SO_2 to SO_3 at higher rates than low vanadium fuels and result in higher H_2SO_4 emissions. The use of SCR catalysts, in particular, SCR catalysts that use vanadium, can result in increased emissions of H_2SO_4. Emissions increases in H_2SO_4 at existing major stationary sources as a result of the application of SCR for NO_X control will trigger PSD permitting requirements, including the application of BACT, if they exceed the H_2SO_4 significance threshold of 7 tpy. Add-on control technologies exist to help reduce H_2SO_4 emissions following SO_2 to SO_3 conversion from combustion and SCR,

including injection of reagents (*e.g.,* hydrated lime, sodium bisulfite) to convert H_2SO_4 to particulate matter that is then captured by downstream PM control devices, such as baghouses. Based on discussions with URS Corporation, the commercial vendor for sodium bisulfite (SBS) injection technology, the expected low concentrations of H_2SO_4 at FCPP, compared to coal-fired facilities in the Midwestern and Eastern states, suggests the application of reagent injection will not effectively reduce H_2SO_4 emissions from FCPP. Based on a recent PSD permit issued to the Coronado Generating Station in Arizona, the use of an ultra-low conversion catalyst (achieving no more than 0.5% SO_2 to SO_3 conversion) currently represents BACT.

In addition to the impact of SCR on H_2SO_4 emissions, the application of SCR reduces the energy efficiency of the facility by increasing parasitic load from the use of additional fans to overcome increased resistance created by SCR.

2. NGS

As described above, the use of LNB + SOFA for NO_X control results in potential increases in emissions of CO and VOC, and increased LOI of fly ash. Additionally, the impacts associated with SCR, *i.e.,* H_2SO_4 emissions increases, the limited efficacy of reagent injection for H_2SO_4 control, and energy impacts, also apply to NGS. NGS additionally identified another concern related to SCR resulting from the need for daily deliveries by tanker truck of anhydrous ammonia for the SCR system.

D. Factor 3: Existing Controls at the Facility

1. FCPP

Existing controls at FCPP are shown in Table 37.

TABLE 37—EXISTING AIR POLLUTION CONTROLS AT FCPP

	NO_X control	PM control	SO_2 control
Unit 1	none	Venturi Scrubber (VS)	VS.
Unit 2	LNB	VS—Lime	VS—Lime.
Unit 3	LNB	VS—Lime	VS—Lime.
Unit 4	LNB	Reverse Gas Fabric Filter (Baghouse)	Tray Tower Flue Gas Desulfurization (FGD).
Unit 5	LNB	Baghouse	Tray Tower FGD.

a. Existing NO_X Controls at FCCP

For the SCR control case, EPA conducted visibility modeling for FCPP (Table 21, Scenario E2) without the addition of LNB + OFA, whereas APS modeled an SCR control case assuming LNB + OFA could provide further control of NO_X emissions (Scenario E1). FCPP emits more NO_X than any other coal-fired power plant in the U.S. This is due to both the size of the facility and the high average concentration of NO_X emitted from each unit. Every unit at FCPP emits NO_X at a higher concentration than any other unit in Region IX.

The potential for successfully obtaining significant reductions of NO_X using only combustion controls, such as LNB, at this facility is limited. The fireboxes for Units 1, 2 and 3 are considered to be too small to effectively utilize modern approaches to low NO_X combustion which require separated overfire air. Unit 2 was retrofitted with a 1990-designed LNB and, according to APS, had considerable operational problems subsequent to this retrofit. Units 1 and 2 are identical boilers. Thus due to operational difficulties following the Unit 2 retrofit, APS did not attempt a retrofit on Unit 1, which continues to emit NO_X at a concentration of 0.8 lb/MMBtu. Due to their small size, EPA has determined that a retrofit of Units 1 and 2 with LNB and Unit 3 with LNB + OFA will not provide significant NO_X control.

Units 4 and 5 were originally designed and operated with cell burners. This type of combustion burner inherently creates more NO_X than conventional wall-fired burners. Although these burners were replaced in the 1980s, the design of a cell burner boiler limits the NO_X reduction that can be achieved with modern low NO_X combustion techniques. EPA has set different presumptive levels for the expected achievable NO_X reductions for cell burner boilers with combustion modifications due to this design limitation. Thus, the efficacy of LNB + OFA on Units 4 and 5 will also be limited by their inherent design. EPA is requesting comment on the potential efficacy of LNB + OFA on all Units at FCPP.

b. Existing PM Controls at FCCP

Units 1, 2, and 3 utilize venturi scrubbers for both PM and SO_2 control. These scrubbers operate at pressure drops less than 10 inches of water. Venturi scrubbers have not been installed for PM pollution control on any coal fired EGU in Region IX since the early 1970s. This was principally due to concerns over the ability of venturi scrubbers to continuously meet the 0.10 lb/MMBtu standard in a 1971 regulation. Fossil fuel fired boiler standards for coal fired units were revised for units built after 1978 and the PM limit was lowered to 0.03 lb/MMbtu. Most current coal fired boilers now use baghouses which are capable of meeting PM limits of about 0.01 to 0.012 lb/MMBtu (Method 5 front half PM measurement).

In Region IX, all other coal fired EGUs controlled by venturi scrubbers have been retrofit with new PM controls. Unit 1 at APS's Cholla power plant was retrofit with a baghouse in 2007, in order to meet a new 20% opacity standard established by the ADEQ. APS received an extended compliance schedule for meeting that opacity standard to allow for the installation of the new baghouse. Three units at the Nevada Energy Reid Gardner facility also have venturi scrubbers for PM control. These units are required by a consent decree between Nevada Energy, and Nevada Department of Environmental Protection and EPA, to install new baghouses in 2010. EPA is requesting comment on whether the existing controls on Units 1–3 at FCPP meet BART for PM.

2. NGS

Existing controls at NGS are shown in Table 38.

TABLE 38—EXISTING AIR POLLUTION CONTROLS AT NGS

	NO_X control	PM control	SO_2 control
Units 1–3	LNB + SOFA [29]	Hot-side ESP	Wet FGD

E. Factor 4: Remaining Useful Life of Facility

1. FCPP

The remaining useful life of the facility is often expressed in terms of the amortization period used to annualize the costs of control. In its analysis, APS used an amortization period of 20 years, anticipating that the remaining useful life of Units 1–5 is at least 20 years.

EPA is requesting comment on the use of this period of time for the remaining useful life of FCPP.

2. NGS

In its analysis, SRP used an amortization period of 20 years, anticipating that the remaining useful life of Units 1–3 is at least 20 years.

EPA is also requesting comment on the use of this period of time for the remaining useful life of NGS.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is not a ''significant regulatory action.'' Because this action does not propose or impose any requirements, the various statutes and Executive Orders that apply to rulemaking do not apply in this case. In addition, this notice covers two facilities. Any future rulemaking would be separate, one for each facility. Determinations of significance and applicability of any Executive Order or statute would depend upon the content of each individual rulemaking. Should EPA subsequently determine to pursue rulemaking and propose BART for these facilities, EPA will address the statutes and Executive Orders as applicable to those individual proposed actions.

Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of the following: tribal implications pursuant to Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000); environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997); energy effects pursuant to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001); Paperwork burdens pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501); or human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency will consider such comments during the development of any subsequent rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Particulate matter, Regional haze.

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

Dated: August 19, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–20826 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

[29] On November 20, 2008, EPA Region IX issued a PSD permit authorizing NGS to modify Units 1–3 with LNB + SOFA over 2009–2011.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0385; FRL–8948–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Santa Barbara County Air Pollution Control (SBCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve these local rules that are administrative and address changes for clarity and consistency under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 28, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0385, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SJVUAPCD Rule 1020, Definitions and SBCAPCD Rule 102, Definitions. In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 11, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–20805 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0079; FRL–8944–9]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from leaking components at industrial facilities such as petroleum refineries and chemical manufacturing plants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). At the same time, we are also approving a Negative Declaration and removing rules from the SIP.

DATES: Any comments on this proposal must arrive by September 28, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0079a, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: Rule 1173—Fugitive Emissions of Volatile Organic Compounds, Rule 465—Vacuum Producing Devices or Systems, Rule 466—Pumps and Compressors, 466.1—Valves and Flanges, and Rule 467—Pressure Relief Devices. In the Rules and Regulations section of this **Federal Register**, we are approving amendments to Rule 1173 and removing Rules 465, 466, 466.1, and 467 from the SIP in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 13, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–20828 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2009-0032]
[92210-1117-0000-B4]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Sonoran Population of Desert Tortoise (*Gopherus agasizzii*) as a Distinct Population Segment (DPS) With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90–day finding on a petition to list the Sonoran desert tortoise (*Gopherus agasizzii*) as a distinct population segment (DPS) under the Endangered Species Act of 1973, as amended, and designate critical habitat. On the basis of our review of the petition and information readily available in our files, we have determined that there is substantial information indicating that the Sonoran

desert tortoise may meet the criteria of discreteness and significance as defined by our policy on distinct vertebrate population segments. Further, we find that the petition presents substantial scientific or commercial information indicating that listing the Sonoran population of the desert tortoise may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the Sonoran population of the desert tortoise to determine if listing the population is warranted. To ensure that the status review of the Sonoran population of the desert tortoise is comprehensive, we are soliciting scientific and commercial data and other information regarding this population. At the conclusion of this review, we will issue a 12–month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat for the Sonoran population of the desert tortoise if we initiate a listing action.

DATES: We made the finding announced in this document on August 28, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before October 27, 2009.

ADDRESSES: You may submit information by one of the following methods:

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

• U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-R2-ES-2009-0032]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; by telephone 602-242-0210; or by facsimile 602-242-2513. Persons who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the status of the Sonoran population of the desert tortoise (Sonoran desert tortoise). We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Sonoran desert tortoise. We are seeking information regarding:

(1) The historical and current status and distribution of the Sonoran desert tortoise (particularly with respect to Mexico), its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) Information relating the importance of the Sonoran desert tortoise population to the species as a whole;

(3) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) the present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(4) Information about any ongoing conservation measures for, or threats to, the Sonoran desert tortoise and its habitat.

If we determine that listing the Sonoran desert tortoise is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the Sonoran desert tortoise. Therefore, with regard to areas within the geographical range currently occupied by the Sonoran desert tortoise, we also request data and information on what may constitute physical or biological features essential to the conservation of the Sonoran desert tortoise, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the Sonoran desert tortoise that are essential to its conservation. Please provide specific comments and information as to what, if any, critical habitat should be proposed for designation if the Sonoran desert tortoise is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the

Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Gardians and Western Watersheds Project (petitioners) requesting that the Sonoran population of the desert tortoise be listed under the Act as a distinct population segment (DPS), as threatened or endangered rangewide (in the United States and Mexico), and critical habitat be designated. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). The petition contained detailed information on the natural history, biology, current status, and distribution of the Sonoran population of the desert tortoise. It also contained information on what the petitioners reported as potential threats to the Sonoran population of the desert tortoise, such as livestock grazing, urbanization and development, mining, international border patrol activities, illegal collection, inadequacy of existing regulations, altered fire regimes, off-highway vehicle use, drought, and climate change. In a November 26, 2008, letter to the petitioners, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act was not warranted. We also stated that we intended to make our finding on whether the petition presented substantial information that the requested action may be warranted, to the maximum extent practicable within 90 days of receipt of the petition, according to the provisions of section 4(b)(3) of the Act.

Previous Federal Actions

Throughout this finding, we use ''Mojave'' to describe desert tortoise populations north and west of the Colorado River, which is consistent with the previous and current spelling of the common name in Federal actions that have addressed this population. We use ''Mohave'' in the geographic context to remain consistent with its reference by the U.S. Board of Geographic Names (e.g., Mohave Desert, Mohave County). In addition, while we do not currently recognize the Sonoran population of the desert tortoise as a unique taxonomic entity, for ease of reference, we refer to the Sonoran population of the desert tortoise as the ''Sonoran desert tortoise'' in this document.

On December 30, 1982, we published a notice of review which determined the desert tortoise throughout its range in the United States and Mexico to be a Category 2 Federal Candidate species (47 FR 58454); this was reaffirmed on September 18, 1985 (50 FR 37958). Category 2 status was granted to species for which information in our possession indicated that a proposed listing as threatened or endangered was possibly appropriate, but for which sufficient data were not available to make a determination of listing status under the Act. On April 2, 1990, we issued a final rule designating the Mojave population of the desert tortoise (occurring north and west of the Colorado River) as a threatened species under the Act (55 FR 12178; see final rule for a summary of previous actions regarding the Mojave population of the desert tortoise). Currently, the Mojave population of the desert tortoise is recognized as a DPS under the Act. As part of that rulemaking, we designated any desert tortoise from the Sonoran population as threatened when observed outside of its known range, due to similarity of appearance under section 4(a) of the Act.

On December 5, 1996, we published a rule that discontinued the practice of keeping a list of category 2 candidate species (61 FR 64481). Since that time, the Sonoran desert tortoise has had no Federal Endangered Species Act status.

Species Information

The desert tortoise is a member of the Testudinidae family (terrestrial tortoises) of turtles in the genus *Gopherus* (Rafinesque 1832), or gopher tortoises. Scientific nomenclature assigned to the desert tortoise has undergone a series of changes since its initial description by Cooper (1863) as *Xerobates agassizii*. The desert tortoise was also once known as *Scaptochelys agassizii* (Crother *et al.* 2008, p. 70). Further information is available on classification of the desert tortoise in Van Devender (2002b), Lamb and McLuckie (2002), and McCord (2002).

The desert tortoise is recognized by its gray to orange-brown, high, domed upper shell. The shell measures 8 to 15 inches (20 to 38 centimeters) in length (Service 2008, p. 4). Adult desert tortoises may weigh 8 to 15 pounds (3.6 to 6.8 kilograms) (Service 2008, p. 4). Hind limbs of the desert tortoise are stocky and elephantine in appearance while the forelimbs are paddle-shaped and used for digging (Brennan and Holycross 2006, p. 54). In the wild, desert tortoises have an average lifespan of 35 years (Germano 1994).

The Sonoran desert tortoise is closely associated with rocky bajadas (lower slopes of mountains) and hillsides, and, to a lesser extent, flat areas (including incised washes between or adjacent to flat terrain) (Riedle *et al.* 2008). Sonoran desert tortoises generally occur at elevations ranging from 510 to 5,300 feet (155 to 1,615 meters) (Arizona Game and Fish Department 2001, p. 4).

In the United States, the Sonoran desert tortoise occurs within Mohave desertscrub, Sonoran desertscrub, and semi-desert grassland habitat (Germano *et al.* 1994; Van Devender 2002a; Brennan and Holycross 2006, p. 54). In Mexico, the Sonoran desert tortoise occurs in Sonoran desertscrub and semi-desert grassland (Germano *et al.* 1994; Fritts and Jennings 1994; Bury *et al.* 2002; Van Devender 2002a; Edwards *et al.* 2009, p. 8). The Sonoran desert tortoise may also occasionally occur in the lower elevations of Madrean oak woodland (Germano *et al.* 1994; Fritts and Jennings 1994; Bury *et al.* 2002; Van Devender 2002a).

Primarily herbivores, Sonoran desert tortoises consume a variety of plant material in their diet (Van Devender *et al.* 2002).

Sonoran desert tortoises are largely inactive from mid-October to late February or early March when they overwinter in constructed burrows or rocky cavities or crevices (Averill-Murray 2000b). Sonoran desert tortoises tend to use or construct burrows differently, depending on habitat. Riedle *et al.* (2008) found that the availability of adequate shelter sites strongly influenced Sonoran desert tortoise densities.

Tortoise activity spikes in the spring, especially following average or above-average winter precipitation that enhances annual plant production (Averill-Murray 2000b). However, the peak activity for the Sonoran desert tortoises occurs at the onset of the monsoon (summer rainy season) in mid- to late-summer when annual and perennial plants reach peak abundance and availability, and water sources become more widely dispersed across the landscape (Averill-Murray 2000b). During the hot and dry late-spring/early-summer season, Sonoran desert tortoises are less active or may become entirely dormant until the onset of the monsoon (Averill-Murray 2000b).

The monsoon also marks the height of social interaction and reproductive behaviors for the Sonoran desert tortoise. During this time, female

Sonoran desert tortoises lay their eggs, with an average clutch size of 5 (Averill-Murray and Klug 2000). Hatchling Sonoran desert tortoises will emerge from the nest site (burrow) in late summer or they may overwinter, emerging the following spring (Wilson *et al.* 1999; Averill-Murray 2000b). Sonoran desert tortoises reach sexual maturity at approximately 10 to 12 years of age (Averill-Murray 2000b).

Desert tortoises are distributed from California, Nevada, Utah, and Arizona in the United States, south through the Mexican states of Sonora and Sinaloa. The specific distribution of desert tortoise is likely determined by habitat and climatic characteristics (e.g., vegetation community (food), soil and substrate characteristics (shelter), precipitation pattern (water availability)) within the appropriate elevation range. The distribution of the Sonoran desert tortoise in the United States is considered to be east and south of the Colorado River, extending south and east from northwestern Mohave County in Arizona (Germano *et al.* 1994; Van Devender 2002a, Brennan and Holycross 2006, p. 54), covering roughly the western portion of the state. The distribution in the United States is likely bounded to the northeast and east by habitat changes imposed by the Mogollon Rim. In Mexico, the distribution of the Sonoran desert tortoise extends from the International Border of Sonora and Arizona, south to the vicinity of Guaymas, north of the Yaqui River, in southern Sonora (Germano *et al.* 1994; Fritts and Jennings 1994; Bury *et al.* 2002; Van Devender 2002a; Edwards *et al.* 2009, pp. 7-8), covering approximately the western half of the state of Sonora from the Gulf of California coast east roughly to the transition to unsuitable woodland and conifer forest areas in the higher elevations of the Sierra Madre Occidental. The Mojave and Sinaloan populations of desert tortoises represent two additional populations of this species recognized in the literature (Lamb and McLuckie 2002). The Mojave population, listed as threatened in 1990, includes those populations that occur north and west of the Colorado River in southern California, southern Nevada, southwestern Utah, and extreme northwestern Arizona; and the Sinaloan population is considered to be generally distributed along and within the western face of the Sierra Madre Occidental of central Sonora south into the border region between Sonora and Sinaloa at the extreme southern end of the species' range (Lamb and McLuckie 2002). Genotypes (genetic makeup of an organism) differ significantly between populations (Lamb and McLuckie 2002).

Distinct Population Segment

Under section 3(15) of the Act, we may consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa. In determining whether an entity constitutes a DPS, and is therefore listable under the Act, we follow the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) (61 FR 4722; February 7, 1996). Under our DPS Policy, three elements are considered in a decision regarding the status of a possible DPS: (1) the discreteness of the population segment in relation to the remainder of the taxon; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., whether the population segment, when treated as if it were a species, is endangered or threatened) (61 FR 4722, February 7, 1996). The first two elements are used to determine if the population segments constitutes a valid DPS. If it does, then the third element is used to consider whether such DPS warrants listing. In this section, we will consider the first two criteria (discreteness and significance) to determine if the Sonoran desert tortoise may be a valid DPS (i.e., a valid listable entity). Our policy further recognizes it may be appropriate to assign different classifications (i.e. threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4721).

The petitioners requested we examine the Sonoran desert tortoise as a DPS. The information discussed below was presented by the petitioners, unless otherwise noted.

The petitioned DPS includes those populations that occur east and south of the Colorado River, south to the biogeographical boundary of the Yaqui River in southern Sonora, Mexico. In making this delineation for the petitioned DPS, the petitioners considered biogeographic isolation, ecological divergence, morphological and physiological characteristics, and genetic polymorphisms (genetic material occurring in multiple forms or configurations).

The petitioners discuss a population of desert tortoise with the ''Mojave'' genotype (i.e., having similar genetic characteristics to the those of the Mojave DPS of desert tortoise) which occurs in the Black Mountains of Mohave County, Arizona (isolated from the threatened Mojave DPS that occurs north and west of the Colorado River), and are seeking the inclusion of that population within the petitioned DPS because it does not currently have protection under the Act. We will evaluate this anomalous situation further in our 12–month finding.

Discreteness

Under the DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist (61 FR 4722, February 7, 1996).

Information Provided in the Petition on Discreteness

The petitioners claim that the Sonoran population is discrete from the Mojave and Sinaloan populations due to differences in habitat use, reproduction strategies, physical characteristics, and genotype. The petitioners claim that the Colorado (United States) and Yaqui (Sonora, Mexico) Rivers act as biogeographical barriers to movement of tortoises between the Mojave and Sonoran populations, and between the Sonoran and Sinaloan populations, respectively. In view of this biogeographical isolation, the petitioners claim that significant ecological divergence has occurred between the Mojave and Sonoran populations of desert tortoise, largely due to significant differences in geology, vegetation types, and precipitation cycles where the populations are distributed. Desert tortoises in the Mojave population are most dense in the intermountain valleys that have soil types favorable to the construction of large, deep burrows (Bury *et al.* 1994). However, Sonoran desert tortoises reach maximum densities in the rocky bajadas and hillsides of higher slope, with reduced densities in the intermountain valleys (Averill-Murray *et al.* 2002b). The petitioners state that differences in precipitation cycle have led to notable differences in seasonal activity patterns between desert tortoises that occur in the Sonoran and Mojave deserts. Information in our files confirms these assertions. Specifically, analyzing the genetic population structure among desert tortoise populations in Mexico,

Edwards *et al.* (2009, pp. 7-8) suggest the Sinaloan population of desert tortoise uses Sinaloan thornscrub and tropical deciduous forest habitats (which are created by higher precipitation levels). However, some level of gradation of the Sonoran and Sinaloan genotypes may occur in the vegetative transition zone between Plains of Sonora subdivision of Sonoran desertscrub and Sinaloan thornscrub habitats of central Sonora (Edwards *et al.* 2009, p. 8).

Differences in reproduction strategies between the Sonoran and Mojave populations of desert tortoises were also discussed in the petition. In the Mojave population of desert tortoises, females lay up to three clutches of eggs per year with larger clutch sizes, earlier in the year (April to mid-July) while those in the Sonoran population lay one clutch per year of smaller size, later in the year (June through August) (Wallis *et al.* 1999; Averill-Murray *et al.* 2002a). These differences led Averill-Murray (2002b) and Henen (1997) to hypothesize that Sonoran desert tortoises invest all reproductive effort into a single clutch which hatches at the peak of forage and water availability and abundance, whereas desert tortoises in the Mojave population (maturing at younger ages and at smaller body sizes), have higher clutch numbers to account for higher mortality. Comparative reproduction strategies of the Sinaloan population of the desert tortoise were not discussed in the petition.

The petitioners claim morphological and physiological characteristics, in particular, shell characteristics, differ between the Sonoran and Mojave populations of desert tortoises. Germano (1993) found that desert tortoise shells in the Sonoran population are narrower than those in the Mojave population, were less domed, and possessed shorter gular shields (plates projecting forward from the lower shell). Desert tortoises in the Sonoran population also have a smaller plastron (lower shell) and a broader carapace (upper shell) (McLuckie *et al.* 1999). The petitioners did not provide information on the potential differences in morphological and physiological characters between the Sonoran and Sinaloan populations of desert tortoises.

Lastly, the petitioners rely on genetic polymorphisms (that is, genetic material occurring in multiple forms) as a primary basis to consider the Mojave, Sonoran, and Sinaloan populations of desert tortoises as evolutionarily significant units. The Mojave population of desert tortoise exhibits three related genotypes but the Sonoran desert tortoise possesses a single genotype that is closely associated with Arizona upland and lower Colorado River subdivisions of Sonoran desertscrub habitat where the species is generally found (Lamb *et al.* 1989; Lamb and McLuckie 2002). Lamb and McLuckie (2002) suggest that regional inundation of the inland area from Yuma, Arizona, north to the Nevada border during the Miocene Epoch correlates with a single maternal ancestor of the Mojave population of desert tortoises, which would have presented significant isolation long enough to allow such genetic divergence between these two populations.

Evaluation of Discreteness

The population of desert tortoises in the Black Mountains of Mohave County, Arizona, which possess a uniquely Mojavean genotype, present an anomaly in the argument for genetic divergence as a result of regional inundation and subsequent isolation. McLuckie *et al.* (1999) suggest three possible hypotheses that may have led to the occurrence of the Mojave genotype east of the Colorado River: (1) active dispersal from north of the Miocene Epoch inundation; (2) river meander and subsequent geomorphological features assisted in allowing tortoises to cross the river over time; and (3) aboriginal human transport across the river for food stock, ritualistic or ceremonial use, or for medicinal uses which may have resulted in released animals or escapes.

The genetic differentiation between the entire Mojave and Sonoran populations of the desert tortoise has led some researchers to hypothesize that the two populations may represent different species entirely (Berry *et al.* 2002; Murphy *et al.* 2007). The Sinaloan population of desert tortoise, has been documented to have a 4.2 percent divergence in genotype from the Sonoran desert tortoise, and a 5.1 percent divergence in genotype from the Mojave population of desert tortoise (Lamb and McLuckie 2002). Lamb and McLuckie (2002) stated, ''Given their geographic distribution, genealogical depth, and concordant suite of characters, the Mohave, Sonoran, and Sinaloan tortoise assemblages clearly qualify as [evolutionarily significant units].''

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). On the basis of our review, we find that the petition provided substantial information indicating that the Sonoran population of the desert tortoise as it occurs east and south of the Colorado River, south to the Yaqui River, in Sonora, Mexico, may be discrete from the Mojave and Sinaloan desert tortoise populations. We base this conclusion on ecological (habitat use), physiological (reproductive capacity), morphological (shell dimensions), and behavioral (seasonal activity patterns) differences that are further supported by analysis of genetic polymorphisms that concluded significant divergence has occurred among the Mojave, Sonoran, and Sinaloan populations of the desert tortoise over time.

Significance

Under our DPS Policy, in addition to our consideration that a population segment is discrete, we consider its biological and ecological significance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) evidence of the persistence of the discrete population segment in an ecological setting that is unique or unusual for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4721; February 7, 1996).

Information Provided in the Petition on Significance

The current range of the Sonoran desert tortoise, as described in the discussion above pertaining to discreteness, represents several hundred miles or kilometers of occupied habitat spanning across an International Border. The petition contends that this population segment is confined by two large perennial rivers; the Colorado River in its northern periphery, which separates the Mojave and Sonoran populations of desert tortoises, and the Yaqui River at its southern periphery, which separates the Sonoran and Sinaloan populations of the desert tortoise. These two rivers represent significant biogeographical barriers to genetic exchange between adjacent population segments and, therefore, preclude recolonization of this expanse of habitat from adjacent populations should the Sonoran desert tortoise become extirpated. As a result, the loss of the Sonoran desert tortoise would constitute a significant gap of several hundred miles or kilometers in the range between the Mojave and Sinaloan populations of desert tortoises.

Evaluation of Significance

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). On the basis of our review, we find that the petition provided substantial information indicating that the Sonoran desert tortoise may be significant to the continued existence of the taxon. We base this conclusion on the large geographic range of the species, which may be significant to the taxon as a whole, a gap of several hundred miles or kilometers that would result from the loss of the Sonoran population, which would effectively bisect the species' range, and the genetic divergence between the three populations. These factors indicate that the loss of the Sonoran population may result in a significant gap in the range of the taxon that could not be filled over time due to presence of biogeographical barriers to movement.

DPS Conclusion

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). In a 90–day finding, the question is whether a petition presents substantial information that the petitioned action may be warranted. Based on our review, we find that the petition, supported by information in our files, presents substantial scientific or commercial information to demonstrate that the Sonoran population of desert tortoise may be discrete from the Mojave and Sinaloan populations and that the Sonoran population may be significant to the taxon as a whole. As a result, we have determined that the Sonoran population of desert tortoise may be a DPS. Thus, the Sonoran population of desert tortoise may be a listable entity under the Act.

Five-Factor Evaluation

We next evaluated the level of threat to the potential DPS based on the five listing factors established by the Act. We thus proceeded with an evaluation of information presented in the petition, as well as information in our files, to determine whether there is substantial scientific or commercial information indicating that listing this population may be warranted.

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species, subspecies, or distinct population segment of vertebrate taxa may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the Sonoran desert tortoise, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. The information discussed below was presented by the petitioners, unless otherwise noted.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition states that habitat occupied by the Sonoran desert tortoise is threatened by livestock grazing, urbanization and development, mining, and international border patrol activities.

The petitioners claim that livestock grazing in occupied habitat adversely affects the Sonoran desert tortoise in a number of ways including competition for forage, vegetative trampling, alteration of plant community structure, introducing or enhancing the establishment of nonnative plant species, altering fire ecology, damaging burrows and cover sites, and altering tortoise behavior (Bostick 1990; Fleischner 1994; Oldemyer 1994; Averill-Murray 2000b; Kazmaier *et al.* 2001; Boarman 2002; Esque *et al.* 2002). Over 60 percent of habitat occupied by the Sonoran desert tortoise occurs on federally managed land, the majority of that on lands managed by the U.S. Bureau of Land Management (BLM). The petitioners claim that on BLM land livestock grazing occurs on 78 percent (on 273 allotments) of potentially occupied habitats for the Sonoran desert tortoise. The petitioners also state that on U.S. Forest Service lands, livestock grazing occurs on 86 percent of potentially occupied habitat for the Sonoran desert tortoise. The percentage of Sonoran desert tortoise habitat used for livestock grazing on State, private, or tribal lands is not identified in the petition.

The petitioners claim that the Sonoran desert tortoise and its habitat are harmed by urbanization and development in approximately 29 percent of its occupied range in the United States. The petitioners state that urbanization and development threaten the Sonoran desert tortoise and its habitat. Tortoise habitat within developing areas may be permanently lost or degraded, while patterns of development may fragment habitat, restrict gene flow, and hamper recolonization of formerly occupied habitat.

The human population in Arizona increased by 394 percent from 1960 to 2000; Arizona is the second-fastest growing State in terms of human population (Social Science Data Analysis Network 2000, p. 1). In particular, certain counties with habitat occupied by the Sonoran desert tortoise have experienced explosive human population growth over this timeframe: Maricopa (463 percent); Yavapai (579 percent); and Mohave (2,004 percent) (Social Science Data Analysis Network 2000). The petition did not specifically discuss the threat of urbanization and development in occupied habitat for the Sonoran desert tortoise in Mexico; however, information in our files suggests urbanization and development might affect the Sonoran desert tortoise there as well. Information in our files indicates that Mexico's human population grew 700 percent from 1910 to 2000 (Miller *et al.* 2005, p. 60). Demand from a growing human population has spurred the need for more agricultural development, according to information from our files (Contreras Balderas and Lozano 1994, p. 384; va Linda *et al.* 1997, p. 316).

The petitioners provided evidence that mining activities may also be a threat to the Sonoran desert tortoise and its habitat. Mining activities occur on Federal and private lands but are stated to be the most pervasive on BLM lands, with 4,670 mining claims occurring in habitat occupied by the Sonoran desert tortoise. As of 2003, 1,096 of these claims remained active and 3,574 had been closed, according to the petitioners. The petitioners state that mining activities (both small- and large-scale) adversely affect the Sonoran desert tortoise through habitat fragmentation, loss, and degradation; introduction of contaminants and fugitive dust (dust that cannot be attributed to a single point of origin, such as a smokestack); off-road travel associated with mining activities or roads created for said activities; and entrapment of tortoises in mine spoil

heaps (Averill-Murray 2000b; Woodman *et al.* 2001, 2004; Boarman 2002).

Occupied habitat for the Sonoran desert tortoise occurs along the International Border in Yuma, Pima, and Santa Cruz counties in Arizona. The petitioners state that patrol activities on the international border present threats to the Sonoran desert tortoise and its habitat. Specifically, the petitioners state that border patrol activities threaten the Sonoran desert tortoise and its habitat through road mortality, and loss or degradation of occupied habitat. In particular, the petitioners claim that the recently constructed border fence fragments the habitat of Sonoran desert tortoise populations in Mexico and the United States, and also directly and indirectly threatens the Sonoran desert tortoise habitat from construction and maintenance activities associated with the border fence.

Evaluation of Information

In consideration of the threats summarized above and discussed in the petition, we find that the petition provides substantial information that listing the Sonoran desert tortoise due to the present or threatened destruction, modification, or curtailment of its habitat or range may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition claims that the Sonoran desert tortoise is threatened by poaching, illegal collection for use as pets, shooting, and vandalism (physical harassment or disturbance of the animals) throughout its range in the United States and Mexico. Illegal collection of desert tortoises for food, for commercial trade, and as pets has been documented (Fritts and Jennings 1994, Averill-Murray 2000b; Bury *et al.* 2002). Information in our files suggests that the simple act of handling a Sonoran desert tortoise may cause an individual tortoise to void the contents of its bladder in defense. This loss of water may jeopardize its life (Averill-Murray 2002, p. 434; Boarman 2002). Shooting and vandalism of Sonoran desert tortoises has been reported in Howland and Rorabaugh (2002) and Woodman *et al.* (2002).

Evaluation of Information

In our evaluation of the petition, we find that the petitioners provided substantial information that listing the Sonoran desert tortoise due to overutilization for commercial, recreational, scientific, or educational purposes may be warranted.

C. Disease or Predation

Information Provided in the Petition

The petitioners cite upper respiratory tract disease (URTD) as a threat to the Sonoran desert tortoise and reference the significant threat URTD is, and has been, for the Mojave population; a primary reason that population was listed as threatened in 1990. This disease is irreversible and fatal once acquired. Two species of *Mycoplasma* (a genus of small parasitic bacteria that lack cell walls and can survive without oxygen), *Mycoplasma agassizii* and *M. testudineum*, are known to cause URTD in desert tortoises and are easily transmitted between individual tortoises from casual contact (Brown *et al.* 1999; Wendland *et al.* 2007). Appendix 2 of the petition summarizes disease incidence reports within Sonoran desert tortoise populations. The petitioners state that Sonoran desert tortoises have tested positive for one or both of these antibodies at Saguaro National Park, and in the Ragged Top, Hualapai, Harcuvar, Little Shipp, and Sand Tank mountains among other locations. Dickinson *et al.* (2002) suspected that URTD may not be as serious a threat to the Sonoran population of desert tortoises as it has been for the Mojave population because tortoises in the Sonoran population do not occur in as high of densities as those in the Mojave and because Sonoran populations are more isolated from one another. In addition, the Sonoran population can take advantage of a bimodal precipitation cycle (two distinct rainy seasons). This offers additional opportunities for rehydration, lessening physiological stress, and, therefore, lessening susceptibility to the disease.

In addition to URTD, cutaneous dyskeratosis (shell disease) has been observed in numerous Sonoran desert populations (Appendix 2 of the petition). The petitioners claim that, while no serious deleterious effects of the disease have been observed in affected tortoises, Homer *et al.* (2001) indicated higher mortality rates in some populations where the disease has been documented. Lastly, the petitioners state that additional pathogens have been noted in free-ranging Sonoran desert tortoises including *Pasteurella* sp., *Streptococcus* sp., *Staphylococcus* sp., herpesvirus, *Pseudomonas* sp., and *Salmonella* sp. and that these diseases may be correlated with physiological stress induced by habitat destruction and modification discussed above in Factor A (Pettan-Brewer *et al.* 1996; Dickinson *et al.* 2001).

There are numerous natural predators of the Sonoran desert tortoise, including the jaguar (*Panthera onca*) and mountain lion (*Felis concolor*) (the only predators known to be able to break an adult tortoise's shell), coyote (*Canis latrans*), common raven (*Corvus corax*), kit fox (*Vulpes macrotis*), bobcat (*Lynx rufus*), gray fox (*Urocyon cinereoargenteus*), badger (*Taxidea taxus*), Gila monster (*Heloderma suspectum*), golden eagle (*Aquila chrysaetos*) and other raptors, greater roadrunner (*Geococcyx californianus*), coachwhip (*Coluber flagellum*), gophersnake (*Pituophis melanoleucus*), and kingsnake (*Lampropeltis getula*) (Averill-Murray *et al.* 2002b). The petitioners state that urban encroachment within the distribution of the Sonoran desert tortoise has created, or threatens to create, elevated levels of unnatural predation, mainly by ravens, coyotes, and feral domestic dogs. As explained below, petitioners claim these predators have benefitted, or been ''subsidized,'' by human activities within the wild-urban interface areas.

Ravens can effectively prey on juvenile tortoises because their shells have not yet hardened (particularly the plastron) and the ravens are able to pierce the shells (Boarman 2002). Ravens, noted as a significant threat to desert tortoises in the Mojave population, have increased their numbers 14-fold within Arizona (Appendix 3 of the petition; Boarman and Kristen 2008). The petitioners suggest that increases in the number of ravens within the Sonoran desert may be linked to increased availability of food and water resources at landfills, rural and urban developments, along heavily traveled roads, and at agricultural areas in particular dairies. These land uses were also suspected by the petitioners to result in increased predation of Sonoran desert tortoises from coyotes and feral dogs; the latter being documented at 4 of 17 Sonoran desert tortoise study plots (Appendix 1 of the petition).

Evaluation of Information

In our evaluation of the petition, we find that the petitioners provide substantial information that listing the Sonoran desert tortoise due to the incidence of disease and high predation levels may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

In 1988, the Sonoran and Mojave populations of the desert tortoise were closed to collection in Arizona by the Arizona Game and Fish Department, except as authorized under their scientific collecting permit program. This status means that it is illegal to kill or capture desert tortoises from the wild (unless under a special permit). Possession for trade, sale, or other commercial purposes is prohibited (Howland and Rorabaugh 2002). Prior to 1988, the Arizona Game and Fish Department allowed the possession of one lawfully obtained tortoise per person, which likely contributed to their popularity as pets (Averill-Murray 2000b). The Arizona Game and Fish Department has developed a draft Comprehensive Wildlife Conservation Strategy: 2005-2015, in which the Sonoran desert tortoise has been identified as a Species of Greatest Conservation Need for which immediate conservation is necessary (Tier 1b under the Vulnerable category) (Arizona Game and Fish Department 2006a, pp. 485-487; 2006b, p. 4). The Arizona Game and Fish Department has been a significant contributor in the conservation and management of the Sonoran desert tortoise, producing many documents for public education, administering an adoption program for individual Sonoran desert tortoises that cannot be returned to the wild, and conducting or funding monitoring and research on wild Sonoran desert tortoise populations (Arizona Game and Fish Department 1990, 1996, 2000, and 2004; Arizona Interagency Desert Tortoise Team 1996, 1997, and 2000; Averill-Murray 2000).

The Sonoran desert tortoise does not currently have special status under the Endangered Species Act. The desert tortoise is included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and a permit is required for the export of tortoises (Howland and Rorabaugh 2002).

Several Federal agencies have management authority for Sonoran desert tortoise habitat, including the BLM, the National Park Service, the U.S. Forest Service, the U.S. Bureau of Reclamation, the U.S. Department of Defense, and the Service. Significant land use protections are afforded the Sonoran desert tortoise on National Park Service lands and U.S. Fish and Wildlife Service refuges, in particular where they occur adjacent to U.S. Department of Defense lands such as the Barry M. Goldwater Range and the Yuma Proving Grounds, because of the relatively large amounts of primarily undisturbed habitat within the boundary zone between these managed lands.

The Sonoran desert tortoise is considered a ''sensitive species'' by the BLM. In 1988, the BLM adopted a rangewide management strategy for desert tortoise habitat (BLM 1988; Howland and Rorabaugh 2002). Subsequently, habitat for the Mojave and Sonoran populations of desert tortoise was categorized into one of three categories: Category one being the highest quality; Category three, the lowest. In 1991, the BLM, the Service, and state wildlife agencies (Arizona, Nevada, Utah, and California) developed a policy whereby persons who disturbed occupied habitat were required to pay monetary compensation (usually in the form of land acquisition). The monetary compensation was weighted using the BLM's habitat categorization criteria. Mitigation ratios ranged from 1:1 (acres protected: acres disturbed) for category three habitat, to 6:1 for category one habitat (Howland and Rorabaugh 2002). The petitioners also cite numerous reports, management strategies, and formal actions taken by the BLM with regard to management of the Sonoran desert tortoise, but conclude that, based on their review, these measures may be insufficient to adequately protect the Sonoran desert tortoise on BLM lands.

The Sonoran desert tortoise occurs on both the Tonto and Coronado National Forests. The Sonoran desert tortoise is on the Regional Forester's Sensitive Species List, which means it is considered in land-management decisions. The petitioners claim that, despite this recognition, threats to the Sonoran desert tortoise continue to occur within these National Forests and that potential protections, such as those afforded under the National Environmental Policy Act (42 U.S.C. 4321-4327), have failed to come to fruition, particularly with respect to livestock grazing (see Table 6, p. 55 of the petition).

There are currently 10 Native American reservations within Arizona that contain known or potential Sonoran desert tortoise habitat: Fort Mojave Indian Tribe, Colorado River Indian Tribe, Hualapai Tribe, Fort McDowell Yavapai Nation, Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Ak Chin, Tohono O'odham Nation, Pasqua Yaqui Tribe, and San Carlos Apache Tribe, although the status of populations on these reservations has not been established (Averill-Murray 2000b). The petitioners state that historically no reservations conducted surveys or performed active management for the Sonoran desert tortoise or its habitat. However, the petitioners note that recently the Tohono O'odham Nation developed the Wildlife and Vegetation Management Program and now has oversight over the desert tortoise on their land. This program authorizes surveys for Sonoran desert tortoise and the establishment of monitoring plots, but does not provide funding to implement these activities (Averill-Murray 2000b). The petitioners also suggest that many Native American tribes have a historical relationship with desert tortoises that is of important cultural and spiritual significance, which may provide added protection of the species on their lands (Nabhan 2002).

On State lands, the Arizona State Land Department manages occupied Sonoran desert tortoise habitat, according to the petition, with the goal of ''maximizing revenue to benefit education, health and penal institutions,'' and works cooperatively with the Arizona Game and Fish Department in management of Sonoran desert tortoises (Averill-Murray 2000b). Specifically, the petitioners state that the Arizona Game and Fish Department ''recommends mitigation measures for tortoise impacts for which it is consulted ... (and) comments on State land projects related to urban planning, land sales and exchanges, rights of way, and commercial leases,'' but these recommendations are not binding (Averill-Murray 2000b).

The petition also notes that Pima County has considered the Sonoran desert tortoise in its habitat conservation planning by acknowledging that populations are decreasing in Pima County. However, Pima County offers few specific protections for the species.

In Mexico, the Secretaria de Deserrollo Social lists both the Sonoran and Sinaloan populations of the desert tortoise as threatened (Secretaria de Deserrollo 2008, p. 99). Populations of the Sonoran desert tortoise in Mexico are reportedly in decline. Factors believed to contribute to this decline are related to lack of resources for enforcement and include habitat destruction or modification, capture of tortoises for food or pets, and predation by feral dogs (particularly in areas adjacent to settlements or urban areas) (Fritts and Jennings 1994; Bury *et al.* 2002).

In the United States, as part of a multi-agency collaborative project, the Arizona Interagency Desert Tortoise

Team was formed in 1985 to coordinate research and management of Sonoran desert tortoise populations in Arizona. Participating agencies in the Arizona Interagency Desert Tortoise Team include the Arizona Game and Fish Department, Arizona State Lands Department, the U.S. Forest Service, the BLM, the U.S. Bureau of Reclamation, the U.S. Bureau of Indian Affairs, the Service, the National Park Service, the U.S. Geological Survey, and several U.S. Department of Defense military reservations (Arizona Interagency Desert Tortoise Team 1996). Since its inception, the Arizona Interagency Desert Tortoise Team has collaborated in the development of numerous publically available documents addressing conservation of the Sonoran desert tortoise (Averill-Murray 2000a, 2000b; Arizona Game and Fish Department 2007a, 2007b; Arizona Interagency Desert Tortoise Team 2008).

The Arizona Interagency Desert Tortoise Team's Memorandum of Understanding, signed in 1995, established specific objectives for the team including: (1) ensuring the survival of the species; (2) preventing loss of the species; and (3) improving the quality of Sonoran desert tortoise habitat in Arizona, with the team to function as an advocate for the Sonoran desert tortoise (Arizona Interagency Desert Tortoise Team 1996). A management plan for the Sonoran desert tortoise completed in 1996 called for improved monitoring protocols, the implementation of threat-minimization activities, and the creation of Sonoran Desert Management Areas for conservation of the Sonoran desert tortoise (Arizona Interagency Desert Tortoise Team 1996). However, the petitioners claim that the 1996 plan: (1) lacked meaningful goals and objectives; (2) lacked political willpower without legal protection for the Sonoran desert tortoise; (3) failed to designate Sonoran Desert Management Areas; and (4) was poorly funded, which hampered implementation of threat minimization activities outlined in the plan. These shortcomings in the 1996 plan were collectively recognized by the Arizona Interagency Desert Tortoise Team members who in 2002 reconvened to initiate the development of a revised plan in the form of a State Conservation Agreement for the Sonoran desert tortoise. The State Conservation Agreement, when finalized, is expected to: (1) mandate more practical conservation recommendations; (2) garner a higher level of commitment and responsibility from its signatories; (3) set measurable goals and objectives; and (4) establish Key Habitat Areas on public lands where management strategies for the Sonoran desert tortoise will focus.

Evaluation of Information

There are significant protections in place with respect to management for the Sonoran desert tortoise on lands managed by the Service, National Park Service, and to a lesser degree, lands managed by the U.S. Department of Defense. The Arizona Interagency Desert Tortoise Team has also provided technical expertise and guided habitat-management decisions of participating agencies with marginal success. Despite these protections, we conclude that the petition and information in our files present substantial information that existing regulatory mechanisms may be inadequate to prevent declines of the Sonoran desert tortoise, particularly on lands managed as ''multiple-use'' such as U.S. Forest Service, BLM, and the Arizona State Land Department, where threats continue to occur. An additional concern is the limited implementation of recommendations of the Arizona Interagency Desert Tortoise Team's 1996 management plan.

In our evaluation of the petition, we find that the petitioners provided substantial information that listing the Sonoran desert tortoise due to the inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petitioners state that off-highway vehicle (OHV) use, alteration of fire frequency in the Sonoran Desert resulting from nonnative plant invasion, mortality on roads, drought, and climate change are among additional threats to the Sonoran desert tortoise. The petitioners claim that OHV use has increased significantly on public lands within the distribution of the Sonoran desert tortoise, especially on U.S. Forest Service and BLM lands, and particularly in incised washes, which are important habitat for the Sonoran desert tortoise (Averill-Murray 2000b; Averill-Murray and Averill-Murray 2002; Riedle *et al.* 2008). We have information in our files that indicates the use of OHVs has grown considerably in Arizona. For example, as of 2007, 385,000 OHVs were registered in Arizona (a 350-percent increase since 1998) and 1.7 million people (29 percent of Arizona's population) engaged in off-road activity from 2005-2007 (Sacco 2007). Over half of OHV users reported that merely driving off-road was their primary activity, versus using the OHV for the purpose of seeking a destination to hunt, fish, or hike (Sacco 2007). Specific threats cited by the petitioners to the Sonoran desert tortoise or its habitat from OHV use include crushing tortoises, collapsing occupied and unoccupied burrows, changes in plant abundance and species composition, reduced habitat connectivity, soil compaction, soil erosion, reduced water infiltration, higher soil temperatures, and increased fire-starts (Boarman 2002; Ouren *et al.* 2007, pp. 6-7, 11, 16). The petitioners further claims that OHV use causes destruction of cryptogamic soils, which are soils with crusts formed by an association of algae, mosses, and fungi, which stabilize desert soil, retain moisture, and protect germinating seeds (Boarman 2002, pp. 46-47; Ouren *et al.* 2007, pp. 7-8).

Nonnative plant species such as Mediterranean splitgrass (*Schismus barbatus*), red brome (*Brombus rubens*), and African buffelgrass (*Pennisetum cilare*) have significantly degraded Sonoran desert tortoise habitat by out-competing more nutritional, native plant species and altering the frequency and magnitude of wildfires in many areas within its distribution (Howland and Rorabaugh 2002). The petitioners state that in addition to injury and mortality of Sonoran desert tortoises, wildfire within occupied habitat is expected to result in the complete conversion of desertscrub to grasslands at higher elevations and to barren landscapes at lower elevations (Esque *et al.* 2002). *Pennisetum cilare* poses unique problems for the Sonoran desert tortoise in Sonora, Mexico, because Sonoran desertscrub is actively cleared in favor of planting *P. cilare* as forage for livestock; *P. cilare* disperses naturally from these sites into adjacent habitat where it self-perpetuates, and is ''likely to dominate the entire area'' (Bury *et al.* 2002).

The petitioners cite several adverse effects to the Sonoran desert tortoise from roads. Among these threats were direct mortality, injury, facilitation of increased raven populations, increased roadside foraging by tortoises (as a result of increased plant growth from precipitation runoff), population fragmentation, and contamination of roadside habitat (Homer *et al.* 2001; Boarman 2002). Boarman and Kristin (2008, Appendix 3 of the petition) states that roads are one of the most prevalent threats in the study plots they reviewed.

Lastly, the petitioners claim that drought and climate change pose additional threats to the Sonoran desert tortoise. Drought increases the

physiological stress of desert tortoises and reduces reproductive rates within populations because of reduced forage quality and abundance (Averill-Murray and Klug 2000). The petitioners also state that the effects of drought can act synergistically with other threats to the Sonoran desert tortoise such as disease and habitat destruction or modification. Increased magnitude and frequency of drought is expected to occur as a result of climate change. Weiss and Overpeck (2005) predict that the Sonoran Desert may be displaced in the south by hotter, drier habitats and may expand to the north and to higher elevations, displacing cooler, drier habitats. In our review of available files, we find that Seagar *et al.* (2007, pp. 1181-1184) analyzed 19 different computer models of differing variables to estimate the future climatology of the southwestern United States and northern Mexico in response to predictions of changing climatic patterns. All but one of the 19 models predicted a drying trend within the Southwest; one predicted a trend toward a wetter climate (Seagar *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models and all but three predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021-2040 (Seagar *et al.* 2007, p. 1181).

Evaluation of Information

In consideration of the above, we find that the petition and information in our files provide substantial information to indicate that OHV use, altered fire regimes, roads, and effects from prolonged drought, exacerbated by climate change, may be threats to the Sonoran desert tortoise.

Finding

On the basis of our determination under section 4 of the Act and our evaluation of the five factors, we have determined that the petition presents substantial information indicating that listing the Sonoran population of desert tortoise may be warranted.

The petitioners presented substantial information indicating that the Sonoran population of desert tortoise may be discrete and significant and, therefore, may be a listable entity (DPS) under the Act. Further, the petitioners presented substantial information that the Sonoran population of desert tortoise may be threatened by Factors A through E throughout the entire range, with the exception of Factor C where the petitioners did not provide information on disease or predation in Mexico, nor did we have information in our files on disease or predation of the Sonoran desert tortoise in Mexico. Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the Sonoran population of desert tortoise throughout its range in the United States and Mexico as a DPS may be warranted due to current and future threats presented in our discussion of the five listing factors. As such, we are initiating a status review to determine whether listing the Sonoran desert tortoise under the Act is warranted. We will issue a 12–month finding as to whether any of the petitioned actions are warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Sonoran desert tortoise, particularly with respect to its status and threats in Mexico.

The ''substantial information'' standard for a 90–day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioners requested that critical habitat be designated for this DPS. If we determine in our 12–month finding that listing the Sonoran population of desert tortoise is warranted, we will address the designation of critical habitat to the maximum extent prudent and determinable at the time of the proposed rulemaking.

References Cited

A complete list of all references cited is available, upon request, from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2009.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–20835 Filed 8–27–09; 8:45 am]

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Notices

Federal Register
Vol. 74, No. 166
Friday, August 28, 2009

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.

VALLES CALDERA TRUST

Notice of Intent To Prepare an Environmental Impact Statement for a Public Use and Access Plan

AGENCY: Valles Caldera Trust.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

Authority: The National Environmental Policy Act of 1969 (NEPA), CEQ Regulations at 40 CFR parts 1500 through 1508, The Valles Caldera Preservation Act, Public Law 106–248, NEPA Procedures for the Valles Caldera National Preserve, 68 CFR 42460.

SUMMARY: The Valles Caldera Trust (the Trust) a wholly owned government corporation empowered to provide management and administrative services for the Valles Caldera National Preserve (the Preserve) intends to prepare an Environmental Impact Statement (EIS) to analyze and disclose the potential impacts of a proposed stewardship action to develop facilities, infrastructure, and programs to provide public access to, and use of, the Preserve for recreation, education, scientific, commercial and other purposes; from this point forward referred to as *public access and use.* The proposal will address six elements associated with public access and use:

1. Access—How do you enter the Preserve? After entering, where can you go and how do you get there?

2. Capacity—How many visitors can be accommodated on the Preserve on an annual, seasonal, or daily basis?

3. Activities—What types of activities and programs will be available?

4. Development—What types of facilities and infrastructure should be developed? At what scale should development occur and where should it be located?

5. Financing—What are the capital investment requirements for various levels of development? What are the annual operating costs? How much of the annual operating costs can be recovered through revenues generated by programs and activities?

6. Values—What do we value most about the Preserve? How may those values be affected by development?

All action alternatives will consider the location and construction of a visitor and interpretive center as the main point of access to the Preserve. The visitor and interpretive center would include connected ancillary facilities and infrastructure such as parking, interpretive trails and overlooks, and motorized access onto the Preserve. Programmatic direction to guide or prescribe the development of future programs facilities, and infrastructure facilities in support of public access and use will also be considered. The scale and location of development will vary between the alternatives.

The construction of the visitor and interpretive center including the connected ancillary facilities and infrastructure would be scheduled following an implementing decision; approximately 12–18 months following the publication of this notice. Programmatic direction would describe capacities and types of future visitor programs, and criteria for determining scale and location of future ancillary facilities. The actual construction of ancillary facilities such as campgrounds, cabins, lodging, additional parking, trails, picnic areas, restroom facilities, or other amenities developed in the Preserve's interior may require additional site-specific analysis compliant with NEPA.

DATES: This scoping process will culminate in the preparation of a draft EIS which will be made available for public comment. To ensure that the Trust has an opportunity to fully consider public comments in the development of the alternatives and determining the scope of the analysis and to facilitate the prompt preparation of the draft EIS, comments regarding the proposed stewardship action, Public Access and Use, are requested on or before October 15, 2009, 4:30 p.m. MDT.

Two public meetings are currently scheduled:

Monday, September 14, 2009, 5:30–8 p.m., Hilton Garden Inn, 5320 San Antonio Dr., NE., Albuquerque, New Mexico.

Tuesday, September 15, 2009, 5:30–8 p.m., Santa Fe Community College, 6401 S Richards Ave., Santa Fe, New Mexico.

At least one additional meeting will be scheduled at the Trust's administrative offices located at 18161 State Highway 4, Jemez Springs, New Mexico. The date for this meeting is to be determined.

To receive future notices regarding planning and decision making for public use and access, including the times and locations of public meetings, subscribe to the Trust's user maintained mailing list. To subscribe, access our Web site, *http://www.vallescaldera.gov,* and select the ''Mailing List'' tab from the upper left corner of the home page. You will be asked to select one or more topics of interest. Check ''Project Planning and Decisions'' to receive updates on this planning effort.

ADDRESSES: You may submit comments on public access and use planning by any of the following methods:

E-mail: comments@vallescaldera.gov; include Public Access and Use as the subject.

Agency Web site: An interactive Web site for public access and use planning is active. Simply visit our homepage at *http://www.vallescaldera.gov* and select the link provided or type in the complete URL: *http://www.vallescaldera.gov/nepa/pages/introduction.aspx?id=096afd15-f2e5-4df0-84df-46151a07be62*.

Surface Mail: The Valles Caldera Trust, Attn: Public Access and Use, P.O.B. 359, Jemez Springs, NM 87025.

Hand Delivery/Courier: Valles Caldera Trust, 18161 State Highway 4, Jemez Springs, New Mexico.

FOR FURTHER INFORMATION CONTACT: Contact Marie E. Rodriguez, Natural Resource Coordinator at *mrodriguez@vallescaldera.gov,* or 505/661–3333.

SUPPLEMENTARY INFORMATION: The Valles Caldera National Preserve is located in north-central New Mexico in the Jemez Mountains, primarily in Sandoval County with a small inclusion in Rio Arriba County. The Preserve was acquired by the Federal government in 2000 with the signing of the Valles Caldera Preservation Act (Pub. L. 106–248). Besides acquisition of the land, the law established the Valles Caldera Trust, a wholly owned government corporation and non-profit 501(c)1 organization to manage the Preserve. The Preserve and Trust are considered

an experiment in public land management. Purposes and goals include continued operation as a working ranch consistent with the protection and preservation of resources and provision public access for recreation and other purposes. The act also establishes that the Trust should strive to become financially self-sufficient where consistent with other goals and purposes.

Since 2002, the Trust has been managing an interim program for public access and use of the Preserve. The interim program was developed in response to the Valles Caldera Preservation Act (Pub. L. 106–248), which mandated that reasonable access to the Preserve for recreation would be provided within two years of Federal acquisition. The interim program provides a variety of regularly available outdoor recreation activities such as fishing, hiking, hunting, wildlife and scenic tours, wagon rides, horseback riding, as well as winter recreation activities. The interim program has also included opportunities for the public to enjoy and learn about the Preserve through an array of special events. Special events have included night sky adventures, youth and adult outdoor education seminars, photography workshops, mountain biking and running events and more recently, overnight opportunities such as weddings and workshops, which use the existing facilities on the Preserve. Universities, K–12 schools, and various educational and research entities have also had access to the Preserve on a case by case basis.

Infrastructure development has been limited to road maintenance and upgrade activities necessary to provide safe access while protecting and preserving natural and cultural resources. Temporary facilities (portable buildings, portable toilets, etc.) have been used to facilitate public access and use of the Preserve.

Prior to Federal acquisition, about 200–300 people visited the Preserve annually. Since Federal acquisition, that number has increased to an estimated 15,000 visitors annually. Visitors enjoy their experience on the Preserve but consistently request broader, less controlled access. In addition, the Preserve's unique setting within a basically intact volcanic crater offers unique opportunities for learning and inspiration. Interest in the Preserve as a portal to learning about and being inspired by nature is growing. With increasing interest from partners, the Trust sees opportunities to develop science and education programs which have local, regional, national, and global effects.

In December 2006 the Trust initiated ''Phase I'' of comprehensive planning for public access and use. This phase was largely information gathering and included a series of public workshops, strategic level business planning and analysis, and assessing various sites on the Preserve to determine possible locations for a visitor and interpretive center and other ancillary facilities. Based on the information accumulated, the Trust is entering into ''Phase II'', planning and decision-making for public access and use.

Based on the information accumulated, the Trust is proposing to establish a visitor and interpretive center within the boundary of the Preserve. The purpose of the center will be to expand public access and use on the Preserve while continuing to provide unique, high quality recreation, education, and interpretive experiences that impact the hearts and minds of our visitors. It is needed to facilitate broad access to the Preserve while protecting and preserving the natural, cultural, scientific, scenic, and recreational values of the Preserve. The design for the visitor and interpretive center will include parking and connected ancillary facilities such as interpretive trails, overlooks, and motorized access onto the Preserve.

The Trust is also proposing to make programmatic decisions that will guide or prescribe future development of programs and facilities.

Alternatives will be developed with input from the public that vary in the scale and location of the visitor and interpretive center and the capacities and types of programs that would be considered in the future.

A variety of reference documents are available for viewing and downloading from the Trust's Web site *http://www.vallescaldera.gov/about/trust/trust_ref.aspx*.

Dated: August 18, 2009.

Gary D. Bratcher,

Executive Director.

[FR Doc. E9–20672 Filed 8–27–09; 8:45 am]

BILLING CODE 3410–H6–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Minnkota Power Cooperative, Inc.: Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to a request for possible financial assistance to Minnkota Power Cooperative, Inc. (Minnkota Power) for the construction of the proposed Distribution Substation and Overhead Transmission Line for the Keystone Pipeline Pump Station No. 17 Project in Steele County, North Dakota.

ADDRESSES: The Environmental Assessment (EA) and FONSI are available for public review at USDA Rural Utilities Service, 1400 Independence Avenue, SW., Washington, DC 20250–1571; at Minnkota Power's headquarters office; and at the Steele County Auditor's Office in Finley, North Dakota.

Contacts: To obtain copies of the EA or FONSI or for further information, contact Mr. Richard Fristik, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–5093 or e-mail: *richard.fristik@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The study area for the proposed project is in Steele County, North Dakota. The proposal involves the construction of a substation on ¼ acre of land inside the fenced area of the Keystone Pipeline Pump Station No. 17 site, construction of an 11.75-mile 69 kV transmission line, and upgrading of 17.34 miles of existing 69 kV transmission line. The new line would be constructed in existing distribution line rights-of-way and would connect the new substation to an existing Minnkota transmission line.

No significant environmental impacts resulting from the proposal have been identified. Therefore, RUS is satisfied that the environmental impacts of the proposal have been adequately addressed and has determined that this FONSI fulfills its obligations under the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR 1500–1508), and RUS' Environmental Policies and Procedures (7 CFR Part 1794). An Environmental Impact Statement will not be prepared for this proposal.

Dated: August 24, 2009.

Nivin Elgohary,

Acting Assistant Administrator—Electric, Rural Utilities Service.

[FR Doc. E9–20774 Filed 8–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–DA–09–0058]

Dairy Industry Advisory Committee

AGENCY: Agricultural Marketing Service.

ACTION: Notice of Intent to establish the U.S. Department of Agriculture (USDA) Dairy Industry Advisory Committee and a Request for Nominations.

SUMMARY: The USDA intends to establish the Dairy Industry Advisory Committee (Committee). The purpose of the Committee is to review the issues of farm milk price volatility and dairy farmer profitability and provide suggestions and ideas to the Secretary on how USDA can best address these issues to meet the dairy industry's needs. USDA also seeks nominations of individuals to be considered for selection as Committee members.

DATES: Written nominations must be received on or before September 28, 2009.

ADDRESSES: Nominations should be sent to Brandon Willis, Deputy Administrator, Farm Programs, Farm Service Agency, USDA, 1400 Independence Avenue, SW., Room 3612–S, Stop 0510, Washington, DC 20250–0510; Facsimile: (202) 720–4726; E-mail: *brandon.willis@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Designated Federal Official; Phone: (202) 720–7901; E-mail: *solomon.whitfield@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II), notice is hereby given that the Secretary of Agriculture intends to establish the Committee for two years. The purpose of the Committee is to review the issues of: (1) Farm milk price volatility and (2) dairy farmer profitability and provide suggestions and ideas to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

The Deputy Administrator of the Farm Service Agency's Farm Programs will serve as the Committee's Executive Secretary. Representatives from USDA mission areas and agencies affecting the dairy industry will participate in the Committee's meetings as determined by the Committee Chairperson.

The Secretary of Agriculture will appoint industry members to serve 2-year terms. Membership will consist of up to fifteen (15) members representing various dairy industry groups including: producers and producer organizations, processors and processor organizations, handlers, consumers, academia, retailers, and state agencies involved in organic and non-organic dairy at the local, regional, national and international levels. The members of the established Committee will elect the Chairperson and Vice Chairperson of the Committee. In the absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the established Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee, and list their name, title, address, telephone, and fax number. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the dairy industry's needs.

USDA will provide individuals who are nominated with the necessary forms for membership. The biographical information and clearance forms must be completed and returned to USDA within 10 working days of notification, to expedite the requisite clearance process before the Secretary of Agriculture selects Committee members. Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Dated: August 24, 2009.

Jonathan Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–20733 Filed 8–25–09; 11:15 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Aquaculture Ponds (Code 397), Contour Orchard and Other Perennial Crops (Code 331), Forage and Biomass Planting (Code 512), Forest Trails and Landings (Code 655), Heavy Use Area Protection (Code 561), Herbaceous Wind Barriers (Code 603), Integrated Pest Management (Code 595), Obstruction Removal (Code 500), Pumping Plant (Code 533), Sediment Basin (Code 350), Spoil Spreading (Code 572), Trail and Walkways (Code 568), and Vegetative Barrier (Code 601). Notice is also hereby given of the rescission of Prescribed Forestry (Code 409), effective October 1, 2009. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996, requires NRCS to make available for public review and comment, all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective August 28, 2009.

Comment date: Submit comments on or before September 28, 2009. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted using any of the following methods:

- *Mail:* Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.
- *E-mail:* *wayne.bogovich@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room

6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/*. Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html*. To aid in this comparison, following are highlights of the proposed revisions to each standard:

Aquaculture Ponds (Code 397)—The revised CPS 397 has expanded Definition and Purpose sections. The Considerations and Specifications sections are more focused in their scope.

Contour Orchard and Other Perennial Crops (Code 331)—The revision includes several significant changes. This revision changes the practice name from ''Contour Orchard and Other Fruit Areas'' to ''Contour Orchard and Other Perennial Crops,'' and adds reduction in transport of sediment and other associated contaminant as a purpose. Also, this revision removes several statements in the criteria that are not applicable to this conservation practice, adds requirements in ''Plans and Specifications,'' includes the addition of vegetative ground cover and associated benefits as a consideration, and adds references.

Forage and Biomass Planting (Code 512)—The name was changed from Pasture and Hay Planting to Forage and Biomass Planting in recognition of similarities among plant species use for this purpose. Production of feedstock for biofuel production was added as a purpose. The practice remains applicable to all lands where appropriate, but does not include establishment of annually panted food, fiber, or oilseed crops. Additional Consideration has been incorporated. Plans and Specification now identify specific elements that are to be addressed in the plan.

Forest Trails and Landings (Code 655)—The changes made to the document include the addition of an important criterion on the re-use of trails in future management activities ''designated skid trails'' and additional clarification of environmental mitigation measures.

Heavy Use Area Protection (Code 561)—More detail was added to the purposes; criteria was changed eliminating specific reference to 4000 lb. design load, reference to Design Note 24 made in lieu of the American Association of State Highway and Transportation Officials (AASHTO) publication, reference to appropriate design documents added to concrete section, AASHTO reference added for bituminous concrete paving, alternate design procedure added for bituminous concrete, edited to specifically cover roofs, the American Society of Civil Engineers reference added for design loads for structures; minimum requirements for plan and specification content were added; minimum requirements for operation and maintenance (O&M) plans were added; and references were added.

Herbaceous Wind Barriers (Code 603)—This revision adds considerations for beneficial insects and pollinators, sequestering of carbon, native plant materials, invasive species, and micro-environment for plant growth. Also, this revision moves ''food and cover for wildlife'' from the ''Purpose'' section to ''Considerations,'' adds ''tolerance to soil deposition'' as a criterion under ''Vegetation,'' expands ''Conditions where Practice Applies'' to include lands where forages are grown, removes instruction statements for preparation of State standards, adds requirements in ''Plans and Specifications,'' and updates barrier criteria to include the most current technology and references.

Integrated Pest Management (Code 595)—The practiced was revised to include specific NRCS Integrated Pest Management (IPM) risk reduction techniques to address identified hazards related to cultural, biological, and chemical pest suppression strategies. A technical note has been developed to support the implementation of the NRCS IPM mitigation techniques. The name of the standard was changed to reflect the IPM approach to reduce the risks/hazards related to pest prevention, avoidance, monitoring, and suppression activities.

Obstruction Removal (Code 500)—The definition was edited to add ''works of improvement'' and ''debris'' while ''landscape features'' were eliminated; the conditions where practice applies added ''public safety and infrastructure'' and a statement added that ''does not apply to aquatic environments.'' The criteria was completely re-written to add more detail, safety and environmental concerns added and more detail added for stabilization of the site after removal work; considerations were added related to recycling, dust suppression, erosion and sediment control, working in environmentally sensitive areas, safety and wildlife habitat; minimum requirements for plan and specification content were added; minimum requirements for O&M plans were added; and references were added.

Pumping Plant (Code 533)—The definition was expanded to identify pumping plant components; purposes were expanded to address various resource concerns; new criteria was added for Variable Frequency Drives, Photovoltaic Panels, Windmills, and Hydraulic Rams; additional criteria was provided, corresponding to the newly expanded purposes.

Sediment Basin (Code 350)—The definition changed to better define the type of basin; the purpose changed to reflect the sediment capturing function of the basin; conditions where practice applies changed to define land uses where the practice applies and the physical conditions where the practice is applicable, which are the same as Pond (Code 378); criteria added for location, basin capacity, spillway design, basin shape, embankment and side slopes, vegetation and safety while a drawing was added to better define the storage capacities; considerations were added related to improved functioning of the basin, visual concerns, safety and wildlife habitat; minimum requirements for plan and specification content were added; minimum requirements for O&M plans were added; and references were added.

Spoil Spreading (Code 572)—The criteria was edited and a section specifically for spreading of spoil along channels was added; consideration was added for evaluating channels capacity; minimum requirements for plan and specification content were added; minimum requirements for O&M plans were added; and references were added.

Trail and Walkways (Code 568)—The title changed from Recreation Trails and Walkways; the definition added farm workers, construction/maintenance access and small walk behind equipment; the purpose changed to add agricultural and construction/maintenance purposes; conditions where practice applies changed to cover recreational, agricultural, and non-agricultural; criteria changed to added more detailed requirements for all land uses and information added on accessibility of public access trails;

considerations added on maximum grades, drainage issues, parking issues, scenic values, fish and wildlife habitat, water quality, and wind erosion; minimum requirements for plan and specification content were added; minimum requirements for O&M plans added; and references were added.

Vegetative Barrier (Code 601)—The primary revision included the addition to use the Revised Universal Soil Loss Equation, Version 2 (RUSLE2) for the design and spacing of the vegetative barriers. Other revisions included edits to improve clarity.

Prescribed Forestry (Code 409)—Rescission of this practice will be effective October 1, 2009. This practice has been replaced by Forest Management Plan (Code 106).

Signed this 20th day of August 2009, in Washington, DC.

Dave White,

Chief.

[FR Doc. E9–20796 Filed 8–27–09; 8:45 am]

BILLING CODE 3410–16–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting—September 15, 2009—6 p.m.

In connection with its investigation into the cause of a December 19, 2007, explosion and subsequent chemical fire at the T2 Laboratories, Inc., a chemical manufacturer in Jacksonville, Florida, the Chemical Safety and Hazard Investigation Board announces that it will convene a public meeting on September 15, 2009, starting at 6 p.m. at the Marriott Hotel located at 4670 Salisbury Rd in Jacksonville, Florida in ''The Florida Room.''

At the meeting CSB staff will present to the Board the results of their investigation into this incident. Key issues involved in the investigation concern reactive hazard recognition, hazard education, emergency preparedness, and process design and scale-up. This will be followed by a public comment period prior to a Board vote on the report.

Incident Description: On December 19th, T2 Laboratories, Inc. was producing a batch of methylcyclopentadienyl manganese tricarbonyl (MCMT). A problem soon occurred and the process operator had an outside operator call the owners to report a cooling problem and request they return to the site. Upon their return, one of the two owners went to the control room to assist. A few minutes later, the reactor burst and its contents exploded, killing the owner and process operator who were in the control room and two outside operators who were exiting the reactor area. It also injured 32, including four employees and 28 members of the public who were working in surrounding businesses. Debris from the reactor was found up to one mile away, and the explosion damaged buildings within one quarter mile of the facility.

Following the staff presentation and the conclusion of the public comment period, the Board will consider whether to approve the final report and recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final. Only after the Board has considered the final staff presentation, listened to the witnesses and the public comments and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. E9–20949 Filed 8–26–09; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2009—2011 Company Organization Survey.

Form Number(s): NC–99001, NC–99007.

OMB Control Number: 0607–0444.

Type of Request: Extension of a currently approved collection.

Burden Hours: 127,517.

Number of Respondents: 48,000.

Average Hours per Response: 2 hours and 40 minutes.

Needs and Uses: The Census Bureau is requesting an extension of the currently approved Company Organization Survey (COS) to conduct the 2009, 2010 and 2011 COS. This collection will direct inquiries to multi-establishment enterprises and selected single-establishment companies. The Census Bureau conducts the annual COS in order to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the organizational structure, operating characteristics, and employment and payroll of multi-location enterprises. The 2009–2011 COS collection will not differ from the 2008. The sample size will remain the same as in 2008 surveying 48,000 respondents.

Form NC–99001 is mailed to multi-location enterprises. We ask questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates; research and development, and employees from a professional employer organization. Establishment inquiries include questions on operational status, mid-March employment, first-quarter payroll, and annual payroll of establishments (see Attachment A, Item 5 of NC–99001).

In addition to the mailing of multi-location enterprises, the Census Bureau will mail Form NC–99007 to some large single-location enterprises that may have added some locations. Form NC–99007 contains questions on ownership and control by a domestic company, number of locations of operation, physical location, locations of operation, and inquiries on mid-March employment, first-quarter payroll, and annual payroll for each separate location.

The BR serves two fundamental purposes: First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of

establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, local or Tribal governments.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 195, 224, and 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: August 24, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20696 Filed 8–27–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 17, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–045. Applicant: Air Force Research Laboratory, Wright–Patterson AFB, 2230 10th St., Area ''B'', Building 655, Room 76, Wright–Patterson AFB, OH 45433. Instrument: Tilting Goniometer Stages, with Resistive Encoders. Manufacturer: Attocube Systems AG, Germany. Intended Use: This instrument will be used to study structural aerospace materials. Specifically, it will be used to characterize and measure the micromechanical properties of structural aerospace metals. The instrument must be able to move linear position less than 5 nm wide and to move objects to distances over 5 nm. It must also have millidegree resolution and a range of tilt of at least 5 degrees. Justification for Duty–Free Entry: There are no instruments of the same general category being manufactured within the United States. Application accepted by Commissioner of Customs: July 27, 2009.

Docket Number: 09–046. Applicant: National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, Colorado 80401. Instrument: Sidewinder Upgrade (ion column) Accessory for Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: This instrument will be used to study the chemistry, crystallography and structural morphology of a variety of materials used in the development of photovoltaic devices. Justification for Duty–Free Entry: There are no instruments of the same general category being manufactured within the United States. Application accepted by Commissioner of Customs: August 3, 2009.

Dated: August 24, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–20823 Filed 8–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 17, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–047. Applicant: Washington State University, P.O. Box 641020, Pullman, WA 99164. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study bulk amorphous metal alloys, nano–particle ceramics, nano–particle metals, polymer matrices and ceramic matrices. The instrument will be used to measure the thickness of deposited coatings at 1.0 nm resolution. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: July 31, 2009.

Dated: August 24, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–20824 Filed 8–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 0908031214–91214–01]

Call for Applications for the International Buyer Program Calendar Year 2011

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications.

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with support for domestic trade shows by the International Buyer Program (IBP) of the U.S. Department of Commerce (DOC). This announcement covers selection for International Buyer Program participation for calendar year 2011 (January 1, 2011 through December 31, 2011). The purpose of the IBP program is to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential.

DATES: Applications must be received by October 27, 2009.

ADDRESSES: Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Global Trade Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004. Telephone (202) 482–4207; (2) Facsimile: (202) 482–7800; or (3) e-mail: *Blanche.Ziv@mail.doc.gov*. Facsimile and e-mail applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program within five (5) business days after the application deadline. To ensure that applications are timely received by the deadline, applicants are strongly urged to send applications by hand delivery service (*e.g.*, U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Director, International Buyer Program, Global Trade Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–4207; Facsimile: (202) 482–7800; E-mail: *Blanche.Ziv@mail.doc.gov*.

SUPPLEMENTARY INFORMATION: The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the DOC U.S. and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in more than 70 countries representing the United States' major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices.

The Commercial Service is accepting applications for the International Buyer Program for trade events taking place between January 1, 2011 through December 31, 2011. Selection of a trade show is valid for one event, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. Even if the event occurs more than once in the 12-month period covered by this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service expects to select approximately 35 events from among applicants to the program for the January 1, 2011 through December 31, 2011 period. The Commercial Service will select those events that are determined to most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful show organizer applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by the DOC as part of the International Buyer Program and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. The responsibilities to be undertaken by the DOC will be carried out by the Commercial Service.

A participation fee of $8,000 for shows of five days or less is required within 45 days of written notification of acceptance into the program. For trade shows more than five days in duration, or requiring more than one International Business Center, a participation fee of $14,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Business Centers, the participation fee will be negotiated, but shall not be less than $19,500.

The DOC selects trade shows to be International Buyer Program partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an International Buyer Program partner does not constitute a guarantee by the U.S. Government of the show's success. International Buyer Program partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered.

Eligibility: All 2011 U.S. trade events are eligible to apply.

General Selection Criteria: The Commercial Service will select shows to be International Buyer Program partners that, in the judgment of the Commercial Service, best meet the following criteria:

(a) *Level of Intellectual Property Rights Protection:* The trade show organizer includes in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); has procedures in place at the trade show to address IPR infringement, which, at a minimum, provides information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States.

(b) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.*, Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides, available through the Web site, *http://www.export.gov*).

(c) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.*, best prospect lists). Previous international attendance at the show may be used as an indicator.

(d) *Scope of the Show:* The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(e) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of U.S. products or products with a high degree of U.S.

content will be preferred. Generally, to have ''U.S. content,'' products and services to be exhibited should be: (i) Produced or manufactured in the United States; or, (ii) if produced or manufactured outside of the United States, be marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished product or service being exported. U.S.-sourced inputs that may be considered as contributing to U.S. content, to the extent that they are incorporated into the finished product or service being exported, may include but are not limited to: Materials; components; packaging; labor; production equipment and factory overhead; research and development; design; intellectual property; warehousing; distribution; sales; administration and management; advertising; and marketing and promotion.

(f) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(g) *Level of Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export (NTE) or seeking to expand their sales into additional export markets.

(h) *Level of Overseas Marketing:* There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance. (Planned cooperation with Visit USA Committees overseas is desirable. For more information on Visit USA Committees go to: *http://www.tia.org/International/VUSA.html*).

(i) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition must be capable of accommodating large numbers of attendees whose native language will not be English.

(j) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the International Buyer Program will be taken into account in evaluating the applications received for the January 1, 2011 through December 31, 2011 period.

(k) *Delegation Incentives:* Show organizers should list or identify a range of incentives to be offered to delegations and/or delegation leaders recruited by the Commercial Service overseas posts. Examples of incentives to international visitors and to organized delegations include, but are not limited to: Waived or reduced admission fees; special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders. Waived or reduced admission fees are required for international attendees who are members of Commercial Service recruited delegations under this program. Delegation leaders also must be provided complimentary admission to the event.

Application Requirements: Show organizers submitting applications for the 2011 International Buyer Program are requested to submit with each application: (1) A narrative statement addressing each question in the application; (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the 2011 International Buyer Program (January 1, 2011 through December 31, 2011)''; and (3) two copies of the application, on company letterhead, and one electronic copy submitted on a 3.5'' diskette or CD–RW (preferably in Microsoft Word® format), on or before the deadline noted above. The DOC expects to issue the results of this process by March 2010.

Legal Authority: The Commercial Service has the legal authority to enter into MOAs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. sections 2455(f) and 2458(c)). MECEA allows the Commercial Service to accept contributions of funds and services from firms for the purposes of furthering its mission. The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form ITA–4102P) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: August 24, 2009.

Blanche Ziv,

Director, International Buyer Program, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. E9–20825 Filed 8–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR21

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold Meetings of its Limited Access Privilege Program (LAPP) Committee, Spiny Lobster Committee, Mackerel Committee, a joint meeting of its Executive and Finance Committees, Law Enforcement Committee, Snapper Grouper Committee, joint Ecosystem-Based Management and Habitat Committees, Golden Crab Committee, and Dolphin Wahoo Committee, and a meeting of the full Council. There will also be a swearing in of new Council members. The Council will hold an informal public question and answer session with NMFS Regional Administrator and Council Chairman as well as open public comment periods relative to agenda items. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meeting will be held September 14 - 18, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Charleston Marriott, 170 Lockwood Boulevard, Charleston, SC 29403; telephone: (800) 968–3569 or (843) 723–3000; fax: (843) 266–1479. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

Swearing In of New Council Members: September 14, 2009, 1:30 p.m. - 1:45 p.m.

1. LAPP Committee Meeting: September 14, 2009, 1:45 p.m. until 4 p.m.

The LAPP Committee will receive presentations, discuss Amendment 20 to the Snapper Grouper Fishery Management Plan (FMP) addressing the South Atlantic wreckfish fishery, and receive an update on Amendment 5 to the Golden Crab FMP addressing LAPPs.

2. Spiny Lobster Committee Meeting: September 14, 2009, 4 p.m. until 5 p.m.

The Spiny Lobster Committee will review recommendations from the Coral Advisory Panel and discuss Amendment 10 to the Spiny Lobster FMP.

3. Mackerel Committee: September 15, 2009, 8:30 a.m. until 10:30 a.m.

The Mackerel Committee will review recommendations from the King and Spanish Mackerel Advisory Panel and discuss Amendment 18 to the FMP for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic Region.

4. Joint Executive and Finance Committees Meeting: September 15, 2009, 10:30 a.m. until 12 Noon

The Committees will review Calendar Year Activities schedule and budget for 2009, receive an update on the status of the Fiscal Year 2010 Congressional budget and review year 2010 of the five-year grant proposed activities schedule and budget.

5. Law Enforcement Committee Meeting: September 15, 2009, 1:30 p.m. until 3 p.m.

The Law Enforcement Committee will review recommendations from the Law Enforcement Advisory Panel, discuss development of a law enforcement officer of the year award, develop recommendations on a format for law enforcement reporting of violations the Council would like to see, and discuss other issues as appropriate.

6. Snapper Grouper Committee Meeting: September 15, 2009, 3 p.m. until 5 p.m., and September 16, 2009, 8:30 a.m. until 5 p.m.

The Snapper Grouper Committee will receive updates on research and outreach associated with the Oculina Bank protected areas, the status of the red snapper interim rule request to close the fishery to help address overfishing, presentations of red snapper rebuilding projections, economic impacts of proposed red snapper management measures to the commercial sector, and review recommendations from the Snapper Grouper Advisory Panel. The Committee will review draft Amendment 17A to the Snapper Grouper FMP addressing red snapper management and Amendment 17B addressing overfishing for nine other species, and develop recommendations for taking the amendments out to public hearings. The Committee will also review draft Amendment 18 to the Snapper Grouper FMP with several measures addressing snapper grouper management, including extension of the fishery management unit northward, as well as Amendment 20 to the FMP addressing changes to the wreckfish fishery, and provide direction to staff. The Committee will discuss and develop recommendations regarding the draft Comprehensive Annual Catch Limit (ACL) Amendment as well as a Fishery Independent Monitoring Workshop.

Note: There will be an informal public question and answer session with NOAA Fisheries Services' Regional Administrator and the Council Chairman, on September 16, 2009 beginning at 5:30 p.m.

7. Joint Ecosystem-Based Management and Habitat Committees Meeting: September 17, 2009, 8:30 a.m. until 10 a.m.

The Committees will review the Draft Environmental Impact Statement comments for Comprehensive Ecosystem-Based Amendment 1 (CE-BA1) establishing Deepwater Coral Habitat Areas of Particular Concern in the South Atlantic region, revise the amendment as necessary, and provide recommendations of approval of CE-BA1 for submission to the Secretary of Commerce. The Committees will also review the Proposed Rule for CE-BA1 and deem it as appropriate. The Committee will review Comprehensive Ecosystem-Based Amendment 2 (CE-BA2) addressing coral management and provide guidance to staff.

8. Golden Crab Committee Meeting: September 17, 2009, 10 a.m. until 11 a.m.

The Golden Crab Committee will review catch share recommendations from fishermen and receive an update on Amendment 5 to the Golden Crab FMP.

9. Dolphin Wahoo Committee Meeting: September 17, 2009, 11 a.m. until 12 Noon

The Dolphin Wahoo Committee (consisting of all Council members) will review recommendations from the Dolphin Wahoo Advisory Panel, receive a presentation on dolphin and wahoo landings, and develop recommendations for the Comprehensive ACL Amendment.

10. Council Session: September 17, 2009, 1:30 p.m. until 6:30 p.m. and September 18, 2009, 8:30 a.m. until 12 Noon

Council Session: September 17, 1:30 p.m. until 6:30 p.m.

From 1:30 p.m. - 2 p.m., the Council will call the meeting to order, adopt the agenda, and approve the June 2009 meeting minutes.

Note: Interested persons will be provided the opportunity to present oral or written statements regarding matters on the Council agenda beginning at 2 p.m. on Thursday on Thursday, September 17, 2009.

On Thursday, September 17, 2009 at 3 p.m., the Council will take public comment regarding Comprehensive Ecosystem-Based Amendment 1 .

From 3 p.m. - 3:30 p.m., the Council will receive a report from the Joint Ecosystem-Based Management and Habitat Committees, approve Comprehensive Ecosystem-Based Amendment 1 for submission to the Secretary of Commerce, and consider other committee recommendations and take action as appropriate.

From 3:30 p.m. - 4 p.m., the Council will receive an update on the Atlantic Sea Turtle Strategy.

From 4 p.m. - 4:30 p.m., the Council will receive an update on the National Marine Protected Area Program.

From 4:30 p.m. - 5:30 p.m., the Council will receive a presentation on Draft Amendment 3 to the Consolidated Atlantic Highly Migratory Species FMP and an update on the swordfish exempted fishery.

From 5:30 p.m. - 6 p.m., the Council will receive report from the Snapper Grouper Committee and take action as appropriate.

From 6 p.m. - 6:15 p.m., the Council will receive a report from the Joint

Executive and Finance Committees and take action as appropriate.

From 6:15 p.m. - 6:30 p.m., the Council will receive legal briefing on litigation (CLOSED SESSION)

Council Session: September 18, 2009, 8:30 a.m. until 12 Noon

From 8:30 a.m. - 8:45 a.m., the Council will receive a report from the LAPP Committee and take action as appropriate.

From 8:45 a.m. - 9 a.m., the Council will receive a report from the Golden Crab Committee and take action as appropriate.

From 9 a.m. - 9:15 a.m., the Council will receive a report from the Dolphin Wahoo Committee and take action as appropriate.

From 9:15 a.m. - 9:30 a.m., the Council will receive a report from the Spiny Lobster Committee and take action as appropriate.

From 9:30 a.m. - 9:45 a.m., the Council will receive a report from the Mackerel Committee and take action as appropriate.

From 9:45 a.m. - 10 a.m., the Council will receive a report from the Law Enforcement Committee and take action as appropriate.

From 10 a.m. - 10:15 a.m., the Council will receive a status report from NOAA Fisheries Service on commercial quotas by fishing year for: Atlantic king mackerel, Gulf king Mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack, South Atlantic Octocorals and dolphin (soft quota ratios), vermilion snapper, black sea bass, red porgy and gag. The Council will also receive a status report of Snapper Grouper Amendment 16, Protected Species Issues, VMS Compliance report from Law Enforcement, and review and develop recommendations on Experimental Fishing Permits as necessary.

From 10:15 a.m. - 10:45 a.m., the Council will receive status reports from NMFS Southeast Fisheries Science Center on the Data Collection and Stock Assessment Improvement Plans, a progress report on aging red and black grouper, 2007 and 2008 headboat data entry, and the status of recreational catches versus allocations where appropriate of the following species: Atlantic king mackerel and Spanish mackerel, black sea bass, golden tilefish, snowy grouper, red porgy, greater amberjack, dolphin, wahoo, cobia, vermilion snapper, gag, red snapper, mutton snapper, and yellowtail snapper.

From 10:45 a.m. - 12 Noon, the Council will receive agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 11, 2009.

Dated: August 24, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–20709 Filed 8–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Wednesday, October 14, 2009, from 8:30 a.m. to 5 p.m. and Thursday, October 15, 2009, from 8:30 a.m. to 11:45 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The theme for this meeting is ''NIST's Laboratory Programs and their Importance to Documentary Standards Development and Implementation.'' Based on the discussions held at the previous VCAT meeting with the same theme, this meeting will focus on cybersecurity. The first day's agenda will include an update on NIST; an overview of the NIST role in cybersecurity standards; a presentation on the importance of NIST laboratory research programs to cybersecurity standards; external perspectives from two guest speakers on the issues and challenges associated with cybersecurity; presentations on NIST role and research in quantum information science; and laboratory tours. On the second day, the agenda calls for a discussion with the Committee related to the theme of the meeting followed by the VCAT's feedback on summary findings for the 2009 Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*.

DATES: The meeting will convene on October 14, 2009 at 8:30 a.m. and will adjourn on October 15, 2009, at 11:45 a.m.

ADDRESSES: The meeting will be held in Building 1, Room 1107, at the National Institute of Standards and Technology, Boulder, Colorado 80305–3328. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number (301) 975–2667. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov*.

SUPPLEMENTARY INFORMATION: Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On October 15, 2009, approximately one-half hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-serve

basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by e-mail to *gail.ehrlich@nist.gov*.

All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Stephanie Shaw no later than Friday, October 9, 2009, and she will provide you with instructions for admittance. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov* and her phone number is (301) 975–2667.

Dated: August 24, 2009.

Katharine Gebbie,

Director, Physics Laboratory.

[FR Doc. E9–20837 Filed 8–27–09; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 9/28/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/29/2009 (74 FR 25717–25718); 6/12/2009 (74 FR 28028); 6/19/2009 (74 FR 29187–29189); 6/26/2009 (74 FR 30531–30532) and 7/10/2009 (74 FR 33211–33212); the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services:

Service Type/Location: Food Service & Mess Attendants, Seabee Camp, Covington Guam Support Facility, Resident NMCB, Santa Rita, Guam.
NPA: Able Industries of the Pacific, Santa Rita, Guam.
Contracting Activity: Dept of the Navy, FISC Pearl Harbor, HI.

The **Federal Register** identifies the services as ''Food Service'' and ''Mess Attendants,'' which are programmatic methods to identify the services provided by nonprofit agencies employing people who are blind or who have other severe disabilities within the AbilityOne Program. While the Randolph-Sheppard Act provides entrepreneurial management opportunities for blind vendors, under normal circumstances it does not afford them priority for food service, mess attendant and other services supporting the operation of a military dining facility short of management responsibilities. The Committee determines that the information provided in the **Federal Register** Notice is sufficiently clear to identify the services sought. There is no R–SA Program in place on Guam at this time.

Service Type/Location: Dining Facility Attendant Service, Fort Bragg, NC.
NPA: Employment Source, Inc., Fayetteville, NC.
Contracting Activity: Dept of the Army, XR W6BB Ft Bragg, NC.

The **Federal Register** identifies the services as ''Dining Facility Attendant Service'' which is the programmatic method to identify the services provided by nonprofit agencies employing people who are blind or who have other severe disabilities within the AbilityOne Program. While the Randolph-Sheppard Act provides entrepreneurial opportunities for blind vendors, under normal circumstances it does not afford them priority for food service attendant opportunities supporting the operation of a military dining facility short of management responsibilities. The Committee determines that the information provided in the **Federal Register** Notice is sufficiently clear to identify the services sought. Based on the information available, the Committee may determine that this service is appropriate for the AbilityOne Program.

Service Type/Location: Secure Document Destruction, Federal Law Enforcement Training Center, 1300 W. Richey Ave., Artesia, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: Federal Law Enforcement Training Center, Department Of Homeland Security, Artesia, NM.
Service Type/Location: Laundry Service, 111 Elwyn Road (NPA Facility), Elwyn, PA.
NPA: Elwyn, Inc., Aston, PA.
Contracting Activity: Department of Veterans Affairs, Veterans Administration Medical Center, Wilmington, DE.
Service Type/Location: Custodial Services, York VA Outpatient Clinic, 2251 Eastern Boulevard, York, PA.
NPA: Goodwill Services, Inc., Harrisburg, PA.
Contracting Activity: Department of Veterans Affairs, Lebanon, PA.
Service Type/Location: Housekeeping Services, Fort Custer Education Center, 2501 26th Street, Augusta, MI.
NPA: Navigations, Inc., Battle Creek, MI.
Contracting Activity: Dept of the Army, XRAW8AC MIARNG Element, JF HQ, Lansing, MI.
Service Type/Location: Food Service Attendant, Joint Dining Facility, Selfridge Air National Guard, Selfridge

ANG Base, MI.
NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
Contracting Activity: Dept of the Army, XRA W39L USA NG Readiness Center, Selfridge ANG Base, MI.

The **Federal Register** identifies the services as ''Food Service Attendant'' which is the programmatic method to identify the services provided by nonprofit agencies employing people who are blind or who have other severe disabilities within the AbilityOne Program. While the Randolph-Sheppard Act provides entrepreneurial opportunities for blind vendors, under normal circumstances it does not afford them priority for food service attendant opportunities supporting the operation of a military dining facility short of management responsibilities. The Committee determines that the information provided in the **Federal Register** Notice is sufficiently clear to identify the services sought. Based on the information available, the Committee may determine that this service is appropriate for the AbilityOne Program.

Service Type/Location: Janitorial Services, Pacific Heights Entrance Point, Facility Number 1300, San Pedro, CA.
Pacific Crest Entrance Point, Facility Number 1200, San Pedro, CA.
Fort MacArthur, 2400 South Pacific Ave, San Pedro, CA.
Service Type/Location: Base Wide Janitorial Service, Los Angeles Air Force Base, 2420 Vela Way, El Segundo, CA.
Service Type/Location: Hospital Housekeeping Service, 61st Medical Squadron Medical Clinic, Building 30, San Pedro, CA.
NPA: Goodwill Industries of Southern California, Los Angeles, CA.
Contracting Activity: Dept of the Air Force, FA2816 61 CONS LGC, El Segundo, CA.
Service Type/Location: Custodial Services, Basewide, Robins AFB, GA.
NPA: Good Vocations, Inc., Macon, GA.
Contracting Activity: Dept of the Air Force, FA8501 WR ALC PKO, Robins AFB, GA.
Service Type/Location: Consolidated Base Operation Support (BOS), Naval & Marine Corps Reserve Center, 1600 Lafayette Ave, Moundsville, WV, 3938 Old French Road, Erie, PA, 1400 Postal Drive, Allentown, PA, 261 Industrial Park Road, Edensburg, PA, 625 East Pittsburgh McKeesport Blvd., North Versailles, PA, 3920 Kirkwood Highway, Wilmington, DE.
Naval Reserve Center, 1200 Navy Way Road, Avoca, PA.
Marine Corps Reserve Center, 615 Kenhorst Boulevard, Reading, PA.
NPA: Human Technologies Corporation, Utica, NY.
Contracting Activity: Dept of the Navy, U S Fleet Forces Command, Norfolk, VA.
Service Type/Location: Dining Attendant Services, Basewide Naval Air Station Whidbey Island, WA.
NPA: New Leaf, Inc., Oak Harbor, WA.
Naval Base Kitsap (Basewide Bremerton and Bangor), WA, Fleet & Industrial Supply Center FISC, Puget Sound, Bremerton, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Navy, FISC Puget Sound, Bremerton, WA.
Service Type/Location: Mess Attendant Services, Patterson Dining Facility, Building 403, Dover AFB, DE.
NPA: Opportunity Center, Incorporated, Wilmington, DE.
Contracting Activity: Dept of the Air Force, FA4497 436 CONS LGC, Dover AFB, DE.

The **Federal Register** identifies the services as ''Dining Service Attendant'' and ''Mess Service Attendant'', which are historical and programmatic methods to identify the services provided by nonprofit agencies employing people who are blind or with other severe disabilities within the AbilityOne Program. While the Randolph-Sheppard Act provides entrepreneurial opportunities for blind vendors, it does not include food service attendant opportunities reserved for the AbilityOne Program. Thus, the information provided in the **Federal Register** notice is sufficiently clear to identify the services sought and precludes those services from being procured under the Randolph-Sheppard Act.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–20777 Filed 8–27–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before October 27, 2009.

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

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

Dated: August 25, 2009.

Angela Arrington,

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

Federal Student Aid

Type of Review: New.
Title: Part 601—Institution and Lender Requirements Relating to Education Loans.
Frequency: On Occasion.
Affected Public: Individuals or households; Not for profit institutions; Private Sector, State, Local or Tribal Government.
Reporting and Recordkeeping Hour Burden:
Responses: 117,162.
Burden Hours: 43,938.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a new section of the proposed regulations governing private education loans offered at covered institutions by lenders also participating in the FFEL program. These proposed regulations provide for new Perkins loan cancellations. These proposed regulations assure the Secretary that the

integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to insure that borrowers receive additional disclosures about TitleIV, HEA program assistance prior to obtaining a private education loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4048. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20799 Filed 8–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Financial Reporting EIA–28 Surveys package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by September 28, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jason Worrall. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*Jason.worrall@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form EIA–28, ''Financial Reporting System.''
2. Office of Energy Markets and End Use (EMEU).
3. OMB Number 1905–0149.
4. Three-year approval requested.
5. Mandatory.
6. The Financial Reporting System, Form EIA–28 collects data used to analyze the energy industry's competitive environment as well as energy industry resource development, supply distribution, and profitability issues. Survey results from major energy producers are published annually and are used by both public and private analysts.
7. Business or other for-profit.
8. 16327 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, August 24, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–20807 Filed 8–27–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8433–6]

Access to Confidential Business Information by Industrial Economics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Industrial Economics, Inc. of Cambridge, MA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 4, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Jonathan Libber, Office of Enforcement and Compliance Assurance (2248A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–6102; e-mail address: *libber.jonathan@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you or your firm is the subject of an EPA enforcement action under the Toxic Substances Control Act (TSCA)''. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number GS10F0224J, Order Number EP07H000213, contractor Industrial Economics, Inc. of 2067 Massachusetts Avenue, Cambridge, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in preparing financial analyses of the firms, individuals and organizations that are the subject of EPA enforcement actions taken under TSCA.

In the course of these enforcement actions, Industrial Economics, Inc. may need to review such documents such as a violators tax returns, financial statements, sales data, bank statements, recent loan applications, W-2 forms, etc. The contractor needs this information in order to determine what the violator can afford vis-à-vis compliance costs, clean-up costs and civil penalties. The contractor may also be reviewing this information in regard to determining how much money and economic benefit, the violators obtained by violating the law. Some of the information may be claimed or determined to be CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS10F0224J, Order Number EP07H000213, Industrial Economics, Inc. will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Industrial Economics, Inc. personnel will be given access to information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Industrial Economics, Inc. access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Industrial Economics, Inc.'s site located in Cambridge, MA, in accordance with EPA's *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until March 31, 2010. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Industrial Economics, Inc. personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential Business Information.

Dated: August 21, 2009.

Matthew G. Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–20797 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 08/17/2009 through 08/21/2009. Pursuant to 40 CFR 1506.9.

EIS No. 20090293, Final EIS, NPS, PA, White-Tailed Deer Management Plan, Development of a Deer Management Strategy that Supports Protection, Preservation, and Restoration of Native Vegetation, Implementation, Valley Forge National Historical Park, Chester and Montgomery Counties, PA, Wait Period Ends: 09/28/2009, Contact: Kristina M. Heister 610–783–0252.

EIS No. 20090294, Draft EIS, AFS, OR, Off-Highway Vehicle (OHV) Management Plan, Including Forest Plan Amendment #17, Designation of Roads, Trails and Areas for OHV Use on Mt. Hood National Forest, Implementation, Clackamas, Hood River, Multnomah, and Wasco Counties, OR, Comment Period Ends: 10/28/2009, Contact: Jennie O'Connor Card 541–352–6002 ext. 634.

EIS No. 20090295, Draft EIS, FRC, 00, Bison Pipeline Project (Docket No. CP09–161–000), Construction, Operation, and Maintenance of Interstate Natural Gas Pipeline Facilities, Application for Right-of-Way Grant and Temporary Use Permit, NPDES Permit and US COE 404 Permit, WY, MT, and ND, Comment Period Ends: 10/13/2009, Contact: Julie Bovey 1–866–208–3372.

EIS No. 20090296, Draft EIS, SFW, CA, Sears Point Wetland and Watershed Restoration Project, To Restore Tidal Wetlands and Rehabilitate Diked Wetlands, Sonoma County, CA, Comment Period Ends: 10/13/2009, Contact: Christy Smith 707–769–4200.

EIS No. 20090297, Final EIS, EPA, ND, Mandan, Hidatsa and Arikara Nation's Proposed Clean Fuels Refinery Project, Construction and Operation of a New 13, 000 Barrel of Production per day Clean Fuels Refinery and Grow Hay for Buffalo, NPDES Permit, Fort Berthold Indian Reservation, Ward County, ND, Wait Period Ends: 09/28/2009, Contact: Steve Wharton 303–312–6935. US EPA and US DOI's BIA are co-lead agencies for the above project.

Agencies contact are: Steve Wharton, EPA (303) 312–6935 and Mike Black, BIA (605) 226–7621.

EIS No. 20090298, Draft EIS, COE, CA, Natomas Levee Improvement Program Phase 4a Landside Improvement Project, Issuing of 408 Permission and 404 Permit, California Department of Water Resources (DWR) and the California Central Valley Flood Protection Board, Sutter and Sacramento Counties, CA, Comment Period Ends: 10/13/2009, Contact: Elizabeth G. Holland 916–557–6763.

EIS No. 20090299, Final EIS, FHW, UT, Geneva Road, Center Street/1600 West (Provo) to Geneva Road/SR–89 (Pleasant Grove), Improvements, U.S. Army COE 404 Permit, Utah County, UT, Wait Period Ends: 09/28/2009, Contact: Bryan Dillon 801–963–0182.

EIS No. 20090300, Final EIS, NPS, AZ, Fire Management Plan, Management of Wildland and Prescribed Fire, Protection of Human Life and Property Restoration and Maintenance of Fire Dependent Ecosystems, and Reduction of Hazardous Fuels, Grand Canyon National Park, Coconino County, AZ, Wait Period Ends: 09/28/2009, Contact: Chris Marks 928–606–1050.

Amended Notices

EIS No. 20090279, Draft EIS, BLM, WA, Blackfoot Bridge Mine Project, Developing Three Mine Pits, Haul Roads, Water Management Structures, and Overburden Disposal Areas, Implementation, Caribou County, ID, Comment Period Ends: 10/31/2009, Contact: Kyle Free 208–478–6368.

Revision of FR Notice Published on 08/21/09: Extension to Comment Period from 10/01/2009 to 10/31/2009.

Dated: August 25, 2009.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–20809 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090156, ERP No. D–NIH–D99002–MD, National Institute of Health (NIH), Transport of Laboratory Personnel Potentially Exposed to Infectious Agents from Fort Detrick, Frederick, MD to the National Institutes of Health Clinical Center, Bethesda, MD.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20090095, ERP No. F–NRC–D06005–PA, GENERIC—License Renewal of Nuclear Plants, Supplement 35 to NUREG–1437, Regarding Susquehanna Steam Electric Station, Units 1 and 2, Issuing Nuclear Power Plant Operating Licenses for a 20–Year Period, PA.

Summary: NRC has accommodated EPA's recommendations regarding historic and archaeological resources as well as pollution prevention measures. EPA does not object to the proposed action.

EIS No. 20090175, ERP No. F–NRC–A09836–00, GENERIC—In-Situ Leach Uranium Milling Facilities (NUREG–1910), Construction, Operation, Aquifer Restoration and Decommissioning, Potentially Location in Portions of WY, NE, SD and NM.

Summary: EPA continues to have environmental concerns about the lack of analysis of impacts of other leaching solutions that are proposed for use including acid lixiviants.

EIS No. 20090185, ERP No. F–COE–D39038–00, PROGRAMMATIC—Oyster Restoration in Chesapeake Bay Including the Use of a Native and/or Nonnative Oyster, Implementation, Chesapeake Bay, MD and VA.

Summary: EPA restated its support for the native only combination Alternative 8A as representing the best choice among the alternatives presented. EPA provided a number of points to be considered as any Record of Decision is prepared and native oyster restoration plans developed.

EIS No. 20090233, ERP No. F–IBR–G39048–NM, Navajo-Gallup Water Supply Project, To Provide a Long-Term (Year 2040) Water Supply, Treatment and Transmission of Municipal and Industrial (M&I) Water to Navajo National and Jicarilla Apache Nation, City of Gallup, New Mexico.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090234, ERP No. F–AFS–J61115–SD, Slate Castle Project Area, Proposes to Implement Multiple Resource Management Actions, Mystic Ranger District, Black Hills National Forest, Pennington County, SD.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090238, ERP No. F–USN–D35063–VA, Norfolk Harbor Channel, Proposed Dredging to Deepen Five Miles of the Federal Navigation Channel in the Elizabeth River from Lamberts Bend to the Norfolk Naval Shipyard (NNSY), Norfolk and Portsmouth, VA.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090240, ERP No. F–FHW–E40818–NC, NC–119 Relocation Project, Transportation Improvement from the I–185/40 Interchange Southwest of Mebane to Existing NC–119 south of NC–1918 (Mrs. White Lane) Mebane, Right-of-Way Acquisition, Alamance County, NC.

Summary: EPA continues to have environmental concerns about impacts to streams, agricultural lands, critical water supply areas, and noise receptors.

EIS No. 20090248, ERP No. F–AFS–L65557–OR, Farley Vegetation Management Project, To Conduct Timber Harvest Commercial and Non-Commercial Thinning, Fuels Treatment Prescribed Burning and Reforestation, Desolation Creek, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR.

Summary: EPA continues to have environmental concerns about the wildfire expectations.

EIS No. 20090255, ERP No. F–BLM–J65496–CO, Canyons of the Ancients National Monument Resource Management Plan, To Address Future Management Options for Approximately 165.00 Acres of Land, Dolores and Montezuma Counties, CO.

Summary: No formal comment letter was sent to the preparing agency.

Dated: August 25, 2009.

Kenneth Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–20810 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8951–2]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Bristol Family Center Water System in Bristol, VT, the Kids in the Country School Water System in Dover, VT, and the Otter Valley Union High School Water System in Brandon, VT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Bristol Family Center Water System in Bristol, Vermont, the Kids in the Country Water System in Dover, Vermont, and the Otter Valley Union High School in Brandon, Vermont (the ''Systems'') for the purchase of NSF–55 Class A certified Ultra Violet (UV) disinfection equipment. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded projects being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. The UV disinfection equipment under consideration is manufactured outside of the United States by a company based in Canada and meets the water systems' technical specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Systems have provided sufficient documentation to support each individual request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of the ARRA. This action permits the purchase of specific UV disinfection equipment for the proposed projects being implemented by the Bristol Family Center Water System in Bristol, Vermont, Kids in the Country Water System in Dover, Vermont, and Otter Valley Union High School Water System in Brandon, Vermont.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1658, or David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Bristol Family Center Water System in Bristol, Vermont, the Kids in the Country Water System in Dover, Vermont, and the Otter Valley Union High School Water System in Brandon, Vermont (the ''Systems'') for the acquisition of NSF–55 Class A certified Ultra Violet (UV) disinfection equipment manufactured outside of the United States.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The State of Vermont requires that water supply installations must comply with the Vermont Standards for Water System Design, Construction and Protection (Vermont Water Supply Rule—Chapter 21). In order to meet these standards the State of Vermont requires public water systems using UV disinfection to use National Sanitation Foundation (NSF) Standard 55 (Ultraviolet Microbial Water Treatment Systems) Class A certified UV equipment. The State of Vermont, Agency of Natural Resources, Water Supply Division (VTANR) has identified several lines of UV disinfection systems with NSF–55 Class A certification, all manufactured in Canada. The Water Systems are proposing to use the UV Pure Hallett 15xs and 30 ultraviolet disinfection water systems. The design engineer and the VTANR have conducted research and determined that there are no domestic manufacturers that have NSF–55 Class A certification at the time of these waiver requests.

The design engineers for the Bristol Family Center Water System indicated that they intend to use two Hallett 30 (30 gpm) UV units for the school buildings. The estimated cost for all of the UV equipment for Bristol Family Center Water System in Bristol, Vermont is $4,000. For the Kids in the Country Water System, the engineers intend to use two Hallett 15xs (15 gpm) The estimated cost for all of the UV equipment for the Kids in the Country Water System in Dover, Vermont is $3,400. For the Otter Valley Union High School Water System, the design engineers intend to use four Hallett 30 (30 gpm) UV units for the school buildings. The estimated cost for all of the UV equipment for the Otter Valley Union High School Water System in Brandon, Vermont is $8,000.

The designs for all three Systems took into account the limited space available for retrofitting the water supply and distribution systems, as well as the attributes of the specific equipment. The Systems' submissions clearly articulated functional reasons for their technical specifications and requirements, and have provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its design specifications and requirements.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009,' '' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design''. After extensive research by the design engineers and the VTANR, information has been provided to the EPA documenting that there is currently no other UV disinfection equipment from a domestic manufacturer available to meet the Systems' exact design specifications and requirements.

EPA's national contractor has prepared a technical assessment report for these Systems dated June 25, 2009 based on the waiver requests submitted. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no

significant weaknesses in the justification provided. The report confirmed the waiver applicants' claim that NSF Standard 55 Class A UV disinfection equipment of the size specified are not available from a domestic manufacturer.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities, such as these Water Systems, to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs. The construction must be completed prior to September 1, 2009 when the students return for the new school year.

The Municipal Assistance Unit (CMU) has reviewed these waiver requests and has determined that the supporting documentation provided by the Bristol Family Center in Bristol, Vermont, the Kids in the Country School in Dover, Vermont, and the Otter Valley Union High School in Brandon, Vermont is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for these project waivers is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Systems' technical specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for these projects, and that this manufactured good was not available from a producer in the United States, the Bristol Family Center Water System, Kids in the Country Water System, and Otter Valley Union High School Water System are hereby granted waivers from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of the specified UV disinfection equipment using ARRA funds as documented in the Systems' requests of June 18, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: August 19, 2009.

Ira W. Leighton,

Acting Regional Administrator, Region I, New England.

[FR Doc. E9–20800 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8950–7]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Plymouth Village Water & Sewer District, New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Plymouth Village Water & Sewer District, New Hampshire (''District'') for the purchase of a foreign manufactured rotary sludge dewatering press. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The District's proposed wastewater treatment facility improvements will include a replacement of the existing belt filter press for sludge generated at the plant. Based upon information submitted by the District and its consultants, it was determined that a 6 channel rotary press sludge dewatering unit, manufactured by Fournier Industries of Quebec, Canada, will meet the District's design and performance specifications. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The District through its design engineer, has provided sufficient documentation to support their request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a 6 channel rotary press sludge dewatering unit, manufactured by Fournier Industries, by the District, as specified in its June 26, 2009 waiver request, as part of the improvements to the wastewater treatment facility.

DATES: *Effective Date:* August 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Spinale, Environmental Engineer, (617) 918–1547, or Katie Connors, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Sections 1605(b)(2) of Public Law 111–5, Buy American requirements, to the Plymouth Village Water & Sewer District (''District''), New Hampshire for the purchase of a 6 channel rotary press sludge dewatering unit, manufactured by Fournier Industries of Quebec, Canada. It has been determined that this rotary press meets the District's technical specifications for design and performance of a sludge dewatering unit as part of its wastewater treatment plant improvement project. Based on the information provided by the applicant, there are no domestically manufactured rotary sludge presses at this time that meet the specific design criteria established for this unit in the District's project.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent

with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The District has requested a waiver from the Buy American Provision for the purchase of a foreign made rotary press sludge dewatering unit as part of its wastewater treatment plant improvement project. The purchase of the new rotary sludge press is intended to replace the existing belt filter press which is approaching the end of its useful life. The estimated cost of the overall improvements to the District's wastewater treatment plant is estimated at $5.2 million, of which the cost of the foreign made rotary sludge press unit is priced at $330,000.

The consulting engineers for the District set forth the following key criteria for evaluating sludge dewatering technologies. The various technologies were evaluated based on the ability to:

- Maintain the current annual average dewatered sludge cake solids of approximately 25% or higher.
- Improve environmental working conditions in the dewatering area by minimizing worker exposure to odorous and hazardous gases released from the sludge as well as exposure to bio-aerosols and pathogens. Enclosed dewatering equipment will achieve this goal.
- Automatically adjust for variation in feed solids concentrations and sludge mix ratios to provide consistent and optimum cake solids.
- Allow for unattended, automatic operation freeing up operators for other needed tasks.
- Keep the dewatering operation as simple as possible while still maintaining optimum dewatering performance.
- Allow for some degree of backup capacity during periods of equipment failure and routine maintenance.
- Equipment must have a proven track record of low annual operation and maintenance costs and reliability.

As part of the review of potentially viable sludge dewatering units, four technologies were considered by the District and their consultants: (1) Rotary press; (2) screw press; (3) centrifuge; and (4) belt filter press. Of the four technologies, it was determined that the rotary sludge press is the desired technology because it ranked the highest in terms of meeting the key criteria highlighted above. The rotary press option, for example, has one of the lowest maintenance requirements due to the slow rotational speed, and has one of the highest degrees of redundancy. Low rotational speeds results in less susceptibility to wear from high grit sludge.

The rotary press would have six parallel channels on-line with the ability to take one or two channels off-line for maintenance without having to disrupt treatment operation. The rotary press option also represented the lowest capital cost option that met the District's goals and current and future throughput capacity of 220 pounds/hour per channel for a total capacity of 1,100 pounds per hour, with one additional channel available for redundancy purposes.

The technical memorandum prepared by the District's consulting engineers indicates that the rotary press technology has been use in the Canadian market for a number of years. The technical memorandum further indicates that of the other manufacturers that have similar dewatering units, Fournier Industries is considered the only rotary press manufacturer that meets the design specifications for this proposed project. The project specification requires that ''the rotary press shall have the capacity to have 6 channels mounted on the drive shaft with 3 on each side. The sludge shall be continuous feed, and the unit built to operate continuously.'' The specifications also state that ''the dewatering equipment shall be capable of hydraulic flow capacity range of 5 to 15 gpm per channel, or for a 6 channel unit, 30 to 90 gpm of 3.0 to 5.0% thickened sludge.''

Based on the review of available information, there is only one domestic manufacturer of similar rotary type presses for municipal sludge. However, this manufacturer only produces 1 and 2 channel rotary fan presses and currently cannot meet the design specifications required by this proposed project.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines ''satisfactory quality'' as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

The District has requested a waiver of the ARRA Buy American provisions on the basis of unavailability of a U.S. manufactured product that will meet the design and performance criteria specified for this sludge dewatering unit. The evaluation of all of the submitted documentation by EPA's technical review team supports the District's claim that at this time no domestic manufacturer can provide a suitable rotary sludge dewatering press which meets the specifications for this unit. Based on the information available, and to the best of our knowledge, there do not appear to be other rotary press sludge dewatering units manufactured in the United States that are available at this time to meet the District's design specifications and performance requirements for this unit.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already ''shovel ready'' by requiring SRF eligible recipients such as the District to revise their design standards and specifications. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the District established both a proper basis to specify the particular good required and that this manufactured good was not available from a producer in the United States able to meet the design specifications for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States,

the District is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of the specified Fournier Industries 6 channel rotary press sludge dewatering unit documented in District's waiver request submittal dated June 26, 2009 as part of its wastewater treatment plant improvements. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: August 17, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. E9–20798 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, September 9, 2009 from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a short summary of the Bank's recent activities, plus reports from the two Subcommittees of the 2009 Advisory Committee members.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 5, 2009, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Phone: (202) 565–3232.

FOR FURTHER INFORMATION CONTACT: Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Jonathan Cordone, Sr.,

Vice President and General Counsel.

[FR Doc. E9–20707 Filed 8–27–09; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and renewal of the collections of information described below.

DATES: Comments must be submitted on or before September 28, 2009.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Form Number: FDIC 6710/07.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 22.

Estimated Time per Response: 16 hours.

Total Annual Burden: 352 hours.

General Description of Collection: Section 19 of the Federal Deposit Insurance Act (FDI), 12 U.S.C. 1829, requires the FDIC's consent prior to any participation in the affairs of an insured depository institution by a person who has been convicted of crimes involving dishonesty or breach of trust. To obtain that consent, an insured depository institution must submit an application to the FDIC for approval on Form FDIC 6710/07.

2. *Title:* Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Form Numbers: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 5,110.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 2,555 hours.

General Description of Collection: The Bank Protection Act of 1968 (12 U.S.C. 1881–1884) requires each Federal supervisory agency to promulgate rules establishing minimum standards for security devices and procedures to discourage financial crime and to assist in the identification of persons who commit such crimes. To avoid the necessity of constantly updating a technology-based regulation, the FDIC takes a flexible approach to implementing this statute. It requires each insured nonmember bank to designate a security officer who will administer a written security program. The security program shall: (1) Establish procedures for opening and closing for business and for safekeeping valuables; (2) establish procedures that will assist in identifying persons committing crimes against the bank; (3) provide for initial and periodic training of employees in their responsibilities under the security program; and (4) provide for selecting, testing, operating and maintaining security devices as prescribed in the regulation. In addition, the FDIC requires the security officer to

report at least annually to the bank's board of directors on the effectiveness of the security program.

3. *Title:* Privacy of Consumer Financial Information.

OMB Number: 3064–0136.

Form Numbers: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: Initial notice, 208; annual notice and change in terms 5,138; opt-out notice, 873.

Estimated Average Time per Response: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated Number of Responses: 328,600.

Total Annual Burden: 64,728 hours.

General Description of Collection: The elements of this collection are required under section 504 of the Gramm-Leach-Bliley Act, Public Law l06–102. The collection mandates notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of August 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–20741 Filed 8–27–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 14, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Larry E. Kircher, Trustee of the Larry E. Kircher Revocable Trust, 4/12/07, and Molly H. Kircher, Trustee of the Molly H. Kircher Revocable Trust, 4/12/07, all of Bald Knob, Arkansas, acting in concert, to retain control of Citizens State Bankshares of Bald Knob, Inc., Bald Knob, Arkansas, and thereby retain shares of Citizens State Bank, Bald Knob, Arkansas.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Marcia J. Edsall Trust, Bozeman, Montana, Marcia J. Edsall and Wayne A. Edsall as trustees, the Wayne Edsall Trust No. 2, Bozeman, Montana, Wayne A. Edsall as trustee, as well as Susan Joy Edsall, Ennis, Montana, Steven L. Edsall, Bellevue, Idaho, and Sharon J. Cohen, Spokane, Washington, as a group acting in concert, to retain shares of Inter-Mountain Bancorp, Inc., Bozeman, Montana, and thereby indirectly retain First Security Bank, Bozeman, Montana.

2. Cornelius A. Dogterom Marital Trust, Bozeman, Montana, Marjorie T. Dogterom as trustee and individually, Bozeman, Montana, the Dana Dogterom Living Trust, Manhatten, Montana, Dana M. Dogterom as trustee, the Toni Dogterom Living Trust, Evanston, Illinois, Toni L. Dogterom as trustee, the Daphne Gillam Revocable Trust, Bozeman, Montana, Daphne Gillam as trustee, as well as Ashley Claire Gillam, Bozeman, Montana, and Dana M. Dogterom as Custodian for Alexa Dogterom, Evanston, Illinois, as a group acting in concert to shares of Inter-Mountain Bancorp, Inc., Bozeman, Montana, and thereby indirectly retain First Security Bank, Bozeman, Montana.

3. Thomas J. Kamp, Manhatten, Montana, Robert K. Kamp, Manhatten, Montana, Robert and Sharon T. Kamp, Manhatten, Montana, John T. and Joyce B. Kamp, Manhatten, Montana, Alma J. Kamp, San Anselmo, California, Lois F. Kamp, Great Falls, Montana, Michael S. Kamp, Manhatten, Montana, Thomas J. Kamp, Belgrade, Montana, and Theodore P. Kamp, Raton, New Mexico, as a group acting in concert to retain shares of Inter-Mountain Bancorp, Inc., Bozeman, Montana, and thereby indirectly retain First Security Bank, Bozeman, Montana.

Board of Governors of the Federal Reserve System, August 25, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–20814 Filed 8–27–09; 8:45 am]

BILLING CODE 6210–01–S

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 September 23, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. NB and T Financial Group, Inc., Employee Stock Ownership Plan, Wilmington, Ohio, and NB and T Financial Group, Inc., Wilmington, Ohio; to acquire 100 percent of the voting shares of Community National Corporation, Franklin, Ohio and thereby indirectly acquire The Community National Bank, Franklin, Ohio.

Board of Governors of the Federal Reserve System, August 25, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–20815 Filed 8–27–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Emergency Information Collection Clearance Request for Public Comment

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 7 days.

Proposed Project: Rapid Assessment of Critical Illness Due to 2009–H1N1 Influenza OMB No. 0990–New—Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO).

Abstract: The Office of the Secretary (OS) is requesting emergency action for this clearance by the Office of Management and Budget no later than August 28, 2009. ASPR is requesting emergency processing procedures for this application because this information is needed immediately to help reduce morbidity and mortality from 2009–H1N1 by providing near real-time critical care data streams and analyses to strengthen our response to 2009–H1N1 influenza. Specifically, HHS officials will use this information to inform up-to-date clinical practice guidance to front-line clinicians. Also, this data will be used by HHS to guide resource planning actions to assure that healthcare systems have optimal access to treatments and supportive care medical material for critically ill patients. Lastly, this data stream network can serve as platform for which to build critical care clinical trials for H1N1. The overarching purpose of this initiative is to better understand critical illness in 2009–H1N1 patients and to be able to better respond to the needs of these patients. Currently our main source of data is case reports, which lacks timeliness and sufficient numbers of patients to assure that these non-scientific snapshots represent the broad experience across US ICUs. Collecting patient level data through a research network will allow us to understand the disease course of critically ill patients, what clinical resources they require, and what conditions they may be at increased risk for (*e.g.,* secondary bacterial infections and pulmonary thromboembolism).

Estimate Annualized Burden Hours

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total hour burden
IRB Submission (Research Coordinator)	120	1	20	2400
IRB Submission (Site Coordinator)	120	1	2	240
Prospective Patient Data Collection and Transmittal to Coordinating Center (Research Coordinator)	2000	1	6	12000
(Site Investigator)	2000	1	30/60	1000
Retrospective Patient Data Collection and Transmittal to Coordinating Center (Research Coordinator)	250	1	8	2000
(Site Investigator)	250	1	30/60	125
NHLBI Clinical Coordinating Center, 0.5 FTE	1	1	520	520
Total				18,285

Seleda Perryman,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. E9–20793 Filed 8–27–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0299; 30-day notice]

Agency Information Collection Request, 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Adolescent Family Life Care and Prevention End of Year Report Templates (Revision) OMB No. 0990–0299, Office of Adolescent Pregnancy Programs (OAPP).

Abstract: OAPP is proposing to revise the current OMB approved Adolescent Family Life Care and Prevention End of Year Report Templates. The current OMB approval is applicable through May 31, 2009. All AFL grantees are required by their Notice of Grant Awards to submit an end of year report once per year. The current End of Year Report templates provide a degree of standardization across the AFL grantees, allowing for more complete data collection by OAPP for program assessment.

OAPP is also proposing to consolidate 0990–0300—AFL Prevention Project End of Year Report Template ICR and 0990–0299—AFL Care and Prevention End of Year Report Templates ICR. After the approval by OMB on 0990–0299 ICR, OAPP will eliminate 0990–0300. This action will reduce the redundancy across ICRs and lessen the number of burden hours reported by including both templates under one ICR (0990–0299).

The original title will be changed to Adolescent Family Life End of the Year Report Template.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses/ respondent	Average burden/ response (hours)	Total burden (hours)
Care demonstration projects.	Adolescent Family Life Care and Prevention Template.	31	1	65	2,015
Prevention demonstration projects.	Adolescent Family Life Care and Prevention Template.	35	1	65	2,275

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–20795 Filed 8–27–09; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1515/1572, CMS–301, CMS–317, CMS–319, CMS–1957 and CMS–10296]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR 488.26 and 442.30. *Use:* In order to participate in the Medicare Program as a Home Home Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information and patients' health and provider compliance with requirements and to report the information to the Federal Government. *Form Number:* CMS–1515/1572 (OMB#: 0938–0355); *Frequency:* Reporting—Yearly; *Affected Public:* Health Care Services; *Number of Respondents:* 10,078; *Total Annual Responses:* 5,614; *Total Annual Hours:* 9,821. (For policy questions regarding this collection contact Patricia Sevast at 410–786–8135. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Quality Control Payment Error Rates and Supporting Regulations Contained in 42 CFR 431.816. *Use:* Under the MEQC program, States can operate the traditional MEQC sample-and-review program or States can elect to study targeted areas of eligibility or program administration that are error-prone or that will help to prevent or reduce erroneous or misspent funds. These alternative MEQC programs are called MEQC pilots. Some States operate alternative MEQC programs as part of their research and demonstration waivers under Section 1115 of the Social Security Act. The majority of States operate some form of alternative MEQC program. However, since the number of States that conduct traditional MEQC programs and alternative MEQC programs can fluctuate at any time, we have assessed the burden and costs associated with submitting the Payment Error Rate form as if all States were reporting this information.

State agencies are required to submit the Payment Error Rate form to their respective CMS Regional Offices. Regional Office staff will review these forms for completeness and will forward these forms to the Central Office for compilation of error rate charts for

projected quarterly withholdings and/or fiscal disallowances. The collection of information is also necessary to implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. *Form Number:* CMS–301 (OMB#: 0938–0246); *Frequency:* Reporting and Recordkeeping—Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 102; *Total Annual Hours:* 16,446. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sampling Plan and Supporting Regulations in 42 CFR 431.800–431.865; *Use:* The Medicaid Eligibility Quality Control (MEQC) System is operated by the State Title XIX agency to monitor and improve the administration of its Medicaid system. The MEQC system is based on monthly State reviews of Medicaid cases by States performing the traditional sampling process identified through statistically reliable statewide samples of cases selected from the eligibility files. These reviews are conducted to determine whether or not the sampled cases meet applicable State Title XIX eligibility requirements. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases.; *Form Number:* CMS–317 (OMB#: 0938–0146); *Frequency:* Recordkeeping and Reporting—Semi-annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 10; *Total Annual Responses:* 20; *Total Annual Hours:* 480. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of the currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sample Selection Lists and Supporting Regulations in 42 CFR 431.800–431.865; *Use:* State Medicaid Eligibility Quality Control (MEQC) is operated by the State Title XIX agency to monitor and improve the administration of its Medicaid system. The MEQC system is based on State reviews of Medicaid beneficiaries identified through statistically reliable statewide samples of cases selected from the eligibility files. These reviews are conducted to determine whether or not the sampled cases meet applicable State Title XIX eligibility requirements by States performing the traditional sample process. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases. At the beginning of each month, State agencies still performing the traditional sample are required to submit sample selection lists which identify all of the cases selected for review in the States' samples. The sample selection lists contain identifying information on Medicaid beneficiaries such as: State agency review number; beneficiary's name and address; the name of the county where beneficiary resides; Medicaid case number, *etc.* The submittal of the sample selection lists is necessary for regional office (RO) validation of State reviews. Without these lists, the integrity of the sampling results would be suspect and the ROs would have no data on the adequacy of the States' monthly sample draw or review completion status.; *Form Number:* CMS–319 (OMB#: 0938–0147); *Frequency:* Reporting—Monthly; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 10; *Total Annual Responses:* 120; *Total Annual Hours:* 960. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* SSO Report of State Buy-in Problem and Supporting Regulations in 42 CFR 407.40; *Use:* Under the State Buy-In program, States enroll certain groups of needy people under the Part B Supplementary Medical Insurance (SMI) Program and pay their premiums. The purpose of the ''buy-in'' is to allow the States to provide SMI protection to certain groups of needy individuals as part of its total assistance plan. Generally, States ''buy-in'' for individuals who are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreement those eligible for medical assistance only. The CMS–1957 is used in the resolution of beneficiary complaints regarding State buy-in. This form facilitates the coordination of efforts between the SSO, State Medicaid Agencies, and CMS in the resolution of a beneficiary's State buy-in problem. *Form Number:* CMS–1957 (OMB#: 0938–0035); *Frequency:* Reporting—On occasion; *Affected Public:* Federal government, Individuals or Households, and State, Local, and Tribal governments; *Number of Respondents:* 5,600; *Total Annual Responses:* 5,600; *Total Annual Hours:* 1,816. (For policy questions regarding this collection contact Lucia Diaz-Robinson at 410–786–0598. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Electronic Health Records (EHR) Testing; *Use:* The Centers for Medicare and Medicaid Services (CMS) has indicated through statements in proposed and final rulemaking for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program that it is actively seeking to pursue quality measurement based on alternative sources of data that do not require manual chart abstraction or that utilize data already being reported by many hospitals for other programs, as doing so would potentially reduce the burden associated with the collection and reporting of measures for the program. Over the years, we have encouraged hospitals to take steps toward the adoption of electronic health records (EHRs) that would allow for reporting of clinical quality data from the EHRs directly to a CMS data repository beginning with the FY 2006 Inpatient Prospective Payment System (IPPS) Rule (70 FR 47420 through 47421). We have also encouraged hospitals that are implementing, upgrading, or developing EHR systems to ensure that the technology obtained, upgraded, or developed conforms to standards adopted by the Department of Health and Human Services (HHS).

In the IPPS 2010 proposed rule (74 FR 24182), we described our intent to begin a voluntary testing program for the submission to CMS of standardized data elements needed to calculate inpatient hospital quality measures on the topics of Stroke, Venous thromboembolism, and Emergency department throughput. These measures have not been adopted for the Reporting Hospital Quality for Annual Payment Update (RHQDAPU) program, and participation in this voluntary EHR-testing program will not substitute for submission of data elements required under the RHQDAPU program in a time, form and manner specified by the Secretary. Similarly, non-participation in this voluntary program will not incur any penalties.

The results of this voluntary testing process will enable CMS to assess the feasibility of collecting data elements via electronic health records as a future alternative to submission of manually abstracted chart data elements by hospitals, thereby potentially reducing the administrative burden associated with submission of quality measures for the RHQDAPU program. *Form Number:* CMS–10296 (OMB#: 0938–New); *Frequency:* Reporting—Once; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 28,655. (For policy questions regarding this collection contact Shaheen Halim at 410–786–0641. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *October 27, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 21, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–20845 Filed 8–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10080, CMS–R–70, CMS–R–38 and CMS–846–849, 854, 10125, 10126, 10269]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Publication Usage Survey; Use: The Publication Usage survey was developed to gather information from people who request or access Medicare publications, to ensure comprehension, usability, and use of the publications. CMS is seeking understanding about whether publications have been effective in informing members of the Medicare audience regarding policy and benefits. Included in the survey are questions regarding the satisfaction of publication users with specific publications and whether the information they received informed them about the Medicare program. Information gathered in this survey will be used only for purposes of targeting and improving communications with Medicare beneficiaries, caregivers, partners, and community organizations. *Form Number:* CMS–10080 (OMB#: 0938–0892); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,800; *Total Annual Responses:* 3,800; *Total Annual Hours:* 950. (For policy questions regarding this collection contact Renee Clarke at 410–786–0006. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer review Organization Information and Supporting Regulations in 42 CFR, Sections 480.104, 480.105, 480.116, and 480.134; *Use:* The Peer Review Improvement Act of 1982 authorizes quality improvement organizations (QIOs), formally known as peer review organizations (PROs), to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. The QIOs are required to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties. The information provided in these notices is used by the patients, practitioners and providers to: obtain access to the data maintained and collected on them by the QIOs; add additional data or make changes to existing QIO data; and reflect in the QIO's record the reasons for the QIO's disagreeing with an individual's or provider's request for amendment.: *Form Number:* CMS–R–70 (OMB#: 0938–0426); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profits; *Number of Respondents:* 362; *Total Annual Responses:* 3729; *Total Annual Hours:* 60,919. (For policy questions regarding this collection contact Tom Kessler at 410–786–1991. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Certification for Rural Health Clinics and Supporting Regulations in 42 CFR 491.9, 491.10, 491.11; *Use:* The Rural Health Clinic (RHC) conditions of certification are based on criteria prescribed in law and are designed to ensure that each facility has a properly trained staff to provide appropriate care and to assure a safe physical environment for patients. The Centers for Medicare and Medicaid Services (CMS) uses these conditions of participation to certify RHCs wishing to participate in the Medicare program. These requirements are similar in intent to standards developed by industry organizations such as the Joint Commission on Accreditation of Hospitals, and the National League of Nursing/American Public Association

and merely reflect accepted standards of management and care to which rural health clinics must adhere. *Form Number:* CMS–R–38 (OMB#: 0938–0334); *Frequency:* Recordkeeping and Reporting—Annually and upon initial application for Medicare approval; *Affected Public:* Business or other for-profits; *Number of Respondents:* 3,937; *Total Annual Responses:* 3,937; *Total Annual Hours:* 18,932. (For policy questions regarding this collection contact Mary Collins at 410–786–3189. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Medicare Administrative Contractors (MAC), Certificates of Medical Necessity; *Use:* The certificate of medical necessity (CMN) collects information required to help determine the medical necessity of certain items. CMS requires CMNs where there may be a vulnerability to the Medicare program. Each initial claim for these items must have an associated CMN for the beneficiary. Suppliers (those who bill for the items) complete the administrative information (*e.g.,* patient's name and address, items ordered, etc.) on each CMN. The 1994 Amendments to the Social Security Act require that the supplier also provide a narrative description of the items ordered and all related accessories, their charge for each of these items, and the Medicare fee schedule allowance (where applicable). The supplier then sends the CMN to the treating physician or other clinicians (*e.g.,* physician assistant, LPN, etc.) who completes questions pertaining to the beneficiary's medical condition and signs the CMN. The physician or other clinician returns the CMN to the supplier who has the option to maintain a copy and then submits the CMN (paper or electronic) to CMS, along with a claim for reimbursement.

Due to a technical oversight on the part of CMS, an important question on CMN Form 10269 was omitted from the last OMB submission that would allow claims with an apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) greater than or equal to 5 without symptoms for Criterion 2 be paid for by the Medicare program. The omission of the following question ''Does the patient have documented evidence of at least one of the following: Excessive daytime sleepiness, impaired cognition, mood disorders, insomnia, hypertension, ischemic heart disease or history of stroke'' could cause improper payment of claims without regards as to whether the patient has signs or symptoms in support of meeting the applicable coverage criteria for PAP devices. We are resubmitting this information collection request to have the revised CMN Form 10269 approved. None of the other CMN forms have changed. *Form Number:* CMS–846–849, 854, 10125, 10126, 10269 (OMB# 0938–0679); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 59,200; *Total Annual Responses:* 6,480,000; *Total Annual Hours:* 1,296,000. (For policy questions regarding this collection contact Doris Jackson at 410–786–4459. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on September 28, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, e-mail: *OIRA_submission@omb.eop.gov*.

Dated: August 21, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–20839 Filed 8–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Draft Policy Document for Comment

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: This Policy Information Notice (PIN) describes the documentation that will be considered by the Health Resources and Services Administration (HRSA) to establish whether an organization can qualify as a ''public agency'' (also referred to in previous PINs as ''public entities'' or ''public applicants'') for the purpose of determining eligibility for a Health Center Program grant under Section 330 of the Public Health Service (PHS) Act (''Section 330'') and/or Federally Qualified Health Center (FQHC) Look-Alike designation. This draft PIN is available on the Internet at *http://bphc.hrsa.gov/draftsforcomment/publiccenter*.

DATES: Comments must be received by October 13, 2009.

ADDRESSES: Comments should be submitted to *OPPDGeneral@hrsa.gov* by close of business October 13, 2009.

SUMMARY: HRSA believes that community input is valuable to the development of policies and policy documents related to the implementation of HRSA programs, including the Health Center Program. Therefore, we are requesting comments on the PIN referenced above. Comments will be reviewed and analyzed, and a summary and general response will be published as soon as possible after the deadline for receipt of comments.

Background: HRSA administers the Health Center Program, which supports more than 1,100 organizations operating more than 7,500 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve medically underserved communities delivering preventive and primary care services to patients regardless of their ability to pay. The Health Center Program's authorizing statute and implementing regulations (Section 330 of the PHS Act and 42 CFR Part 51c) state that any public or non-profit private entity is eligible to apply for a grant under the Health Center Program. The term ''public agency'' is not explicitly defined in Section 330 or in the Health Center Program's regulations; however, reference is made in Section 330 to these types of organizations within the definition of a public center as ''a health center funded (or to be funded) through a grant under this section to a public agency'' (Section 330(k)(3)(M) of the PHS Act). HRSA is issuing this PIN to describe the documentation that will be considered to establish whether an organization can qualify as a ''public agency'' (also referred to in previous PINs as ''public entities'' or ''public applicants'') for purposes of determining eligibility for a Health Center Program grant under Section 330 of the PHS Act and/or FQHC Look-Alike designation.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact the Office of Policy and Program

Development, Bureau of Primary Health Care, HRSA, at 301–594–4300.

Dated: August 24, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–20818 Filed 8–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2299–FN]

Medicare and Medicaid Programs; Application of the American Osteopathic Association for Continued Deeming Authority for Hospitals

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

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the American Osteopathic Association (AOA) for continued recognition as a national accreditation program for hospitals seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective September 25, 2009 through September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital provided certain requirements are met. The regulations specifying the Medicare conditions of participation (CoPs) for hospitals are located at 42 CFR part 482. These conditions implement section 1861(e) of the Social Security Act (the Act), which specifies services covered as hospital care and the conditions that a hospital program must meet in order to participate in the Medicare program.

Regulations concerning provider agreements are located at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are located at 42 CFR part 488.

Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in the statute and part 482 of the regulations. Then, the hospital is subject to routine State agency surveys to determine whether it continues to meet the Medicare requirements. There is an alternative, however, to State compliance surveys.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met the requirements.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accreditation organization approved program would be deemed to meet the Medicare conditions. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

A national accreditation organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

Our regulations concerning the reapproval of accreditation organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued deeming authority every 6 years or sooner as determined by CMS.

AOA's term of approval as a recognized accreditation program for hospitals expires September 25, 2009.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of a complete application, with any documentation necessary to make a determination, to complete our survey activities and application review. Within 60 days of receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation organization making the request, describes the request, and provides no less that a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Provisions of the Proposed Notice and Response to Comments

On April 24, 2009, we published a proposed notice in the **Federal Register** (74 FR 18728) announcing AOA's request for reapproval as a deeming organization for hospitals. In this notice, we detailed the evaluation criteria. Under section 1865(a)(2) of the Act and our regulations at § 488.4, we conducted a review of the AOA's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following factors:

- An onsite administrative review of AOA's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and, (5) survey review and decision-making process for accreditation.
- A comparison of AOA's hospital accreditation standards to our current Medicare hospital CoPs.
- A documentation review of AOA's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and AOA's ability to provide continuing surveyor training.

+ Compare AOA's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate AOA's procedures for monitoring providers or suppliers found to be out of compliance with AOA program requirements. The monitoring procedures are used only when AOA identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess AOA's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish AOA's ability to provide us with electronic data and reports necessary for effective validation and assessment of AOA's survey process.

+ Determine the adequacy of staff and other resources.

+ Review AOA's ability to provide adequate funding for performing required surveys.

+ Confirm AOA's policies with respect to whether surveys are announced or unannounced.

+ Obtain AOA's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the April 24, 2009 proposed notice also solicited public comments regarding whether

AOA's requirements met or exceeded the Medicare CoPs for hospitals. We received 28 comments in response to our proposed notice.

All commenters expressed support for AOA's continued deeming authority for hospitals. Commenters stated that AOA's standards are clearly written and closely aligned with the Medicare CoPs, and that AOA's accreditation program provides hospitals with a viable alternative to other healthcare accreditation organizations.

IV. Provision of the Final Notice

A. Differences Between AOA's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared AOA's hospital accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of AOA's deeming application, which were conducted as described in section III of this final notice, yielded the following:

- AOA revised its standards to ensure that a medical history and physical is completed and documented in accordance with the requirements at § 482.51(b)(1).
- To meet the requirements in the SOM Appendix A, AOA amended its surveyor team handbook to ensure all hospital survey teams include a Registered Nurse.
- AOA modified its policies related to the accreditation effective date in accordance with the requirements at § 489.13.
- AOA modified its policies regarding timeframes for sending and receiving a plan of correction (PoC) in accordance with section 2728 of the SOM.
- AOA revised its policies to include timeframes for investigation of complaints in accordance with the requirements at section 5075.9 of the SOM.
- AOA developed and implemented internal monitoring procedures to ensure its surveyors are trained and qualified to meet the requirements at § 488.4(a)(4).
- AOA developed an action plan to ensure that deemed status survey files are complete, accurate, and consistent with the requirements at § 488.6(a).
- AOA developed and conducted surveyor training on the documentation of deficiencies to ensure that all cited deficiencies contain a regulatory reference, a clear and detailed description of the deficient practice, and relevant finding.
- To meet the requirements at § 488.20(a) and § 488.28(a), AOA developed a policy to ensure that facilities with condition level non-compliance on a recertification survey submit an acceptable PoC, and receive a follow up onsite focused survey.
- To meet the requirements at section 2005A2 of the SOM, AOA revised its policies and developed an internal tracking tool to ensure that facilities with condition level non-compliance on an initial survey receive an onsite follow-up full survey.
- To meet the requirements at § 488.4(b), AOA developed and incorporated measures to improve the accuracy and consistency of data submissions to CMS.
- To meet the requirements at 2700A of the SOM, AOA revised its policies on blackout dates.
- AOA revised its accreditation decision letters to ensure that they are accurate and contain all the required elements for the CMS Regional Office to render a decision regarding the deemed status of an accredited hospital.
- To meet the survey process requirements in Appendix A of the SOM, AOA developed a policy outlining the minimum number of inpatient records required for review during a certification survey.
- AOA removed all references to mandatory consultative services from its policies to avoid potential conflict of interest issues.
- To verify AOA's continued compliance with the provisions of this final notice, CMS will conduct a follow-up corporate onsite visit within one year of the date of publication of this notice.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that AOA's requirements for hospitals meet or exceed our requirements. Therefore, we approve AOA as a national accreditation organization for hospitals that request participation in the Medicare program, effective September 25, 2009 through September 25, 2013.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

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

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

Dated: July 30, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–20203 Filed 8–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7016–N]

Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education

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

ACTION: Notice.

SUMMARY: This notice requests nominations for individuals to serve on the Advisory Panel on Medicare Education (the Panel) to fill current vacancies and vacancies that will become available in 2009. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on the effectiveness of consumer education strategies concerning the Medicare program.

DATES: *Deadline for Nominations by Regular Mail:* Monday, September 14, 2009 at 5 p.m., eastern daylight time (e.d.t.).

Deadline for Nominations by Electronic Mail: Monday, September 14, 2009 at 5 p.m., e.d.t.

ADDRESSES: *Regular Mail:* Dwayne E. Campbell, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S1–05–14, Baltimore, MD 21244–1850.

Electronic Mail: Dwayne.Campbell@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Dwayne E. Campbell, Health Insurance Specialist, Division of Forum and Conference Development, (410) 786–0291. Please refer to the CMS Advisory Committees Information Line (1–877–

449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities, or contact Mr. Campbell via e-mail at *Dwayne.Campbell@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed * * * by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), which requires the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a), which authorize the creation of advisory committees. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2009 (74 FR 13442, March 27, 2009). The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes benefit options under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer.
- To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate benefit options and build a community infrastructure for information, counseling, and assistance.

The Panel shall consist of a maximum of 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately 4 times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in the fields of senior citizen advocacy; outreach to minority communities; health communications; disease-related health advocacy; disability policy and access; health economics research; health insurers and plans; providers and clinicians; labor and retirement, and web education. Members of the general public are invited to apply.

This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the Panel. The Secretary or his designee will appoint new members to the Panel from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure an appropriate balance of membership.

II. Nomination Requirements

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a resume or description of the nominee's experience and a brief biographical summary. In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts. Self-nominations will also be accepted. All nominations must be received at the appropriate address listed in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a); sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a)); sections 1114(f), 1804, and 1851(d) of the Social Security Act (42 U.S.C. 1314(f), 1395b–2, and 1394w–21(d)); and 41 CFR Part 102–3.

Dated: August 13, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–20129 Filed 8–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Special Emphasis Panel. Institutional Training Grants (T32).

Date: November 17, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 2121, Bethesda, MD 20892–9304. 301–443–2369. *Igunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891 Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: August 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20767 Filed 8–27–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 28–29, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 2121, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20773 Filed 8–27–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3214–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—October 21, 2009

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

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, October 21, 2009. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the use of catheter ablation for the treatment of atrial fibrillation. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting date:* The public meeting will be held on Wednesday, October 21, 2009 from 7:30 a.m. until 4:30 p.m., d.s.t.

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., d.s.t. on Monday, September 21, 2009. Once submitted all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit powerpoint presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., d.s.t. on Monday, September 21, 2009. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m., d.s.t. on Wednesday, October 14, 2009.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., d.s.t. Friday, October 2, 2009.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780.) This notice announces the October 21, 2009, public meeting of the Committee. During this meeting, the Committee will discuss the use of catheter ablation for the treatment of atrial fibrillation. Background information about this topic, including panel materials, is available at *http://ww.cms.hhs.gov/coverage*. We encourage the participation of appropriate organizations with expertise in the use of catheter ablation for the treatment of atrial fibrillation.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the

Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your State-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

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

Dated: August 24, 2009.

Barry M. Straube,

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. E9–20844 Filed 8–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Blood Establishment Computer Software: Understanding What to Include in a 510(k) Submission; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Blood Establishment Computer Software: Understanding What to Include in a 510(k) Submission.'' The purpose of the public workshop is to educate industry on the laws and regulations for medical devices that are applicable to Blood Establishment Computer Software (BECS), including requirements for the content of a 510(k) submission. The public workshop will feature presentations and panel discussions led by FDA and other experts in software quality engineering.

Date and Time: The public workshop will be held on November 4, 2009, from 8:30 a.m. to 5 p.m. and November 5, 2009, from 8:30 a.m. to 12 noon.

Location: The public workshop will be held at The Universities at Shady Grove Conference Center, Bldg. II, multipurpose room, 9630 Gudelsky Dr., Rockville, MD 20850.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 550N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone, and fax numbers) to the contact person by October 16, 2009. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: BECS is a device used in the prevention of disease in humans, by identifying unsuitable donors and preventing the release of infectious or otherwise harmful blood and blood components for transfusion or for further manufacturing use. Facilities that manufacture and distribute BECS are subject to device provisions of the Federal Food, Drug, and Cosmetic Act (the act), including premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) and applicable regulations at 21 CFR 807, subpart E. The public workshop will consist of a series of presentations, question-and-answer sessions, and a panel discussion on the following topics:

- The history and legal framework of BECS regulation in the United States;
- Content of 510(k) submissions, applicable regulations, and guidance;
- Common challenges in obtaining 510(k) clearance;
- FDA-recognized software standards;
- General software quality engineering;
- Transfusion safety management systems (blood administration software);
- Virtualization; and
- Wireless technology.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857,

approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm*.

Dated: August 21, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20781 Filed 8–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Cardiopulmonary and Hematology Grant Opportunities (ARRA).

Date: September 2, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892. 301–594–8394. *mooreb@nhlbi.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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: August 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20775 Filed 8–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Population and Patient-Oriented Training.

Date: October 28, 2009.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20782 Filed 8–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–485 and Supplements A and E, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–485 and Supplements A and E, Application to Register Permanent Residence or Adjust Status; OMB Control No. 1615–0023.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 11, 2009, at 74 FR 27811, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0023. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485 and Supplements A and E. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–485—614,921 responses at 6 hours and 15 minutes (6.25) per response; Supplement A—3,888 responses at 13 minutes (.216) per response; Supplement E—31,000 responses at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,875,095 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 25, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20842 Filed 8–27–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–600/I–600A, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–600/I–600A, Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; OMB Control No. 1615–0028.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 11, 2009, at 74 FR 27811, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0028. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–600/I–600A. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The Form I–600 is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 25, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20857 Filed 8–27–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–751, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–751, Petition to Remove Conditions on Residence; OMB Control No. 1615–0038.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 11, 2009, at 74 FR 27812, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0038. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–751. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This form will be used by USCIS to verify the petitioner's status and determine whether the conditional resident is eligible to have this or her status removed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 responses at 3 hours and 20 minutes (3.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 393,321 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

August 25, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20841 Filed 8–27–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on September 10, 2009, from 1 p.m. to 4:30 p.m., Eastern Standard Time, or until the conclusion of the committee's business.

ADDRESSES: The meeting will be held at the Doubletree Hotel Crystal City—National Airport, 300 Army Navy Drive, Arlington, Virginia, United States 20598–6028.

FOR FURTHER INFORMATION CONTACT: Dean Walter, Office of Transportation Sector Network Management, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone 571–227–2645, e-mail *dean.walter@dhs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The purpose of this meeting is to discuss the following agenda items—

- Transportation System Sector Specific Plan update;
- Secure Flight Program update;
- Report on the Airport Security Design Guidelines;
- Air Cargo Security—Update on 100% screening of air cargo;
- General Aviation update—Large Aircraft Security Plan regulation;
- New air service to foreign countries; and
- Other aviation security topics.

This meeting is open to the public, but attendance is limited to space available. The doors will open at 12:30 p.m.

Members of the public must make advance arrangements to present oral statements at the meeting. Written statements may be presented to the committee by providing copies of them to the person listed under the heading

FOR FURTHER INFORMATION CONTACT prior to or at the meeting. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation, as well as a listening device, can be provided if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Arlington, Virginia, on August 25, 2009.

John P. Sammon,

Assistant Administrator, Transportation Sector Network Management.

[FR Doc. E9–20846 Filed 8–25–09; 4:15 pm]

BILLING CODE 9110–05–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0341; 81420–1113–0000–F3]

Proposed Programmatic Safe Harbor Agreement for the California Rangeland Conservation Coalition in Butte, Glenn, Shasta, and Tehama Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that the California Cattlemen's Association (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the federally-endangered vernal pool tadpole shrimp (*Lepidurus packardi*), the threatened vernal pool fairy shrimp (*Branchinecta lynchi*), the endangered Conservancy fairy shrimp (*Branchinecta conservatio*), the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), the threatened giant garter snake (*Thamnophis gigas*), the threatened California red-legged frog (*Rana aurora draytonii*), the threatened Hoover's spurge (*Chamaesyce hooveri*), the endangered Butte County meadowfoam (*Limnanthes floccosa ssp. californica*), the endangered hairy Orcutt grass (*Orcuttia pilosa*), the threatened slender Orcutt grass (*Orcuttia tenuis*), and the endangered Greene's tuctoria (*Tuctoria greenei*) (collectively referred to as the Covered Species). The Agreement is available for public comment.

DATES: Written comments should be received on or before September 28, 2009.

ADDRESSES: Comments should be addressed to Mr. Rick Kuyper, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may also be sent by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the document for review by contacting the individual named above. You may also make an appointment to view the document at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c) and 17.32(c). These permits allow any necessary future incidental take of covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms and conditions of the permits and accompanying agreements.

This Agreement was developed by members of the California Rangeland Conservation Coalition (CRCC), including the Applicant, the Service, the California Department of Fish and Game, the Natural Resources Conservation Service, the California Farm Bureau Federation, Environmental Defense Fund, Defenders of Wildlife, and Sustainable Conservation. In addition, the CRCC met with recognized species experts and private cattle ranchers in development of the Agreement. The Agreement is expected to promote the recovery of the Covered Species on non-Federal properties within Butte, Glenn, Tehama, and Shasta Counties. The proposed duration of the Agreement and the associated Enhancement of Survival permit are 50 years.

The Agreement was also prepared in conjunction with the California Department of Fish and Game's Voluntary Local Program, which is roughly equivalent to the Federal Safe Harbor Program. The California Department of Fish and Game will cover a variety of State-listed species through this joint-Agreement.

The proposed Enhancement of Survival permit would authorize the incidental taking of the Covered Species associated with: the restoration, enhancement, and maintenance of suitable habitat for the Covered Species; routine activities associated with rangeland and some agricultural lands management; and the potential future return of any property included in the Agreement to baseline conditions. Under this Agreement, individual landowners (Cooperators) may include their properties by entering into a Cooperative Agreement with the Applicant. Each Cooperative Agreement will specify the restoration and/or enhancement, and management activities to be carried out on that specific property and a timetable for implementing those activities. All Cooperative Agreements will be reviewed by the Service to determine whether the proposed activities will result in a net conservation benefit for the Covered Species and meet all required standards of the Safe Harbor Policy (64 FR 32717). Upon Service approval, the Applicant will issue a Certificate of Inclusion to the Cooperator. Each Certificate of Inclusion will extend the incidental take coverage conferred by the Enhancement of Survival permit to the Cooperator. Certificates of Inclusion will be valid for a period of 10 years and are renewable during the 50-year term of the Enhancement of Survival permit. Specific determinations for which species will be covered under each Cooperative Agreement will be determined by the Service on a case by case basis and will depend on the type of habitat present and the restoration and/or enhancement activities that will be implemented by the Cooperator.

Baseline levels for the Covered Species will be determined by completing the Baseline Habitat Worksheet (Attachment 4 of the Agreement), which will be completed by a person approved by the Service. The Service will review each baseline determination prior to the Applicant issuing a Certificate of Inclusion to the Cooperator. The Agreement also contains a monitoring component that requires the Applicant to ensure that the Cooperators are in compliance with the terms and conditions of the Agreement and maintaining baseline levels of habitat for the Covered Species. Results of these monitoring efforts will be provided to the Service by the Applicant in an annual report.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy (64 FR 32717), the Service would issue an Enhancement of Survival permit to the Applicant. This permit will authorize Cooperators issued a Certificate of Inclusion to take the Covered Species incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the property including normal, routine land management activities, and incidental to return to baseline conditions if desired. Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an enhancement of survival permit, plant species may be included on a permit in recognition of the net conservation benefit provided to them under a safe harbor agreement. An applicant would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(c)(5) and 17.32(c)(5)) for all species included in the Enhancement of Survival permit. In addition to meeting other criteria, actions to be performed under an Enhancement of Survival permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

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.

The Service will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If the Service determines that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the Covered Species incidental to otherwise lawful activities in accordance with the terms of the Agreement. The Service will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

August 21, 2009.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E9–20747 Filed 8–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0201; ABC Code: 1261–0000–80230–W2]

Sears Point Wetland and Watershed Restoration Project, Sonoma County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft environmental impact statement and environmental impact report.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG), in cooperation with the Sonoma Land Trust (SLT), have prepared a draft environmental impact report and environmental impact statement (DEIR/EIS) on the restoration of approximately 2,300 acres (ac) of former farm land located in Sonoma County, California near the San Pablo Bay. The proposed restoration project, which would be implemented by the SLT, would restore natural estuarine ecosystems on diked baylands, while providing public access and recreational and educational opportunities compatible with ecological and cultural resources protection. In accordance with National Environmental Policy Act of 1969 (NEPA), this notice advises other agencies, Tribes, and the public that the DEIR/EIS on the proposed Sears Point Wetland and Watershed Restoration Project is now available for review. We invite and encourage interested persons to review the document and submit written comments to identify issues related to the alternatives we address in the DEIR/EIS.

DATES: We must receive written comments at the address below on or before October 13, 2009. You may submit comments by any one of the methods we describe under **ADDRESSES**. We will hold a public meeting in the fall of 2009, to solicit comments. See **SUPPLEMENTARY INFORMATION** for more details.

ADDRESSES: The Draft EIS/EIR is available for review at:

- Refuge Headquarters Office, San Pablo Bay National Wildlife Refuge, 2100 Highway 37, Petaluma, CA 94954; (707) 769–4200.
- San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, CA 94560; (510) 792–0222.
- John F. Kennedy Public Library, 505 Santa Clara, Vallejo, CA 94590.
- http://www.sonomalandtrust.org.

Written comments and requests for information may be mailed to: Christy Smith, Refuge Manager, San Pablo Bay National Wildlife Refuge, 7715 Lakeville Highway, Petaluma, California, 94954. Alternatively, you may fax written comments to (707) 769–8106, or send them by electronic mail to *christy_smith@fws.gov*. Please include the heading ''Sears Point NEPA comments in your response.

FOR FURTHER INFORMATION CONTACT: Christy Smith, Refuge Manager, San Pablo Bay NWR, (707) 769–4200 (phone); *christy_smith@fws.gov* (e-mail), or John Brosnan, Baylands Program Manager, at (707) 526–6930 x109 (phone); *john@sonomalandtrust.org* (e-mail).

SUPPLEMENTARY INFORMATION:

Location

The project site is located at Sears Point near the intersection of Lakeville-Reclamation Road and State Route 37

(SR 37) in southern Sonoma County, California. The site is also traversed from east to west by an inactive rail line owned by the Sonoma-Marin Area Rail Transit (SMART) District.

The project site is a total of 2,327 ac owned by the Sonoma Land Trust (SLT) and is comprised of two large properties, the North Point Joint Venture (NPJV) parcel and the Dickson Ranch parcel, which are situated on the edge of San Pablo Bay between the mouth of the Petaluma River and Tolay Creek. The 1,679-ac NPJV parcel extends both north and south of SR 37. It is bounded on the north by the Infineon Raceway property, on the east by Cougar Mountain (north of SR 37) and Paradise Vineyards (south of SR 37), on the south by the SMART rail line, and on the west by Lakeville-Reclamation Road. The 648-ac Dickson Ranch parcel is located entirely south of Highway 37, and is bounded on the north by the SMART rail line, on the west by Tolay Creek, on the south by San Pablo Bay, and on the west by the outboard levee as it veers bayward from the SMART rail line. The entire Dickson Ranch parcel and 858 ac of the NPJV parcel are located within the approved acquisition boundary of the San Pablo Bay National Wildlife Refuge. The SLT proposes to transfer a 350-acre parcel of this land bounded by Highway 37 and the SMART rail line, to the Service, and the remainder of the land to CDFG.

Alternatives

We identified and analyzed a total of eight alternatives. The alternatives were analyzed based on a set of criteria, including (1) ability to meet the project purpose and need, (2) technical, logistical, and financial feasibility, and (3) ability to avoid or substantially reduce one or more significant impacts. We removed five of these alternatives from further consideration because they did not meet the purpose and need, were not feasible, or did not provide substantial variation in environmental impacts. The lead agencies carried forward three possible alternatives for environmental analysis: the No-Action Alternative, the Partial-Tidal (Preferred) Restoration Alternative, and the Full-Tidal Restoration Alternative.

No-Action Alternative

Under the No-Action Alternative, there would be no wetland restoration or enhancement, no new trails, and no new habitat creation. The Sonoma Land Trust (SLT) would still move forward with the transfer of title of the Sears Point properties to the Federal and State agencies. SLT will honor existing agricultural and commercial leases on the property through June 2010.

Partial-Tidal (Preferred) Restoration Alternative

The Partial-Tidal Restoration Alternative would restore 970 acres of tidal marsh; improve tidal exchange in Tolay Creek along the eastern edge of the project boundary; preserve and enhance a 106-acre area of non-tidal seasonal wetland while maintaining existing agriculture between the SMART line and Highway 37; provide public recreation access south and possibly north of Highway 37; enhance 40 acres of non-tidal seasonal wetland north of Highway 37; and create 15.5 acres of additional breeding habitat for the California red-legged frog, including 0.5 acres of excavation in the floodplain near the northern project boundary.

Full-Tidal Restoration Alternative

The Full-Tidal Restoration Alternative would restore 1,335 acres of tidal marsh; improve tidal exchange in Tolay Creek along the eastern edge of the project boundary; provide public recreation access south and possibly north of Highway 37; enhance 40 acres of non-tidal seasonal wetland north of Highway 37; and create 15.5 acres of additional breeding habitat, including 0.5 acres of excavation in the floodplain, for the California red-legged frog near the northern project boundary.

NEPA Compliance

The entire Dickson Ranch parcel and 858 acres of the NPJV parcel are located within the approved acquisition boundary of the San Pablo Bay NWR. Federally owned lands within the Refuge boundary are adjacent to these properties. In order to implement the action alternatives described above, some activity (channel dredging and levee breaching) within the San Pablo Bay NWR is necessary. We will use the EIR/EIS to determine whether to authorize activities within the San Pablo Bay NWR in order to accomplish project goals.

The EIR/EIS discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, land use, air quality, water quality, water resources, and other environmental resources. It also identifies appropriate mitigation measures for adverse environmental effects.

We are conducting public review of the EIR/EIS in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The EIR/EIS meets the requirements of both NEPA and the California Environmental Quality Act (CEQA). The California Department of Fish and Game is the CEQA lead agency. We provide this notice under regulations implementing NEPA (40 CFR 1506.6).

Public Meeting

We will hold one public meeting to solicit comments on the DEIR/EIS. We will mail a separate notice to the public and local publications that identifies the time, date, and location of the meeting.

Public Comments

We invite the public to comment on the DEIR/EIS during the comment period. 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. We will use the comments to prepare a final EIR/EIS. A decision will be made no sooner than 30 days after the publication of the final EIR/EIS. We anticipate that a Record of Decision will be issued by the Service in 2010.

Dated: August 20, 2009.

Margaret T. Kolar,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. E9–20582 Filed 8–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Mandan, Hidatsa, Arikara (MHA) Nation's Proposed Clean Fuels Refinery, Fort Berthold Indian Reservation, Ward County, ND

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Department of Interior, Bureau of Indian Affairs (BIA) and the U.S. Environmental Protection Agency (EPA) as co-lead agencies; and the Mandan, Hidatsa and Arikara (MHA) Nation and the U.S. Army Corps of Engineers as cooperating agencies, intend to file a Final Environmental Impact Statement (FEIS) with the EPA for the proposed

Clean Fuels Refinery, and that the FEIS is now available for public review. The proposed Federal actions are: (1) The taking into trust of 469 acres of fee land by the BIA in support of the MHA Nation's proposal to construct and operate a clean fuels refinery and produce buffalo forage; and (2) the issuance by the EPA of a Clean Water Act, National Pollutant Discharge Elimination System Discharge (NPDES) permit for the discharge of treated wastewater from the proposed refinery.

DATES: The Record of Decision on the proposed action will be issued no sooner than 30 days after the release of the FEIS. Thus, any comments on the FEIS must arrive by September 28, 2009. A public meeting will be held on September 9 at Four Bears Casino, 202 Frontage Road, New Town, ND, at 7 p.m.

ADDRESSES: You may mail or hand carry written comments to Mike Black, Regional Director, Bureau of Indian Affairs, Great Plains Regional Office, 115 4th Avenue, SE., Aberdeen, SD.

FOR FURTHER INFORMATION CONTACT: Mike Black, BIA, 605–226–7343, or Steve Wharton, EPA, 303–312–6935 or 800–227–8917.

SUPPLEMENTARY INFORMATION: The Three Affiliated Tribes (MHA Nation) has requested that BIA accept into trust status 469 acres for the MHA Nation to construct, own, operate, and maintain a petroleum refinery on 190 acres of the 469-acre parcel. The remaining acres would be used to grow forage for buffalo. The land in the northeast corner of the Fort Berthold Indian Reservation is located along Highway 23, four miles west of the town of Makoti in Ward County, North Dakota.

The MHA Nation has also applied to EPA for an NPDES permit under the Clean Water Act for discharges from the proposed refinery.

Feedstock for the proposed refinery would include 10,000 barrels per stream day (BPSD) of synthetic crude oil via existing pipeline from Alberta, Canada; 3,000 BPSD of field butane from local suppliers; 6 million standard cubic feet per day of natural gas via existing pipeline; and 300 barrels of bio-diesel or 8,500 bushels per day of soybeans. From the feedstock, the refinery would produce about 5,750 BPSD of diesel fuel, 6,770 BPSD of gasoline, and 300 BPSD of propane.

The FEIS analyzes potential environmental effects of two Federal agency decisions: (1) Whether BIA should accept lands into trust in support of the MHA Nation's proposal to construct and operate a clean fuels refinery and produce buffalo forage; and (2) whether EPA should issue a Clean Water Act NPDES permit for the process water discharges associated with the operation of the proposed refinery. The FEIS has identified the Agencies' preferred alternatives. BIA and EPA will be making their decisions in separate Records of Decision (RODs), which will be issued after the 30-day wait period on the FEIS. The MHA Nation will be deciding whether to build and operate the refinery.

BIA has identified its preferred alternative as Alternative 3. In this alternative, BIA would not place the land into trust status and the refinery could be constructed by the Tribes. If the proposed refinery is constructed, EPA has identified Alternative A, issuance of an NPDES permit for effluent discharges associated with the refinery as its preferred water discharge alternative. EPA and BIA recommend that the design of the refinery, if constructed, be modified consistent with Alternative 4.

Public Availability of the FEIS

The FEIS is available on the Web at: *http://www.epa.gov/region8/compliance/nepa*.

Hard copies of the document are available for public review at the following locations:

—Bureau of Indian Affairs, Great Plains Regional Office, 115 4th Avenue, SE., Aberdeen, SD.

—Bureau of Indian Affairs, Fort Berthold Agency, 202 Main Street, New Town, ND.

—EPA Region 8 Library, 1595 Wynkoop Street, Denver, CO.

—Three Affiliated Tribes Governmental Offices, 404 Frontage Road, New Town, ND.

—*Each of the MHA Nation's Segment Offices:* Four Bears (Tribal Gov. Center), Mandaree, Shell Creek (New Town), Lucky Mound (Parshall), Twin Buttes, and White Shield, and

—Rensch garage in Makoti, ND.

Authority

This notice is published in accordance with section 1506.10 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related Department of the Interior requirements in the Department of the Interior Manual (516 DM 1–6), and is in exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 21, 2009.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E9–20816 Filed 8–27–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as a Reservation for the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, aka, Gun Lake Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation; Correction.

SUMMARY: The Bureau of Indian Affairs (BIA) published a document in the **Federal Register** of August 18, 2009, concerning the Assistant Secretary-Indian Affairs proclaiming approximately 147 acres as the Match-e-be-nash-she-wish Band of Pottawatomi Indian Reservation. The document contained an error in the legal description.

DATES: *Effective Date:* August 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639 MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of August 18, 2009, in FR Doc. E9–19751, on page 41741, in the first column, line one, insert the following text after the word ''section,'' and before the word ''said:''

which is North 86 degrees 57 minutes 24 seconds East 481.98 feet from the West line of said Section

Also on page 41741, in the first column, line 33, change ''East 431.00 feet;'' to the following and delete lines 34, 35, 36, 37 and 38 in their entirety:

East 325.00 feet.

Dated: August 21, 2009.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E9–20791 Filed 8–27–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–09–L14200000–BJ0000]

Notice of Stays of Filing of Plats of Survey, Wyoming and Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Stays of Filing of Plats of Survey, Wyoming and Nebraska

SUMMARY: The Bureau of Land Management (BLM) has placed stays on the filing of plats of survey of the following described lands, pending consideration of the protest and/or appeal that was filed within 30 calendar days of publication in this **Federal Register**. A plat will not be officially filed until after disposition of protest and/or appeal.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of section 33, Township 34 North, Range 110 West, of the Sixth Principal Meridian, Wyoming, Group No. 726, was accepted July 9, 2009.

This survey was executed at the request of the National Park Service and is necessary for the management of these lands. The lands surveyed are:

The plat representing the entire record of the survey of Tract No. 37, Township 32 North, Range 3 East, of the Sixth Principal Meridian, Nebraska, Group No. 147, was accepted March 6, 2009.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: August 24, 2009.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E9–20822 Filed 8–27–09; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–619]

In the Matter of: Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and Products Containing Same; Notice of Commission Determination To Review in Part A Final Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on April 10, 2009 (a corrected version was issued on April 16, 2009), finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2007, based on a complaint filed by SanDisk Corporation of Milpitas, CA. 72 FR 70610 (Dec. 12, 2007). 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 flash memory controllers, drives, memory cards, media players and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,426,893; 6,763,424 (''the '424 patent''); 5,719,808; 6,947,332; and 7,137,011 (''the '011 patent''). Three patents and several claims were subsequently terminated from the investigation. Claims 24 and 30 of the '424 patent and claim 8 of the '011 patent remain in the investigation. The complaint named nearly fifty respondents. Twenty-one of these respondents were terminated from the investigation based on settlement agreements, consent orders and withdrawal of allegations from the complaint. Five respondents defaulted. The following respondents remain in the investigation: Phison Electronics Corporation of Hsinchu, Taiwan; Silicon Motion Technology Corporation of Hsinchu, Taiwan; Silicon Motion, Inc. of Milpitas, CA; Skymedi Corporation of Hsinchu, Taiwan; Power Quotient International Co., Ltd. of Taipei, Taiwan; Power Quotient International (HK) Co., Ltd. of Hong Kong; Syscom Development Co., Ltd. of the British Virgin Islands; PQI Corporation of Fremont, California; Kingston Technology Corporation of Fountain Valley, CA; MemoSun, Inc. of Fountain Valley, CA; Transcend Information Inc. of Taipei, Taiwan; Transcend Information Inc. of Orange, CA; Transcend Information Maryland, Inc. of Linthicum, MD; Imation Corporation of Oakdale, MN; Imation Enterprises Corporation of Oakdale, MN; Memorex Products, Inc. of Cerritos, CA; Apacer Technology Inc. of Taipei Hsien, Taiwan; Apacer Memory America, Inc. of Milpitas, CA; Dane Memory S.A. of Bagnolet, France; Deantusaiocht Dane-Elec TEO of Spiddal, Galway, Ireland; Dane-Elec Corporation USA of Irvine CA; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics, Inc. of Seoul, South Korea.

On April 10, 2009, the ALJ issued his final ID finding no violation of section 337 by Respondents. The ALJ issued a corrected version of his final ID on April 16, 2009. The ID included the ALJ's recommended determination on remedy and bonding. In the subject ID, the ALJ found that the accused products do not infringe asserted claims, 17, 24 and 30, of the '424 patent. The ALJ also found that none of the cited references anticipated the asserted claims and that none of the cited references rendered the asserted claims obvious. The ALJ further found the Respondents not liable for contributory or induced infringement of the asserted claims of the '424 patent. Likewise, the ALJ found that SanDisk failed to prove that the sole

respondent accused of infringing claim 8 of the '011 patent, Imation, induced or contributed to infringement of the patent. The ALJ also found that SanDisk's rights in the '011 patent were not exhausted and that claim 8 of the '011 patent satisfies the indefiniteness requirement of 35 U.S.C. 112, second paragraph. The ALJ, however, concluded that the prior art rendered claim 8 of the '011 patent obvious.

On May 4, 2009, SanDisk and the Commission investigative attorney filed petitions for review of the ID. That same day, Respondents filed a collective contingent petition for review of the ID with respect to the '424 patent. Skymedi Corporation and Imation Respondents, in addition to joining the collective contingent petition for review, filed individual contingent petitions for review. On May 18, 2009, the parties filed responses to the various petitions and contingent petitions for review.

On April 21, 2009, the Commission extended the date by which to determine whether to review the ALJ's initial ID from June 9, 2009, to June 22, 2009, and on May 28, 2009, the Commission extended the date for determining whether to review the ID from June 22, 2009, to August 24, 2009. The Commission also extended the target date for completion of the investigation from August 10, 2009 to October 23, 2009.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. The Commission has determined to review the claim construction of claims 17, 24 and 30 of the '424 patent; infringement of the asserted claims of the '424 patent; validity of the '424 patent; and the ALJ's decision not to consider the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent. The Commission has determined not to review any other issues.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Address whether the accused products would infringe claim 17 of the '424 patent if construction of the claim term ''updating pages of original data within any of the metablock component blocks less than all the pages within the block'' is construed to cover single-page updates. Please cite record evidence and/or relevant legal precedent to support your position.

2. Address whether the claim term ''reading and assembling data from the first and second plurality of pages'' as recited in claim 20 of the '424 patent should be construed to cover the so-called ''table method,'' and whether the accused products would infringe claims 24 and 30 of the '424 patent as a result. *See* '424 patent (JX–2) at column 10, lines 44–59; FIG. 12. Please cite record evidence and relevant legal authority to support your position.

3. Address why the Sinclair PCT publication was not listed on any notice of prior art as required by Ground Rule No. 5, and having violated the ground rule, why none of the parties availed itself of its remedy to submit a timely written motion showing good cause why the reference was not listed. *See* Order No. 2 at 9–10.

4. Address under what circumstances, if any, the Commission should consider a reference that was not submitted in accordance with an ALJ's ground rule.

5. Address the similarities and differences, if any, between U.S. Patent No. 6,725,321 to Alan Welsh Sinclair *et al.* (RX–628) and its corresponding Patent Cooperation Treaty publication, WO 00/49488 (''the Sinclair PCT publication'') (RX–1038—rejected by ALJ) and whether the Sinclair PCT publication invalidates claim 17 of the '424 patent. Please cite record evidence and any relevant legal authority to support your position.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, September 3, 2009. Reply submissions must be filed no later than the close of business on Friday, September 12, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons

why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Dated: Issued: August 24, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–20706 Filed 8–27–09; 8:45 am]

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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 Review 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; Briefing Schedule

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review 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.

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.

The Commission has determined to review the subject ID. In connection with its review, the Commission is particularly interested in responses to the following:

[CONFIDENTIAL INFORMATION DELETED]

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record.

Written Submissions: Parties are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on September 7, 2009. Reply submissions must be filed no later than the close of business on September 17, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 24, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20811 Filed 8–27–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–684]

In the Matter of Certain Articulated Coordinate Measuring Arms and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 28, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hexagon Metrology AB of Sweden and Hexagon Metrology, Inc. of North Kingstown, Rhode Island. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain articulated coordinate measuring arms and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,829,148. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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*.

FOR FURTHER INFORMATION CONTACT: Mareesa A. Frederick Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2055.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 24, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain articulated coordinate measuring arms or components thereof that infringe one or more of claims 3, 4, 13, and 16 of U.S. Patent No. 5,829,148, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Hexagon Metrology AB, Lilla Bantorget 15, SE–103 59, Stockholm, Sweden, Hexagon Metrology, Inc., 250 Circuit Drive, North Kingstown, Rhode Island 02852.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Metris N.V., Interleuvenlann 86, 3001 Leuven, Belgium, Metris U.S.A., Inc., 12701 Grand River Avenue, Brighton, Michigan 48116, Mitutoyo Corporation, 20–1, Sakado 1–Chome, Takatsu-ku, Kawasaki-shi, Kanagawa 213–8533, Japan, Mitutoyo America Corporation, 965 Corporate Boulevard, Aurora, Illinois 60502.

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

Issued: August 25, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20812 Filed 8–27–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Proposed Information Collection Request of the ETA 227, Overpayment Detection and Recovery Activities; Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 27, 2009.

ADDRESSES: Send comments to Nancy Dean, U.S. Department of Labor, Employment and Training

Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4531, Washington, DC 20210, telephone number (202)-693–3215 (this is not a toll-free number) or by e-mail: *dean.nancy@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* Section 303(a)(1) of the Social Security Act requires a state's unemployment insurance (UI) law to include provisions for:

''Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *''

Section 303(a)(5) of the Social Security Act further requires a state's UI law to include provisions for:

''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *''

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

''all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *''

The Secretary of Labor has interpreted the above sections of Federal law in section 7511, part V, ES Manual to further require a State's UI law to include provisions for such methods of administration as are, within reason, calculated to: (1) Detect benefits paid through error by the State Workforce Agency (SWA) or through willful misrepresentation or error by the claimant or others; (2) deter claimants from obtaining benefits through willful misrepresentation; and (3) recover benefits overpaid. The ETA 227 is used to determine whether SWAs meet these requirements.

The ETA–227 contains data on the number and amounts of fraud and non-fraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions.

These data are gathered by 53 SWAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data. These data are also used by SWAs as a management tool for effective UI program administration.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The UI program paid approximately $42 billion in benefits in 2008. Although the overpayment rate (fraud and non-fraud) derived from the ETA 227 is relatively low (less than 3.25 percent), high amounts of money are involved, and it is in the national interest to maintain the program's integrity. Therefore, we are proposing to extend the authorization to collect data to measure the effectiveness of the benefit payment control programs in the SWAs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Agency Form Number: ETA 227.

Affected Public: State Government.

Total Respondents: 53 State agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 14 hours.

Estimated Total Burden Hours: 2,968.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: This 20th day of August 2009.

Jane Oates.

[FR Doc. E9–20779 Filed 8–27–09; 8:45 am]

P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

147th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 147th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on September 15–17, 2009.

The three-day meeting will take place in Room N 3437 A&B, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The meeting will run from 9 a.m. to approximately 5 p.m. on September 15 and 16, and from 8 a.m. to approximately 4 p.m. on September 17, with a one hour break for lunch each day. The purpose of the open meeting is for Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA).

The Council will study the following issues: (1) Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries, (2) Stable Value Funds and Retirement Security in the Current Economic Conditions, and (3) Approaches for Retirement Security in the United States. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.* The EBSA update is scheduled for September 16 at 9 a.m., subject to change.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before September 8, 2009 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the e-mail. Relevant statements received on or before September 8, 2009 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or

telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 8 at the address indicated.

Signed at Washington, DC this 24th day of August 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9–20794 Filed 8–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of a Proposed Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as Amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as Corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and Its Affiliates (Wachovia), the Successor of First Union Corporation and PTE 2002–19, 67 FR 14979 (March 28, 2002), as Amended by PTE 2007–05 (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates (D–11530)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of a Proposed Amendment to PTE 96–22 and PTE 2002–19.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96–22 and PTE 2002–19, Underwriter Exemptions.[1] The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment to PTE 96–22 and PTE 2002–19, if granted, would provide a six-month period to resolve certain affiliations, as a result of the Wells Fargo & Company (WFC) acquisition of Wachovia, between Wells Fargo Bank, N.A. (Wells Fargo) the Trustee, and Wachovia as members of the Restricted Group, as those terms are defined in the Underwriter Exemptions (the Proposed Amendment). The Proposed Amendment, if granted, would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

DATE: Written comments and requests for a hearing should be received by the Department by September 28, 2009.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Number D–11530). Interested persons are invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to *moffitt.betty@dol.gov.* The application pertaining to the Proposed Amendment (Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed exemption to amend PTE 96–22 and PTE 2002–19, Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions granted by the Department that provide substantially identical relief from certain of the restrictions of sections 406 and 407 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (Code), by reason of certain provisions of section 4975(c)(1) of the Code for the operation of certain asset pool investment trusts and the acquisition, holding, and disposition by Plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts.

All of the Underwriter Exemptions were amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), and PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007). Certain of the Underwriter Exemptions were amended by PTE 2002–41, 67 FR 54487 (August 22, 2002) or modified by PTE 2002–19.

The Department is proposing this amendment to PTE 96–22 and PTE 2002–19 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

1. The Underwriter Exemptions permit Plans to invest in pass-through securities representing undivided interests in asset-backed or mortgage-backed investment pools (Securities). The Securities generally take the form of certificates issued by a trust (Trust). The Underwriter Exemptions permit transactions involving a Trust, including the servicing, management and operation of the Trust, and the sale, exchange or transfer of Securities evidencing interests therein, in the initial issuance of the Securities or in the secondary market for such Securities (the Covered Transactions). The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05). One of the General Conditions of the Underwriter Exemptions, as amended, requires that the Trustee not be an ''Affiliate'' of any member of the ''Restricted Group'' other than an ''Underwriter.'' PTE 2007–05, subsection II.A.(4). The term ''Restricted Group'' is defined under section III.M. as: (1) Each Underwriter; (2) Each Insurer; (3) The Sponsor; (4) The Trustee; (5) Each Servicer; (6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; (7) Each counterparty in an Eligible Swap Agreement; or (8) Any Affiliate of a person described in subsections III.M.(1)–(7).'' The term ''Servicer'' is defined to include ''the Master Servicer and any Subservicer.'' PTE 2007–05,

[1] The ''Underwriter Exemptions'' are a group of individual exemptions that provide substantially identical relief for the operation of certain asset-backed or mortgage-backed investment pools and the acquisition and holding by Plans of certain securities representing interests in those investment pools.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

section III.G. The term ''Affiliate'' is defined, in part, to include ''(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, partner, employee * * * of such other person; and (3) Any corporation or partnership of which such other person is an officer, director or partner.'' PTE 2007–05, section III.N.

2. On April 3, 1996, PTE 96–22 was granted to First Union Corporation (First Union). On September 1, 2001, Wachovia merged into First Union, with First Union being the surviving entity in the merger. Simultaneously with this stock-for-stock merger, First Union changed its name to Wachovia Corporation (Wachovia). As a result of the merger, Wachovia, formerly known as First Union, became owned by the shareholders of both First Union and the former Wachovia, with the shareholders of First Union owning the majority of the outstanding shares. Prior to its acquisition by WFC, Wachovia was a diversified financial services company that provided a broad range of retail banking and brokerage, asset and wealth management, and corporate and investment banking products and services. Wachovia was one of the largest providers of financial services in the United States, with retail and commercial banking operations in 21 states from Connecticut to Florida and west to Texas and California, and nationwide retail brokerage, mortgage lending and auto finance businesses. Its retail brokerage operations, under the Wachovia Securities brand name, managed client assets through offices nationwide. Globally, Wachovia served clients in selected corporate and institutional sectors and through more than 40 international offices. WFC acquired Wachovia on December 31, 2008 and the successor continues to engage in the same broad range of activities conducted previously by Wachovia.

3. The Applicant is Wells Fargo (the Applicant), the national banking subsidiary of WFC. The Applicant is the Trustee of each of the commercial mortgage-backed securitizations in the Covered Transactions. The Proposed Amendment was requested by application dated December 31, 2008, and as updated by Wells Fargo (the Application). The Applicant states that on December 31, 2008 (the Acquisition Date), WFC acquired Wachovia (the Acquisition). Wachovia is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, insurance, lending and related products and services on a global basis. Wachovia is a ''Consolidated Supervised Entity,'' [3] and is subject to group-wide supervision by the Securities and Exchange Commission (SEC). On March 4, 2009, the Applicant explained that Wachovia is the ultimate parent of all of its subsidiaries, and was (prior to its acquisition by WFC) a publicly traded holding company. Among the direct subsidiaries of Wachovia, each 100% owned by Wachovia, are Wachovia Bank, N.A., Wachovia Capital Markets, LLC, Wachovia Securities, Inc., First Union National Bank, First Union Capital Markets and First Union Securities, Inc.

For the Covered Transactions that are the subject of the Applicant's request, First Union National Bank is the Sponsor of 4 transactions and Wachovia Bank, N.A. is the Sponsor of 35 transactions.

4. The Acquisition caused certain transactions previously subject to PTE 96–22 or PTE 2002–19 to fail to satisfy the requirement under the Underwriter Exemptions that the Trustee not be an Affiliate of any member of the Restricted Group other than an Underwriter. PTE 2007–05 subsection II.A.(4). Currently, for transactions where Wachovia is the Servicer, a six-month period is provided by the Underwriter Exemptions to sever the affiliation between the Servicer and the Trustee if the affiliation occurred after the initial issuance of the Securities. PTE 2007–05, subsection II.A.(4)(b).[4] However, there is currently no transitional relief under PTE 96–22 where Wachovia is a Sponsor, Underwriter or a Swap Counterparty and Wells Fargo is the Trustee. Accordingly, Wells Fargo seeks a temporary amendment to PTE 96–22 to provide for a six-month period for resolution of certain prohibited affiliations caused by the Acquisition of Wachovia by WFC, the parent of the Trustee.

In addition, the Applicant requests that the amendment provide similar relief for one other Covered Transaction which is subject to PTE 2002–19. The specified Covered Transaction is the J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1 (Series 2002–C1), where Wells Fargo is Trustee and Wachovia is the Sponsor and Master Servicer. In this transaction, one of the Underwriters is Wachovia Securities but PTE 96–22 was not relied on in the relevant disclosure documents. The other Underwriter in Series 2002–C1 is J.P. Morgan Securities Inc., which is unrelated to Wells Fargo, and relies upon PTE 2002–19, granted to J.P. Morgan Chase & Co. and its affiliates. The Applicant provides that J.P. Morgan Securities Inc. is the principal nonbank subsidiary of JP Morgan Chase & Co. (previously, J.P. Morgan Chase & Co.). JP Morgan Chase Commercial Mortgage Securities Corp. is 100% owned by JPMorgan Chase Bank, N.A., which in turn, is 100% owned by JPMorgan Chase & Co. J.P. Morgan Securities Inc. and J.P. Morgan Chase Commercial Mortgage Securities Corp. are ''sister'' companies, with JPMorgan Chase & Co. as the common parent. JPMorgan Chase & Co. has confirmed to the Applicant that it has been notified of the application for the Proposed Amendment and has agreed to coverage under the Proposed Amendment.

Wells Fargo represents that it has placed a notice on its Web pages for each of the Covered Transactions affected by the Acquisition and that this notice would be updated upon publication of the Proposed Amendment, and if granted, the final amendment. Further, the Web pages will note the appointment of any co-trustee and the appointment of the replacement trustee. The Applicant states that Wells Fargo, in its role of Trustee, will bear the cost of appointing such co-trustee and that there will be no financial impact on any Underwriter.

5. Wells Fargo represents that the Covered Transactions affected by the Acquisition consist of 39 commercial mortgage-backed securitizations (CMBS) (Securitizations) as detailed at section III.KK. or Section III.LL. of PTE 2002–19 of the Proposed Amendment (the Securitization List). Wells Fargo states that 38 of the Securitizations were structured and are managed to meet the requirements of PTE 96–22 and Series 2002–C1 was structured and managed to meet the requirements of PTE 2002–19,

[3] Effective August 2004, the Securities and Exchange Commission (SEC) adopted rule amendments that established a voluntary, alternative method for computing net capital for certain broker-dealers. As a condition to its use of the alternative method, a broker-dealer's ultimate holding company and affiliates (referred to collectively as a consolidated supervised entity or CSE) must consent to group-wide SEC supervision. These rules, among other things, respond to international developments. Specifically, affiliates of certain U.S. broker-dealers that conduct business in the European Union (EU) have stated that they must demonstrate that they are subject to consolidated supervision at the ultimate holding company level that is ''equivalent'' to EU consolidated supervision. SEC supervision incorporated into these rule amendments addresses this standard. These amendments and the SEC's program for consolidated supervision of broker-dealers and affiliates will minimize duplicative regulatory burdens on firms that are active in the EU, as well as in other jurisdictions that may have similar laws.

[4] *But see,* below at Paragraph 10., the Department's discussion on the ''Split Loan'' Transactions.

in each case as amended by PTE 2007–05. Wells Fargo is the Trustee in each of the Securitizations. The Applicant represents that, in its role as Trustee, Wells Fargo is obligated under both the operative documents that securitize the loans, and under state law relating to fiduciaries, to protect the interests of security holders. Specifically, the Trustee is required to enforce the rights of security holders against other parties to the transaction, including Servicers, Swap Counterparties and loan sellers. The Applicant notes further that in practice, due to industry standards and reputation concerns by the various parties, little such protection or enforcement is necessary, and the Trustee's role, while vigilant, is relatively passive. Wachovia is a party to each of the Securitizations in the capacity or capacities detailed in the Securitizations List. The Applicant states that, in any of these capacities, Wachovia is obligated, under the operative documents of the transaction, to perform its designated duties under contractual and, in some cases, industry standards for the benefit of security holders. The Applicant represents that each of the Pooling and Servicing Agreements has been structured to comply with PTE 96–22 or in the case of Series 2002–C1, PTE 2002–19, and that each of the Trusts has been managed in accordance with the related Pooling and Servicing Agreement. Consequently, Securities issued by each Trust currently are eligible for purchase by Plans that meet the requirements of PTE 96–22 or in the case of Series 2002–C1, PTE 2002–19.

6. The Applicant states that none of the Trusts were formed or marketed with the knowledge that Wells Fargo and Wachovia would become affiliated. In this regard, the Applicant notes that there are no securitizations on the Securitization List that closed later than 2007; the Acquisition was announced in the third quarter of 2008. The Applicant states that, in general, the Pooling and Servicing Agreements governing the applicable Securitizations permit the cures detailed in their Application by contemplating a Trustee's resignation and replacement so as to comply with applicable law and providing the Trustee the ability to appoint co-trustees and other agents authorized to carry out the Trustees' duties. The Applicant notes that the agreements do not provide specific qualifications for co-trustees. While the agreements vary in the detail, after due diligence, the Applicant asserts that it is not aware of any provisions of the agreements or SEC requirements that preclude the cures detailed in the Application.

7. Wells Fargo represented in its Application that, during the proposed six month resolution period, for each Securitization on the Securitization List, the Trustee shall appoint a co-trustee, which is not an Affiliate of Wells Fargo, no later than the earlier of (a) March 31, 2009 or (b) five business days after Wells Fargo, the Trustee, has become aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee would be solely responsible for resolving such conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided that if the Trustee has resigned on or prior to March 31, 2009, and no event described in clause (b) has occurred, no co-trustee shall be required since a replacement trustee would be in place by March 31, 2009. Wells Fargo represented that as Trustee, Wells Fargo would appoint a co-trustee with the knowledge and skill necessary to resolve any conflict arising between Wells Fargo and any Wells Fargo affiliated member of the Restricted Group. In the event that a co-trustee were appointed, such co-trustee would assume Wells Fargo's role under the related Pooling and Servicing Agreement (solely with respect to any conflict between Wells Fargo and a Wells Fargo affiliate that is a member of the Restricted Group) until a replacement trustee replaced Wells Fargo.

For purposes of this Proposed Amendment, a conflict would arise whenever (a) Wachovia is a member of the Restricted Group and fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, as Trustee, or (b) Wells Fargo, as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group. The time as of which a conflict occurs is the earlier of the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

Additionally, for purposes of this Proposed Amendment, the term conflict includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo's request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo's request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of LIBOR [5] that Wells Fargo, as Trustee, considers erroneous.

8. The Applicant stated that it intended to complete the negotiations and paperwork on an ongoing basis, with the effective date for all changes to be March 31, 2009. The Applicant noted that in contrast to co-trustees, any replacement trustee would have to meet the requirements of the related Trust agreement for qualification as a Trustee (*i.e.,* would meet the same requirements that Wells Fargo had to meet). A copy of a typical Pooling and Servicing Agreement requirements for a Trustee was provided to the Department. The Applicant further noted that if a conflict were to arise prior to March 31, 2009, with respect to any Trust, the most likely course would be that Wells Fargo would promptly resign as Trustee and the replacement trustee would assume its role earlier than scheduled. The next most likely scenario is that the party that would become the replacement trustee (and hence meets the requirements of the related Pooling and Servicing Agreement for qualification as a Trustee) would be appointed co-trustee under the terms of the Proposed Amendment. The Applicant stated, however, there might be situations where either such course of action would be impossible or impractical, in which case the parties would have to appoint a different co-trustee until the replacement trustee assumed its role.

The Applicant stated that in certain cases, Wells Fargo would continue as a securities administrator, retaining certain reporting requirements but be responsible to the replacement trustee. The replacement trustee would have legal title to the assets of the trust, would have fiduciary responsibility to the securities holders and would be responsible for supervising Wells Fargo in whatever role it retains. Wells Fargo stated that it would notify the Department of Labor of any conflict that arose prior to the replacement of Wells

[5] The London Interbank Offered Rate.

Fargo as Trustee in any of the Covered Transactions. The Applicant noted that, as a technical matter, in the most likely case (*e.g.* the assertion of a breach of representation or warranty by the Sponsor), the Pooling and Servicing Agreements all require that the Trustee provide the offending party 90 days to cure the issue before the Trustee may take any action to do so itself. Consequently, if an issue arose after December 31, 2009, the Trustee would not have been able to take any action to cure the issue until after March 31, 2009. The Applicant asserts that since it was expected that the Trustee replacements would be made by March 31, 2009, it was not anticipated that a conflict would arise while Wells Fargo was the Trustee of any of the Covered Transactions.

9. On June 3, 2009, the Applicant informed the Department that Wells Fargo is resigning as Trustee from a total of 115 transactions (this number includes transactions where the conflict is not ERISA-related and the transaction is not on the Securitization List). Wells Fargo resigned from 15 of these transactions on December 31, 2008, resigned from 41 of these transactions by March 31, 2009, and will resign from the remaining 59 no later than June 30, 2009. Of the 15 transactions Wells Fargo resigned from on December 31, 2008, it resigned from 7 solely for ERISA purposes and 8 solely for securities law purposes. As of March 31, 2009, 56 transactions had received replacement trustees. The Applicant represented that the replacement trustees for the remaining transactions were currently being negotiated. On May 7, 2009, the Applicant informed the Department that for all 39 of the Covered Transactions on the Securitization List, the replacement trustees were in place as of March 31, 2009. Bank of America, N.A. will be the replacement trustee for 23 of the Covered Transactions and U.S. Bank National Association will be the replacement trustee for the remaining 16 Covered Transactions. The Applicant has further indicated that there were no actual conflicts from the date that the affiliation arose, December 31, 2009, through March 31, 2009. Thus, no co-trustee had to be appointed during that period. The Applicant noted that in cases where the Trustee is also the securities administrator, Wells Fargo will resign as Trustee and remain securities administrator.

10. The Applicant represents that in the financial services industry, large commercial mortgage loans may be securitized by splitting such loans into two or more *pari passu* portions and including each portion in a different securitization (Split Loan Transaction). This is a risk management technique that prevents the loan from representing too large a portion of a single securitization. From the borrower's perspective, the loan remains a single debt instrument and, consequently, the loan is serviced as such.

Servicing of the loan is the responsibility of the parties to the first securitization to close, with the other lenders (whether or not such lenders are themselves securitization vehicles) agreeing to a passive role. This arrangement is memorialized in an intercreditor agreement,[6] which describes the rights and responsibilities of the parties to such agreement (Intercreditor Agreement). In many cases, the securitizations to which the other notes are to be contributed have not been determined as of the date of the Intercreditor Agreement.

In a commercial mortgage securitization transaction, the Servicer is the entity that carries out the day-to-day collection and enforcement of the receivables which back the securities issued in a transaction. The two primary types of Servicers are the Master Servicer, which is generally the lead servicer for the transaction for performing assets, and the ''Special Servicer'', which is generally appointed to service non-performing assets such as defaulted loans and real estate owned (REO) properties.[7] The Applicant notes that the term ''Primary Servicer'' is synonymous with Subservicer, and refers to the servicer who is actually responsible for collection of the mortgage payments with respect to a property. The Primary Servicer is responsible to the Master Servicer for the transaction; the details of the relationship are described in a servicing agreement between the Primary Servicer and the Master Servicer.

The Applicant states that the trigger for transferring the servicing from the Master Servicer to the Special Servicer is a ''Servicing Transfer Event'' (which generally include the uncured failure (or expected failure) of the mortgagor to make payments when due; non-monetary defaults that would materially impair the value of the mortgaged property as security for the loan; bankruptcy, insolvency or similar proceeding by the mortgagor; admission by the mortgagor of its inability to pay its debts; and commencement of foreclosure or similar proceedings with respect to the related mortgaged property).[8] Although the first and foremost difference between a Special Servicer and a Master Servicer is in terms of the assets each one services (*i.e.,* the Master Servicer with respect to performing assets and the Special Servicer with respect to non-performing assets), the Special Servicer is also involved in the servicing of performing assets with respect to certain ''Special Actions'' discussed below.

Upon the occurrence of a Servicing Transfer Event with respect to an asset, the Master Servicer transfers the servicing files for such asset to the Special Servicer and the Special Servicer takes over the primary servicing for such asset (including, but not limited to, collection of payments from the mortgagor, maintenance of insurance, enforcement of alienation clauses, inspections, reports and record keeping) from the Master Servicer. In addition, due to the nature of non-performing assets, the Special Servicer's primary task is to resolve the asset, *i.e.,* either to return the loan to performing status by negotiating a workout with the mortgagor or to realize value from such non-performing asset by undertaking court action and enforcement procedures including, but not limited to, liquidation of the asset through foreclosure and sale of the asset or conversion of the asset into an REO property.

Due to the nature of non-performing assets, the Special Servicer also has additional servicing responsibilities with respect to such non-performing assets such as the production of asset status reports and approval of modifications, waivers, amendments and consents with respect to non-performing assets. While the Special Servicer is generally engaged to service the non-performing assets, in certain instances set forth in the securitization documents, the Special Servicer also

[6] The Applicant has provided the Department with a redacted intercreditor agreement, each of two public offering documents and each of two pooling and servicing agreements used in a typical loan splitting transaction. Because the two notes comprising the loan subject to this intercreditor agreement were securitized in publicly offered securitization transactions, the offering documents and pooling and servicing agreements for such securitizations were filed with the SEC and are public documents. The Applicant notes that the intercreditor agreement itself is not a public document (although the material features of the intercreditor agreement are described in the offering documents for the two securitizations).

[7] The Applicant defines REO property as real property that has been acquired by a securitization trust via foreclosure or by deed in lieu of foreclosure. Tax law requires that such REO property be disposed of by the trust within a specified time period and imposes restrictions on income that can be earned with respect to the property.

[8] The pooling and servicing agreement provides the definition of a ''Servicing Transfer Event'' and related definitions from the pooling agreement.

has the right to consult with and sometimes to direct the Master Servicer to take or refrain from taking certain actions with respect to all assets (whether performing or non-performing) ordinarily referred to as ''Special Actions''. Typical examples of Special Actions include (1) Proposed or actual foreclosure upon an asset, (2) material modifications or waivers of assets, (3) proposed sales of assets, (4) the determination to bring a REO Property into compliance with applicable environmental laws or to otherwise address hazardous materials thereon, (5) acceptance of substitute or additional collateral (where there is lender discretion), (6) the waiver of a ''due-on-sale'' clause or ''due-on-encumbrance'' clause, (7) assumption agreements that would release a borrower from liability, (8) the acceptance of a discounted payoff of an asset, (9) the release of earnout reserve funds [9] or letters of credit (where there is lender discretion), (10) approval of a material lease (where there is lender discretion), (11) any change in property manager or franchise (where there is lender discretion) and (12) with respect to certain loans, approval of defeasance (including confirmation that conditions to a permitted defeasance have been met). In servicing the non-performing assets or with respect to Special Actions, the Special Servicer is typically required to consult with and follow the directions of the Directing Holder, as defined below, unless doing so would violate the servicing standard under the securitization documents.

The Special Servicer is typically appointed by, and can be terminated and replaced by, the ''Directing Holder'' (sometimes referred to as the ''Controlling Class'') for the securitization. This is generally the owner of the most subordinate portion of such securitization.[10] In addition, the Special Servicer (including a replacement Special Servicer) must meet the qualification requirements for a Special Servicer (*e.g.,* required ratings by the ratings agencies) and must not trigger a Special Servicer event of default under the securitization documents to serve as Special Servicer.

The Intercreditor Agreement is drafted in a manner that gives a great deal of, but not limitless, discretion to the Master Servicer and Special Servicer. Both the Master Servicer and the Special Servicer are obligated to act within the confines of the ''Servicing Standard,'' a somewhat amorphous set of guidelines—obviously not prescriptive but with boundaries commonly accepted by the lending industry. Further, certain major decisions with respect to the special servicing of troubled assets are subject to a vote by the Directing Holders, as described above.

The purpose of the Intercreditor Agreement is twofold: first, to provide for the servicing of the various notes as a single loan, and second, to provide assurance that tax laws critical to securitizations will be observed. It is important to holders that the proper tax treatment of any securitizations is ensured. Violating the tax rules for securitizations can cause the securitization vehicle itself to become a taxable corporation, reducing returns to security holders, even tax-exempt holders, by the amount of the taxes due. The Intercreditor Agreement provides that a split loan will be serviced from the first transaction to close. Holders of the other notes comprising the loan, whether or not such notes are included in subsequent securitizations, agree to be bound by the pooling and servicing agreement for the first securitization with respect to the loan. The rights retained by the subsequent securitizations are exercisable by the Directing Certificateholders [11] for each such subsequent securitization, not by the trustee per se. The material terms of the Intercreditor Agreement are spelled out in the disclosure for each of the securitizations, so that all investors understand prior to their investment in the securitization that decision making with respect to the note representing the split loan has been ceded to the lead securitization.

The Intercreditor Agreement provides that, if the contemplated servicing cannot be realized (*e.g.,* because the first securitization is terminated), a substantially similar agreement will be reached. The Applicant states that, if other portions of the loan are in securitizations designed to comply with the Underwriter Exemptions, the trustee counsel, which is sensitive to the issues involved, would not permit any agreement that would cause the conditions of the Underwriter Exemptions to be violated. Either: (i) The subsequent agreement would provide for substantially the same limitation on trustee rights as was the case with the original Intercreditor Agreement; (ii) additional exemptive relief would be sought from the Department; or (iii) the trustee of the affected securitization would be replaced.

The Applicant notes that in a split loan situation where the first securitization suffers considerable losses, since all of the notes making up the loan are *pari passu,* the first note would continue to be outstanding, even if it were no longer in a securitization; therefore, there would have to be a holder of that first note. The holder of the first note would continue to be responsible for any direction to be given to the Master Servicer and the Special Servicer of the first securitization (except for the times where directions would be given by the Directing Holder). Additionally, the servicing would have to be performed in a manner that did not jeopardize the pass-through tax status (normally, REMIC or grantor trust) of securitizations holding notes 2, 3, etc. These are the prime ''substantially similar'' features. The remote possibility exists that the first holder would refuse to put itself in the controlling position. In that case, control would go to one of the other securitizations. At this point, the Applicant states that control would not end up in a securitization where there was an affiliated trustee [12] (and, as a last resort, the trustee would be replaced to ensure non-affiliation).

[9] The Applicant defines ''earnout reserve funds'' as amounts held back from a commercial borrower by the lender at the time of closing of the loan which may, upon satisfaction of conditions set forth in the loan documents and via the procedures set forth in the related pooling and servicing agreement, be released to the borrower for other purposes as set forth in the loan documents. If the conditions are not met, the earnout reserve fund is applied to reduce the outstanding principal balance of the loan.

[10] In the case of a loan split among more than a single transaction, special rules apply. Typically, the Directing Holder is the most subordinate class of each securitization whose assets include a portion of such loan, with voting based on the percentage interest of the loan held by the securitization. Tie votes are broken by the decision of an advisor appointed by the holders. Additionally, the ''Controlling Class'' is the most junior class of a securitization; this class is responsible for appointing and terminating the Special Servicer and for making certain decisions with respect to defaulted loans. If there is more than one holder of an interest in the Controlling Class, it is possible for there to be disagreement among such holders. In this case, the majority would rule. The holders forming such majority are known as ''Directing Certificateholders'' or ''Directing Holders'' (the terms are interchangeable).

[11] Because Directing Certificateholders are the most junior class, they are very unlikely (except in cases where securitization pools have suffered considerable losses) to include Plan investors. Moreover, because of the subordination structure of securitization pools, the interests of Directing Certificateholders are generally aligned to the interests of holders of more senior classes (i.e., because Directing Certificateholders suffer losses before more senior classes, any decision that reduces the likelihood of the most junior class suffering a loss will automatically reduce the likelihood of losses affecting more senior classes).

[12] The Department notes that if this were to occur, the Underwriter Exemption would become unavailable to the transaction.

As illustrated above, the depositing of portions of one loan into multiple transactions increases the potential relationship issues. Though the loan continues to be serviced solely by the Primary, Master and Special servicers (the Split Loan Servicers) under the first transaction, and notwithstanding that each other transaction discloses the fact that such loan is serviced under, and pursuant to, the terms of the initial transaction, these Split Loan Servicers may fall within the definition of Servicer in the Underwriter Exemptions, making such parties members of the Restricted Group for such other transactions. As a result, the pool of available unaffiliated trustees for each other transaction is narrowed.

The December 31, 2008 Acquisition of Wachovia by WFC (Acquisition) caused a certain fact pattern illustrated by the following example to emerge in these nine CMBS transactions (Split Loan Transactions List):

1. Banc of America Commercial Mortgage Trust 2006–4.
2. Banc of America Commercial Mortgage Trust 2007–2.
3. Banc of America Commercial Mortgage Trust 2008–LS1.
4. Citigroup Commercial Mortgage Trust 2008–C7.
5. COMM 2004–LNB–2.
6. COMM 2007–C9.
7. J.P. Morgan Chase Commercial Mortgage Securities Trust 2006–CIBC16.
8. LB–UBS Commercial Mortgage Trust 2004–C2.
9. Morgan Stanley Capital I Trust 2005–HQ5.

For example, a large commercial loan (Loan) is split among four transactions. Each securitization trust, S1, S2, S3 and S4, contains a *pari passu* portion of the Loan. Wachovia is the Primary Servicer of the Loan. Because S1 closes first, the entire Loan is serviced by Wachovia under the S1 securitization and the trustees of the four trusts sign an intercreditor agreement. An unaffiliated bank is Trustee of S1; Wachovia is Master Servicer of S1 and CW Capital is Special Servicer of S1. Pursuant to the Intercreditor Agreement, because Wachovia is Master Servicer of all the loans in S1, Wachovia is now the Master Servicer for the Loan in S1, S2, S3 and S4. As noted above, Wachovia is also the Primary Servicer.

While S1, S2, S3 and S4 are all structured to comply with one or more of the Underwriter Exemptions, a problem may arise because Wells Fargo is the Trustee of S4. With the acquisition of Wachovia by Wells Fargo, Wells Fargo, in its role as Trustee of S4, is now affiliated with a member of the Restricted Group, i.e., Wachovia in its role as Primary Servicer and Master Servicer of the Loan. Wachovia has no other role in or connection with S4; in fact, all of its obligations arise only under the terms of S1 and the Intercreditor Agreement. The Applicant believes that the Underwriter Exemptions' conditions may require that Wells Fargo resign as Trustee of S4, despite the Applicant's belief that Wells Fargo has no control over Wachovia in its role as Master Servicer of the Loan (other than as a result of the already signed Intercreditor Agreement where it cedes control to the unaffiliated bank that is Trustee of S1).

The Applicant notes that when this type of prohibited relationship is known before the transactions close, it is possible to appoint a co-trustee with respect to similarly divided participations in a loan. In this case, however, with the transactions already closed, the Applicant asserts that appointing a co-trustee would likely require an amendment to the pooling and servicing agreement, which may require the consent of all the security holders (a situation made even more problematic with book-entry securities). Consequently, the Applicant believes that the appointment of a co-trustee is not feasible.

The Applicant represents that the presence of an independent trustee in S1 (the unaffiliated bank), which is responsible for the actions of the Master Servicer, provides sufficient protection against any harm the prohibited relationship in S4 could cause. As an additional safeguard, if the Loan were ever to become delinquent, servicing would be transferred to the Special Servicer who is unaffiliated with Wells Fargo. Further, the Intercreditor Agreement was negotiated and signed prior to any indication that a prohibited relationship would exist in any of the trusts. Thus, the Applicant asserts, that the agreement could not have been drafted in a manner as to favor Wells Fargo or Wachovia at the expense of any Plan, or to otherwise circumvent the conditions of the Underwriter Exemption. Additionally, the Applicant believes that the presence of an independent trustee for the Loan and the lack of discretion on the part of Wells Fargo as Trustee of S4 is factually similar to the situation created with the appointment of a co-trustee. The Applicant believes that, if responsibility for the servicing of the Loan is confined to the servicer of one of the securitization vehicles, such servicer should not be considered a member of the Restricted Group within the meaning of the Underwriter Exemptions in the other securitizations where portions of the loan are collateral.

The Applicant notes that Holders, including fiduciaries holding on behalf of Plans, could bring suit against any parties to the transaction or could collectively order the trustee to bring such suits on behalf of the securitization (with the threat of replacing the trustee for failure to comply). As a practical matter, all transaction agreements provide mechanisms for replacing parties, a less expensive and more certain means of stopping bad behavior. Nonetheless, such suits are possible and it is impossible to predict the outcome of any such suit. Moreover, legislative and regulatory actions in response to the current economic situation could make such suits far more probable or, in the alternative, could preempt them completely. The legislative and regulatory situation, both at the federal and the state and local level, is too much in flux to even predict how the landscape might look one, two or ten years in the future. This lack of predictability, though, is pervasive in the capital markets. There is no feature of the split loan structure that makes it any more susceptible to legal action, legislative or regulatory decisions, etc. The Applicant believes that splitting a large loan among several securitizations is best viewed as a matter of prudence. While allowing large loans to be made when appropriate underwriting considerations are taken into account, splitting the loan into multiple notes spreads the risk among several transactions and prevents too great a concentration in any one transaction.

The Applicant has provided the Department with a detailed description of one particular intercreditor agreement (the Agreement) and a redacted copy of the Agreement, as well as the related provisions in the applicable pooling and servicing agreements (PSAs). The Applicant states that in the subsequent loan transactions that arise from the initial securitizations identified in the Split Loan Transactions List, the trustees have agreed (or, more accurately, have inherited an agreement made by its predecessor in interest) to a passive role with limited rights exercisable only under extreme circumstances and that the PSAs for these subsequent securitizations confirm this passivity. Thus, the Applicant asserts that the obligations detailed in the PSAs are ministerial, not discretionary. The Applicant states that the PSAs are explicit that the loan is not serviced or administered from the subsequent securitizations and that the parties to these securitizations are not obligated or authorized to supervise the

administration and servicing of the loan in the initial securitization.

The Applicant represents further that a split loan is serviced in the first transaction to close and the Intercreditor Agreement governs the servicing of the split loan under the first transaction (and limits the rights and responsibilities of other holders of pieces of the loan). The terms of the PSA for any subsequent transaction containing a piece of the split loan specify that the master servicer, the special servicer and the trustee of such subsequent transaction ''shall have no obligation or authority'' to service the loan or to direct the servicing of the split loan or, subject to extremely limited exceptions, to make advances with respect to the split loan. The only responsibilities left for the trustee of a subsequent transaction are: (i) To keep photocopies of the ''Mortgage File''; [13] (ii) to release said Mortgage File upon payment in full of the loan; and (iii) to make advances with respect to the loan to the extent that the advance would be recoverable and such advance has not been made by the Master Servicer of the first transaction or the Master Servicer of the second transaction.

The Applicant states that the first two responsibilities, keeping a photocopy of the Mortgage File and releasing it, are completely ministerial and involve no discretion. The third responsibility is also non-discretionary. The Master Servicer of the first transaction (MS1) is obligated under the PSA for the first transaction to either make the advance or certify that it would be nonrecoverable. If MS1 neither makes the advance nor certifies as to nonrecoverability, the same obligation falls on the Master Servicer of the related subsequent transaction (MS2). MS2 only has the obligation with respect to the piece of the loan in its transaction. If MS2 also neither advances nor certifies, the trustee of the second transaction either (i) must make the advance with respect to the piece of the loan in its transaction (with no authority under certain PSAs to pass judgment on non-recoverability) or (ii) must make either the advance with respect to the piece of the loan in its transaction or the certification of non-recoverability (under the terms of other PSAs—there is some variance among pooling and servicing agreements between approach (i) and approach (ii)). Even in case (ii), the process is not discretionary. While there is admittedly some leeway (that could be interpreted as discretion) in valuing the loan, it is in the trustee's economic interest to make an accurate determination. If the trustee places too high a value on the asset, it risks not being repaid the advance (and note that it is an advance, so there is the expectation of repayment). Too low a value, and the trustee risks action by securityholders that would have benefited from the advance (such holders eventually get their money, but lose the time value). If the trustee is bound by a PSA that permits a certification in lieu of the advance, such certification requires an explanation of the basis for the determination and such explanation requires an objective determination that would satisfy securityholders. The objectivity of the process indicates that discretion plays, at most, a minimal role.

The Applicant concludes that consequently, it should not matter that the trustee for the subsequent securitization is related to the Master Servicer or Special Servicer for the initial securitization; provided that any such party is not otherwise a member of the Restricted Group with respect to the subsequent securitization. More generally, because the relevant features of the Agreement are substantially similar to those found in all intercreditor agreements used in the market, the Applicant requests that the Department determine that if the only potentially prohibited affiliation is between a trustee and a servicer of a loan serviced in another securitization under the eye of an independent trustee, the trustee of the subsequent securitization should not be disqualified in the case of an affiliation arising as a result of a merger between the trustee and servicer that occurs subsequent to the securitization solely because of such affiliation.

Based on the representations and documents that the Applicant has provided to the Department, the Department is of the view that, if the affiliation between the Master Servicer of the first Securitization and a trustee of a loan serviced in a subsequent securitization is solely as a consequence of the acquisition of Wachovia by Wells Fargo, the Master Servicer of the first securitization would not be considered a member of the Restricted Group of a trustee of the subsequent securitizations in each Split Loan Transaction for the nine transactions identified in the Split Loan Transaction List, that are otherwise eligible for relief under the Underwriter Exemptions.

11. The Applicant notes that Plans acquired Securities issued under the Securitizations in reliance on the exemptive relief provided by the Underwriter Exemptions. Absent additional relief, the Acquisition has caused these granted exemptions to cease to apply to several of the Securitizations. Wells Fargo represents that the Securities issued in transactions such as the Securitizations are attractive investments for Plans subject to Title I of ERISA or section 4975 of the Code and conversely, such plans are an important market for issuers of such Securities. Wells Fargo asserts that to force Wells Fargo to resign as Trustee in all of the Securitizations before the Acquisition was not administratively feasible because the number of available trustees is limited and there is work required in changing trustees. Similarly, to have the exemptions no longer apply to the Securitizations would force the Plans to sell their securities in the current unstable market, likely at a loss. The Applicant additionally notes that although the Acquisition has been widely covered, it is conceivable that Plan fiduciaries would not realize that the Underwriter Exemption relied upon by the Plans had ceased to apply, raising the possibility that a Plan would not sell and that non-exempt prohibited transactions would occur.

12. Wells Fargo states that the Plans purchased Securities in reliance on PTE 96–22 or PTE 2002–19. At that time, the Plans had no knowledge that the Trustee would become an Affiliate of one or more members of the Restricted Group. On or after the Acquisition, except in cases covered by PTE 96–22 as amended by PTE 2000–58 (providing a six-month window for Trustee-Servicer affiliations) or PTE 2002–41 (Trustee-Underwriter affiliations), the purchased Securities would no longer be afforded coverage under the Underwriter Exemptions and the Plans would have been obligated to sell the Securities prior to December 31, 2008. The Applicant asserts that this is problematic for several reasons. First, as is customary for such transactions, the physical securities are not used in most cases. Rather, an electronic system, usually the Depository Trust Company's electronic system, is utilized and the securities are in global form. In such cases, it is difficult (and may be impossible) to ascertain the beneficial ownership of the securities, meaning

[13] The Mortgage File is defined in the PSA to include, among other documents, the original executed mortgage note and the original or in some cases, a copy of: The mortgage and any assignment and recordation; assignment of all unrecorded documents related to the mortgage loan; any modification, consolidation, assumption and substitution agreements; the policy or certificate of lender's title insurance or irrevocable binding commitment; filings of relevant UCC Financial Statements; any ground lease and related documents; any relevant intercreditor agreement, loan agreement, letter of credit, management and franchise agreements; and any documents related to any companion loan.

that it is not known whether Plans are owners and to what extent. The Applicant claims that identifying the affected Plans would be time consuming and expensive, and may be impossible to do with complete accuracy because of the book-entry system under which Securities were issued. As stated above, the Applicant represents that notice of this request for relief was posted on the Trustee's Web site at the time this Application was submitted, which would be updated to reflect any action of the Department with respect to the Application. The Applicant has informed the Department that, as noted above, although Wells Fargo has been replaced as Trustee by March 31, 2009, Wells Fargo will remain as the securities administrator for any of the Securitizations on the Securitization List for which it was providing such services. Further, the Applicant has indicated that either Wells Fargo (in cases where Wells Fargo continues as securities administrator) or the replacement trustee (in all other cases) will continue to update its Web site concerning the status of the Proposed Amendment. In this regard, the Applicant also requests that the publication of the Proposed Amendment in the **Federal Register** serve as the Notice to Interested Persons for purposes of this submission.

Second, and more importantly, The Applicant notes that the current disruption in the mortgage-backed securities market makes sales problematic, both in terms of finding buyers and establishing proper valuation. Granting the requested relief prevents these problems. The Applicant states further that the relief is of the same duration, six months, as that already provided by the Department for Trustee-Servicer affiliations, suggesting that the Department has already determined that this period is sufficiently brief to prevent serious conflicts of interest from arising.

13. Wells Fargo requests that the relief, if granted, be made retroactive to December 31, 2008, the Acquisition Date. If the relief is granted retroactively, Plans would be able to retain their prior Securitization investments and to purchase Securities in the secondary market relying upon the Underwriter Exemptions once exemptive relief is granted, even if the transactions originally closed or will close prior to the date the final Amendment is published in the **Federal Register**, if granted by the Department.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans; and

3. The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22) and PTE 2002–19, 67 FR 14979 (March 28, 2002) as amended by PTE 2007–05, (PTE 2002–19).

1. Subsection II.A.(4) of PTE 96–22 is amended to add a new subsection (c) and subsection II.A.(4) of PTE 2002–19 is amended to add a new subsection (d) that read as follows:

(c) [(d) of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, Wells Fargo, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of Wachovia Corporation and its affiliates (Wachovia) by Wells Fargo & Company and its subsidiaries (WFC), the parent holding company of Wells Fargo, N.A. (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, Wells Fargo, N.A., ceases to be an Affiliate of any member of the Restricted Group no later than June 30, 2009;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, Wells Fargo, N.A., did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from December 31, 2008 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, Wells Fargo, N.A.; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, Wells Fargo, N.A., appoints a co-trustee, which is not an Affiliate of Wachovia or any other member of the Restricted Group, no later than the earlier of (A) March 31, 2009 or (B) five business days after Wells Fargo, N.A. becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided, that if the Trustee has resigned on or prior to March 31, 2009 and no event described in clause (B) has occurred, no co-trustee shall be required.

(iv) For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], a conflict arises whenever (A) Wachovia, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, N.A., as Trustee, or (B) Wells Fargo, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: The day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], the term ''conflict'' includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo, N.A.'s request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo, N.A.'s request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that Wells Fargo, N.A., as Trustee, considers erroneous.

2. The Definition of ''Underwriter'' at section III.C. of PTE 96–22 and PTE 2002–19 is temporarily amended to include Wachovia and J.P. Morgan Securities Inc. for the period noted and reads:

C. Effective December 31, 2008 through June 30, 2009,

''Underwriter'' means:

(1) Wachovia or J.P. Morgan Securities Inc.;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entities; or

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

3. The Definition of ''Sponsor'' at section III.D. of PTE 96–22 and PTE 2002–19 is temporarily extended to include language applicable to transactions on the Securitization List at section III.KK [or section III.LL. of PTE 2002–19] and reads:

D. ''Sponsor'' means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective December 31, 2008 through June 30, 2009, for those transactions listed on the Securitization List at section III.KK. [at section III.LL. of PTE 2002–19], Wachovia.

4. Section III. of PTE 96–22 is temporarily amended to add a new section III.KK and Section III. of PTE 2002–19 is temporarily amended to add a new section III.LL. that read as follows:

KK. [LL. of PTE 2002–19] Effective December 31, 2008 through June 30, 2009,

''Securitization List'' means:

Name	Issuance type	Wachovia role	Exemption
First Union Commercial Mortgage Trust FUNB Series 1999–C1.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C6.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C8.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C10.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C11.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C23.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C25.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C01.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: First Union Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C2.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003—C3.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C5.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C7.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C15.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Banc of America Commercial Mortgage Trust, Series 2001–3.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc.	96–22
First Union Commercial Mortgage Trust, Series 2001–C4.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C4.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C9.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C16.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C17.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2006–C1.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C2.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C3.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22

Name	Issuance type	Wachovia role	Exemption
Wachovia Bank Commercial Mortgage Trust, Series 2006–C27.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C29.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C32.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series, 2005–C22.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C33.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C34.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1.	CMBS	Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc. (but note that PTE 96–22 is not relied on in the disclosure document).	2002–19
Wachovia Bank Commercial Mortgage Trust, Series 2006 WHALE 7.	CMBS	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C21.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C19.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C26.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C28.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C30.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C31.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–ESH.	CMBS	Master Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–WHALE 6.	CMBS	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
First Union–Lehman Brothers Wells Fargo, Series 1998–C2.	CMBS	Master Servicer: First Union National Bank Sponsor First Union National Bank Underwriter: First Union Capital Markets.	96–22

Legend: CMBS = Commercial mortgage-backed securitizations

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC, this 24th day of August 2009.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–20736 Filed 8–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. L–11482]

Notice of Proposed Individual Exemption Involving The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan), Located in Seattle, WA

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of

a proposed exemption which, if granted, would permit the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Business Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America (Local 942), a party in interest with respect to the Plan. If granted, the exemption would affect participants and beneficiaries of and fiduciaries with respect to the Plan.

DATES: *Effective Date:* If granted, this proposed exemption will be effective on the date the grant notice is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing should be received by the Department on or before October 27, 2009.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application No. L–11482. Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219–0204 or by electronic mail to *Broady.Jan@dol.gov* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). If granted, the exemption would permit the Plan to purchase the subject Property from Local 942, a party in interest with respect to the Plan. The proposed exemption has been requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Accordingly, this proposed exemption is being issued solely by the Department.

Summary of Facts and Representations

1. The Plan is an apprenticeship and training plan that is organized as a multi-employer Taft-Hartley Trust Fund. The Plan was established in October 1967, pursuant to an original Agreement and Declaration of Trust (the Trust Agreement), between labor and employer representatives of the construction industry in the State of Alaska. The Plan was created to provide classroom instruction and outside training classes and to simulate work experience needed at construction sites and on-the-job training for members and apprentices of Local 942 and Local 341 of the Laborers International Union of North America (Local 341).[1] Although the Plan has a physical presence in Fairbanks, Alaska and Anchorage, Alaska, it maintains its legal address in Seattle, Washington.

2. The Plan is sponsored by the Unions and the Associated General Contractors for the State of Alaska (the AGC), an employer organization representing most of the contributing employers to the Plan. The AGC serves as the collective bargaining agent on behalf of the employers in Alaska. Besides the Unions and the AGC, independent employers contribute to the Plan, though these employers may not be AGC members.

3. The Plan is administered by an eight member Board of Trustees (the Trustees), four of whom are appointed by the AGC and four of whom are appointed by the Unions. The Trustees have ultimate fiduciary, operational and investment discretion over the assets of the Plan. The Trustees appointed by the AGC are Derald Schoon, John Minder, Michael Brady, and Roxanna Horschel. The Trustees appointed by the Unions are Dan Simien and Tim Sharp (who represent Local 942), and Ron McPheters and Joey Merrick (who represent Local 341). The Trustees administer the Plan and certain training facilities described herein with the assistance of Les Lauinger, the Plan's Training Coordinator. As of June 30, 2008, the Plan had total net assets of $5,742,204. As of October 3, 2008, the Plan had approximately 2,000 participants.

4. The Building Association is an Alaska corporation that was incorporated by and on behalf of Local 942 to hold title to real property solely on behalf of Local 942. The Building Association is located at 2740 Davis Road, Fairbanks, Alaska. Other than serving as a Plan sponsor, Local 341 has no other relationship to the Building Association or to Local 942.

5. Among the assets of the Building Association is the Property, consisting of approximately .642 acres of undeveloped land. The Property is located at 2740 Davis Road, Fairbanks, Alaska and it is legally described as ''the East half of Lot 2, Block 16 [of the Laborers Training Center Subdivision], facing the corner of Ada Street and Twenty-First Avenue.'' The Property is adjacent to the Fairbanks Training School building (the Training Facility), which is currently owned and operated by the Plan for training purposes. The Property is also adjacent to real property (referred to as ''Lots 1A and 1B of Block 16'') owned and used exclusively by the Building Association to conduct its business operations.

The Property represents a portion of vacant land that was originally purchased by the Building Association from the Keith Briggs Trust, an unrelated party, on June 20, 1997 for $112,500 (the Briggs Property). Of the purchase price paid for the Briggs Property, the Building Association made a $50,000 cash payment and it financed the remaining balance of $62,500 in two annual installments that occurred on the first and second anniversary dates of the closing date at 8% interest per annum.

6. On January 9, 2003, the Department gave final authorization to the Plan pursuant to the requirements of Prohibited Transaction Exemption 96–62 (61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002), a class exemption permitting certain authorized transactions between plans and parties in interest. The Department's authorization (Final Authorization Number 2003–01E) allowed the Plan to purchase approximately 27,907 square feet of the Briggs Property, including the western half of Lot 2 of Block 16 from the Building Association for $42,000. The property acquired constitutes the site of the Training Facility and it contains approximately 4,400 square feet of classroom and office space, including vacant land for at least 30 parking spaces next to the building. The Training Facility has been owned and occupied entirely by the Plan since 2003.

7. In 2004 and 2005, the Trustees determined that the Plan needed additional vacant land adjacent to the

[1] Local 942 and Local 341 are collectively referred to herein as the ''Unions.''

Training Facility.[2] An initial Earnest Money Receipt and Agreement (the Initial Agreement) was executed in December 2005 between Mr. Lauinger, the Plan's Training Coordinator and Mr. Sharp, on behalf of the Building Association. Under the terms of the Initial Agreement, the Plan deposited $28,000 in the Client Trust Account held on behalf of the Plan by the law firm Jermain, Dunnagan and Owens, P.C. (JDO) of Anchorage, Alaska. JDO, the Plan's legal counsel, is a party in interest with respect to the Plan because it is a service provider. JDO has also submitted this exemption request on behalf of the Plan.

Under the terms of the Initial Agreement, the eastern one-half portion of Lot 1 of Block 16, which faces the corner of Ada and Davis Streets and consists of approximately 67,000 square feet of space, would be acquired by the Plan from the Building Association. Therefore, it was understood that the Plan would need to obtain an administrative exemption from the Department in order for this transaction to proceed. The Building Association was also willing to refrain from selling or marketing this tract of property until the Plan had received an administrative exemption from the Department. If the proposed exemption was not approved by the Department, the Initial Agreement would terminate and no sale would be consummated. Although the Initial Agreement required that the exemption be obtained within a reasonable period of time, no specific date was indicated.

8. Subsequently, the Trustees determined that it would not be prudent for the Plan to purchase the entire eastern half of Lot 1 of Block 16. Instead, the Plan would purchase only half of the parcel or approximately 27,907 square feet of land. As a result, and at full cost to Local 942 and the Building Association, the land and lots were replatted to show the Property as the ''East half of Lot 2 as an extension of Lot 2 of Block 16, of the Laborers Training Trust Subdivision.''

In November 2007, a Revised and Final Earnest Money Receipt and Agreement (the Revised Agreement) was executed between Mr. Sharp for the Building Association and Mr. Lauinger on behalf of the Plan. Under the Revised Agreement, the amount of the Plan's earnest money was reduced to $26,500. In addition, the parties executed an addendum to allow the Building Association and Local 942 a right of first refusal if the Plan decided to resell the vacant lot. As with the Initial Agreement, the primary condition of the Revised Agreement required the Department's approval of both transactions.[3] The Plan has received no interest on its earnest money under either the Initial Agreement or the Revised Agreement, nor has it paid any servicing or administrative fees to JDO.[4] Nevertheless, given the amount of time that has elapsed since such funds have been held in the Client Trust Account, JDO has agreed to compensate the Plan for all back interest at the time the proposed transaction is consummated.[5] Such interest amount will be determined by the independent fiduciary for the Plan, as discussed in Representation 12.

9. The Plan proposes to purchase the Property from the Building Association. The Plan will acquire the Property for the lesser of $62,791 or the fair market value of such Property at the time of the transaction, as determined by a qualified, independent appraiser. The Plan will pay the consideration in cash and it will not be required to pay any real estate commissions, fees or other expenses in connection with the transaction. Accordingly, an administrative exemption is requested from the Department.

Further, the proposed transaction will be consummated only after a qualified, independent fiduciary, acting on behalf of the Plan, negotiates the relevant terms and conditions of such transaction and determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries. The independent fiduciary will monitor the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

10. The Trustees seek this exemption so that the Plan will own real property that is adjacent to the Training Facility and it will give the Plan more direct road access. The Property will be used by the Plan to store training equipment and provide a place to conduct outdoor training classes. Also, due to the distances involved, it is represented that the Training Facility needs to operate independently from an Anchorage training facility and have sufficient physical space and training capabilities to hold classes for members and apprentices living in Northern Alaska. In the past, large and specialized classes needed for certification required that residents from Fairbanks fly to Anchorage and find temporary housing to take training classes, at considerable expense.

11. The Property has been appraised by Chris Guinn, MAI, SRA, SR/WA, a qualified, independent appraiser affiliated with the real appraisal firm of Street, Guinn & Associates, located in Fairbanks, Alaska. Mr. Guinn certifies in an appraisal report dated September 23, 2008 that he has no present or prospective interest in the Property nor any personal interest or bias with respect to the parties involved and that he has received no income, at any time, from the Building Association or from any other parties in interest.

Mr. Guinn represents that he has been a real estate professional in interior Alaska for over 25 years and has a Master's degree in business administration. He states that he maintains several professional affiliations as a member of the Appraisal Institute and the Greater Fairbanks Board of Realtors, among other things. He explains that he has owned Street Guinn & Associates since 1986, and during this time he has acted as an independent professional fee appraiser specializing in condemnation, rural and commercial income property. Further, Mr. Guinn states that he has participated in numerous arbitration

[2] According to the Trust Agreement, any action taken by the Trustees must be performed by ''unit'' vote. As a result of this procedure, any decision to purchase the Property was made by such unit or group vote, which consisted of one vote by the Union Trustees and one vote by the Employer Trustees. Although Trustees Tim Sharp and Dan Simien, who are Union Trustees representing Local 942, ''voted'' within their Trustee group for purposes of obtaining a majority, their individual votes did not matter because the Union Trustees were only entitled to exercise one vote. Similarly, the Trustees for Local 341 voted within their Trustee group.

[3] The right of first refusal has not been included in the scope of this exemption request. If the Plan ever decides to resell the Property to the Building Association and Local 942, the applicants will request an administrative exemption from the Department.

[4] According JDO, the Client Trust Account is an ''Interest On Lawyer Trust Account'' or ''IOLTA'' that is established by a law firm to hold funds for a client that is separate from the firm's other accounts or any other client accounts. The Professional Rules of Responsibility and the Alaska Bar Association rules, require for an IOLTA that all interest payments earned by the firm accounts or the Client Trust Accounts be turned over to the state Bar Association.

[5] The Department is expressing no opinion herein on whether the decision by JDO to recommend that the Plan deposit its earnest money in a non-interest bearing account, has violated the provisions of section 404(a) of the Act. In pertinent part, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

In addition, the Department wishes to point out that to the extent JDO has received any direct or indirect benefit by recommending that the Plan's earnest money be placed in a Client Trust Account rather than in an interest-bearing escrow account with an unrelated party, such action would violate section 406(a)(1)(D) and section 406(b)(1) and (b)(2) of the Act.

issues, not only as the appraiser of record, but also as a chairman of a panel charged with the resolution of such matters.

Using the Sales Comparison Approach to valuation, Mr. Guinn has placed the fair market value of a fee simple interest in the Property at $70,000, as of September 10, 2008. Thus, the Property represents less than 1.3% of the Plan's assets. Mr. Guinn also physically inspected the Property. He explains that his estimate of the fair market value of the Property is as a ''stand-alone property'' and he concludes that the Plan will be engaging in an arm's length transaction. Mr. Guinn will update his appraisal on the date the purchase transaction is consummated.

12. Washington Capital Management, Inc. (WCM) of Seattle, Washington will serve as the independent fiduciary for the Plan with respect to the proposed transaction. Specifically, Cory Carlson, Director of Equity Real Estate of WCM and Mel Morgan, MAI and Vice President of WCM have prepared the representations required of the independent fiduciary. WCM has been a registered investment adviser for over 31 years. As a real estate investment manager, WCM has handled real estate investments for many Taft-Hartley multiemployer plans, including the Alaska Laborers-Employers Retirement Trust. As of September 30, 2008, WCM had $3.3 billion under management, in both separate accounts and commingled open ended portfolio strategies for stocks, bonds, mortgages or real estate equity. WCM is also a ''Qualified Professional Asset Manager'' and it has six offices, including an office in Anchorage, Alaska and a staff of 55 employees. WCM states that it has received no income, at any time, from the parties in interest involved in the proposed transaction and has no other relationships with these parties.

WCM represents that it understands and accepts the duties, responsibilities and liabilities in acting as a fiduciary with respect to the Plan. In this regard, WCM states that it has a compliance department which reviews all ongoing actions for compliance with ERISA duties and responsibilities. In addition, WCM states that it has a ''corporate culture'' and an ''individual value system'' which is attentive to the intent and obligations of ERISA and the resulting rules.

Based on Mr. Guinn's appraisal of the Property, WCM concludes that the purchase price of $62,791 is acceptable and it does not exceed the $70,000 fair market value price that would be expected in an arm's length transaction. WCM also states that the acquisition of the Property would provide certain non-monetary benefits to the Plan because it would allow the Plan to expand its training operations. Since the purchase price is so low, WCM does not believe the acquisition of the Property would affect the Plan's liquidity needs. WCM notes that two of the biggest risks to the Plan in acquiring a vacant parcel of industrial land, such as the Property, are environmental liability and depreciation. However, it states that it has been informed that there are no environmental concerns with the Property and that it has held value. Therefore, the proposed purchase transaction, according to WCM, would be in the best interests of the Plan and its participants and beneficiaries.

In addition, WCM has addressed the amount of the earnest money given by the Plan to secure the Property and the appropriateness of JDO's placing such funds in the law firm's Client Trust Account instead of in an interest-bearing account maintained on behalf of the Plan by an unrelated party. With respect to the amount of the earnest money, WCM states that the $26,500 deposit, though substantial, is not unusual considering the $62,791 purchase price for the Property. WCM explains that earnest money deposits are negotiated to encourage the timely completion of a transaction and to provide sufficient funds to cover damages if a dispute arises. When the total price is small, WCM further explains that the deposits tend to be a larger percentage. Thus, the deposit amount is within a market standard range, according to WCM.

With respect to the issue of whether the earnest money was appropriately deposited, WCM states that although the earning of interest varies according to regional and local practices, it would recommend that the Plan's earnest money be placed in an interest-bearing escrow account, particularly for future long-term transactions involving the Plan. WCM also notes that the amount of potential interest earned by the Plan would have been relatively small. Using one month CD rates published by the Federal Reserve, WCM has initially determined that the Plan's earnest money deposit of $26,500 would have earned $3,840 between December 2004 and April 2009. WCM will update this calculation on the date the proposed transaction is consummated.

In addition to the foregoing duties, WCM will monitor the purchase transaction on behalf of the Plan. Further, WCM will ensure compliance with all agreed upon terms and conditions.

13. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the proposed transaction will be no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property will be a one-time transaction for cash.

(c) The Plan will not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan will purchase the Property from the Building Association for the lesser of (1) $62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction will be consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary has calculated and will calculate to the date of sale, using the applicable certificate of deposit rate in effect, the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel will pay all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary will monitor the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

Notice to Interested Persons

The Trustees will provide notice of the proposed exemption to interested persons within 30 days of the publication of the notice of proposed exemption in the **Federal Register**. The interested persons to whom the Trustees would provide notice would include, but would not be limited to, Plan participants, Union members, and all active laborers reported to the Plan on contribution remittance reports filed with the Plan's Trust Administration Office. Such notice will be provided to interested persons by first-class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform

interested persons of their right to comment on and/or to request a hearing. Comments and requests for a hearing with respect to the proposed exemption are due within 60 days of the publication of this pendency notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to any transaction prohibited under section 406(b)(3);

(3) Before an exemption can be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption accurately describe, where relevant, the material terms of the transaction that will be consummated if this exemption is granted.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Building Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the proposed transaction are no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property is a one-time transaction for cash.

(c) The Plan does not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan purchases the Property from the Building Association for the lesser of (1) $62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction is consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary calculates, on the date of the transaction (using the applicable certificate of deposit rate in effect), the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel pays all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary monitors the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the Covered Transactions.

Signed at Washington, DC, this 24th day of August 2009.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–20737 Filed 8–27–09; 8:45 am]

BILLING CODE 4510–29–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–15]

Notice of the September 9, 2009 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 3 p.m. to 5 p.m., Wednesday, September 9, 2009.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Romell Cummings via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to initiate the Fiscal Year 2010 country selection process by identifying countries that will be candidates for Millennium Challenge Account (''MCA'') assistance in Fiscal Year 2010 based on the per capita income and other requirements of 606(a) of the Millennium Challenge Act of 2003 (Pub. L. 108–199 (Division D)) (the ''Act'') and to discuss other Compact development efforts with MCA-eligible countries; the MCC's Threshold Program; and consider certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: August 26, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E9–20944 Filed 8–26–09; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science & Engineering; 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 International Science and Engineering (#25104).

Date/Time: September 28, 2009; 8:30 a.m. to 5 p.m.; September 29, 2009; 8:30 a.m. to 12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 920, Arlington, VA.

Type of Meeting: Open.

Contact Person: Edward Murdy, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8710.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so you name may be added to the building access list.

Purpose of Meeting: To provide advice on the programs and activities of the Office of International Science and Engineering.

Agenda:

September 28, 2009

AM: Introductions and Updates—Presentation and Discussion of 2009 activities.

PM: Presentation and Discussion—Meet with NSF Director; Committee Discussion.

September 30, 2009

AM: Presentation and Discussion—Activities and initiatives for the coming year. Planning for the next meeting.

Dated: August 25, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–20771 Filed 8–27–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 15, 2009, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 24, 2009 to: Charles D. Amsler, Jr., Permit No. 2010–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9–20734 Filed 8–27–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the nuclear medicine physician position and the radiation oncologist position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nuclear medicine physician nominees should currently be practicing nuclear medicine in a clinical setting. Radiation oncologist nominees should currently be practicing radiation oncology to include clinical use of the Gamma Knife® unit.

DATES: Nominations are due on or before October 27, 2009.

Nomination Process: Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Ashley Cockerham, *ashley.cockerham@nrc.gov*. The cover letter should describe the nominee's current duties and responsibilities and express the nominee's interest in the position. Please ensure that resume or curriculum vitae includes the following information, if applicable: Education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Cockerham, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (240) 888–7129; *ashley.cockerham@nrc.gov*.

SUPPLEMENTARY INFORMATION: The ACMUI nuclear medicine physician provides advice to NRC staff on issues associated with the regulation of diagnostic and therapeutic applications of byproduct material. This advice includes providing input on NRC proposed rules and guidance documents, providing recommendations on the training and experience requirements for physicians specializing in diagnostic and therapeutic nuclear medicine, identifying medical events associated with these uses, evaluating non-routine medical uses of byproduct material, bringing key issues in the nuclear medicine community to the attention of NRC staff, and other nuclear medicine issues as they relate to radiation safety and NRC medical-use policy.

The ACMUI Gamma Stereotactic Radiosurgery (GSR) radiation oncologist provides advice on issues associated with radiation oncology and the clinical use of GSR. This advice includes providing input on NRC proposed rules and guidance documents, providing recommendations on the training and experience requirements for physicians specializing in this use, identifying medical events associated with this use, evaluating new models of GSR units, bringing key issues in the radiation oncology community to the attention of NRC staff, and other radiation oncology issues as they relate to radiation safety and NRC medical-use policy.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in letters or during the selection process. ACMUI members currently serve a four-year term and may be considered for reappointment to an additional term. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; and (k) health care administrator. For additional information about membership on the ACMUI, visit the ACMUI Membership Web page, *http://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html*.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members are expected to attend semi-

annual meetings in Rockville, Maryland and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, these members are reimbursed for travel and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland, this 24th day of August 2009.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–20813 Filed 8–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 07007001; NRC–2009–0377; Certificate No. GDP–1; EA–08–344]

United States Enrichment Corporation, Paducah Gaseous Enrichment Plant; Confirmatory Order (Effective Immediately)

I

The United States Enrichment Corporation (USEC), a subsidiary of USEC Inc., is the holder of NRC Certificates of Compliance (COC) No. GDP–1 issued by the NRC pursuant to 10 CFR Part 76 on November 26, 1996, and renewed on December 22, 2008. The COC is set to expire on December 31, 2013. The certificate authorizes USEC to operate the Paducah Gaseous Diffusion Plant (Paducah), located near Paducah, Kentucky. The certificate also authorizes USEC to receive, and other NRC licensees to transfer to USEC, byproduct material, source material, or special nuclear material to the extent permitted under the COC.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on July 2, 2009.

II

On December 5, 2008, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2–2008–023) regarding activities at the Paducah Gaseous Diffusion Plant located in Paducah, Kentucky. The purpose of the investigation was to determine whether one or more operators deliberately concealed damaged equipment, falsified records, and made false statements to conceal a procedural error while moving a uranium hexafluoride (UF_6) cylinder.

Based on the evidence developed during the investigation, the NRC staff identified four apparent violations.

III

On July 2, 2009, the NRC and USEC met in an ADR session mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. The NRC and USEC agreed that four violations occurred during and subsequent to an incident that occurred in late January 2008, while an operator was preparing a UF_6 cylinder for movement using the applicable procedure. The violations involved the following:

a. On January 29, 2008, an Operator in building C–337A failed to follow Step 8.7.37 of checklist ''Cylinder Burping and Cold Pressure Procedure'' incorporated into procedure USEC CP4–CO–CN2045a that required that the pigtail be disconnected from the cylinder and the autoclave manifold prior to cylinder movement. As a result, the pigtail and the autoclave manifold were damaged when the cylinder was lifted. In addition, the same Operator subsequently willfully placed a waste pigtail in a radioactive waste storage bag and hid it in an unrelated control panel, instead of storing the waste pigtail in a drum and completing the required documentation in accordance with the requirements of USEC Procedure CP4–CO–CN2045a, Step 5.27.3. USEC Procedure CP4–CO–CN2045a is required by Technical Safety Requirements 3.1.1, ''Procedures Scope,'' which requires, in part, that written procedures shall be implemented to cover activities listed in Appendix A to Safety Analysis Report (SAR) section 6.11. Appendix A to SAR 6.11, ''Organization and Operating Programs,'' lists UF6 cylinder handling as an activity that requires implementation of written procedures.

b. On January 29, 2008, an Operator in the C–337A building willfully did not take any action to secure the damaged autoclave manifold, contact the appropriate supervisor or manager, or log the damage in a work package, narrative logbook, or other quality record. The Operator also willfully attempted to repair the autoclave manifold so as to conceal the initial failure to disconnect the pigtail from the autoclave manifold and the cylinder. In addition, a second Operator failed to contact the appropriate supervisor or manager upon learning of an incident that resulted in damage to both the pigtail and the autoclave manifold, and an Operator-Trainee in the C–337A building also failed to contact the appropriate supervisor or manager upon witnessing the incident. The actions of the two Operators and Operator-Trainee are contrary to USEC procedures CP2–PS–PS1044, ''Use of Procedures'', and CP2–CO–CO1032, ''Shift Routines and Operating Practices.''

c. On January 29, 2008, an Operator in the C–337A building willfully prepared and signed his name (*i.e.*, falsified) on a document, indicating that the pigtail had been properly disconnected from the autoclave manifold, when in fact the Operator knew that the pigtail had not been properly disconnected and was damaged. A second Operator in the C–337A building also willfully signed his name (*i.e.*, falsified) on a document, with knowledge that the pigtail had not been properly disconnected from the autoclave. The falsification of documents is prohibited by USEC Procedure UE2–OP–OP1030, ''Conduct of Operation.''

d. On January 30, 2008, two Operators and an Operator-Trainee, individuals who were familiar with the circumstances that resulted in damage to an autoclave manifold, willfully denied any knowledge of these circumstances when questioned by Corporation management. These actions are contrary to USEC Procedure UE2–OP–OP1030, ''Conduct of Operation.''

2. At the ADR session, USEC–Paducah representatives agreed that the circumstances described in Item 1 above represent violations of requirements, and were due, in part, to the willful actions of the two Operators and an Operator-Trainee.

3. Based on USEC–Paducah's review of the incident and NRC concerns with respect to precluding recurrence of the violations, USEC took the following actions:

a. In January 2008, cylinders potentially affected by the incident were inspected.

b. In February 2008, the Nuclear Safety & Quality organization began conducting surveillances of in-hand

procedure use at the General Manager's request.

c. On February 1, 2008, the USEC Section Manager issued a memorandum to all UF_6 handling personnel describing the discovery of the damaged manifold and the need for anyone with knowledge to come forward.

d. On February 4, 2008, the damaged pigtail was retrieved and stored per NCS requirements, and the NCS incident evaluation was completed.

e. On February 5, 2008, the crane and lifting devices used by Operator 1 on January 29, 2008 were tested and inspected.

f. On February 12, 2008, USEC conducted an ''All Hands Stand Down'' meeting with all plant personnel to inform them about the event and to reinforce management expectations.

g. On February 22, 2008, Operations initiated a Long-Term Order requiring that two operators be present during cylinder connections and disconnections.

h. On February 29, 2008, the General Manager sent a letter to all employees reinforcing the need for procedural compliance.

i. On February 29, 2008, the General Manager sent a letter to all employees reinforcing the need to stop work and report errors.

j. In March 2008, USEC completed repairs of the 2E autoclave manifold.

k. In March 2008, a Use of Procedures question bank was distributed as a coaching tool plant-wide. The question bank covers the stop work requirements and other rules that govern procedure use at the plant.

l. In April 2008, USEC conducted a session for all supervisors to reinforce the responsibilities of line management to establish and maintain a strong safety culture. In addition, supervisors were tasked with conducting a Nuclear Safety Culture briefing for all workers that highlights the safety implication of not reporting mistakes and the related guidance in the USEC Code of Conduct.

m. In August 2008, USEC revised its new employee training materials to include additional training on the elements of a Safety Conscious Work Environment.

n. In October 2008, USEC revised the relevant plant procedures to require two operators to be present for selected cylinder operations.

o. In October 2008, USEC developed recurring training for Operations and Maintenance supervisors to reinforce ''conduct of'' principles and procedure compliance. Training will be conducted for a period of 12 months from the date of issuance of the Confirmatory Order.

p. In November 2008, USEC conducted briefings for all personnel who handle fissile materials on the importance of complying with procedures.

q. In March 2009, the General Manager and Plant Manager conducted over 25 briefings for all employees with regard to safety culture, open communications, teamwork to identify vulnerabilities early, procedural compliance, and reporting off-normal conditions.

r. USEC took disciplinary action to address the unacceptable performance of the three individuals involved in the incident.

4. In addition to the actions completed by USEC as discussed above, USEC agreed to additional corrective actions and enhancements, as fully delineated below in Section V of the Confirmatory Order.

5. At the ADR session, the NRC and USEC agreed that (1) the actions referenced in Section III.3 and Section V, would be incorporated into a Confirmatory Order, and (2) the resulting Confirmatory Order would be considered by the NRC for any assessment of USEC, as appropriate.

6. In consideration of the completed corrective actions delineated in Section III.3 and the commitments delineated in Section V of this Confirmatory Order, the NRC agreed to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to USEC of February 25, 2009 (EA–08–344).

7. This agreement is binding upon successors and assigns of USEC.

On August 12, 2009, USEC consented to issuance of this Order with the commitments, as described in Section V below. USEC further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since USEC has completed the actions as delineated in Section III.3, and agreed to take the actions as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that USEC's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that USEC's commitments be confirmed by this Order. Based on the above and USEC's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 76, *It is hereby ordered*, effective immediately, that Certificate No. GDP–1 be modified as follows:

a. USEC agrees to conduct an end-point effectiveness review of actions targeting improvement in procedural compliance. USEC will review plant data for instances of failing to comply with applicable sections of CP2–PS–PS1044, ''Use of Procedures.''

b. USEC agrees to conduct a mid-point effectiveness review of its efforts to enforce compliance with the USEC Code of Conduct. USEC will review plant data for instances of intentional procedure or USEC Code of Conduct violations. The acceptable success criterion is zero instances of intentional procedure or USEC Code of Conduct violations.

c. Not later than 180 days after the issuance of the confirmatory order, USEC will conduct a review of the Assessment Tracking Reports classified as either ''Significant Conditions Adverse to Quality'' or ''Level 1 events'' during the 12 months preceding the issuance of the confirmatory order, in addition to this occurrence, to determine if weaknesses in any of the 13 safety culture components, as identified in NRC Regulatory Information Summary 2006–13, caused or significantly contributed to the event.

d. Within 90 days after conducting the review described in paragraph V.d and following completion of the Safety Conscious Work Environment assessment, USEC will assess the safety culture component weaknesses identified above, integrate the results with the Safety Conscious Work Environment assessment, and develop any appropriate corrective actions.

e. USEC–Paducah agrees to complete the items listed in Section V within 12 months of issuance of the Confirmatory Order.

f. Within 3 months of completion of the terms of the Confirmatory Order, USEC–Paducah will provide the NRC with a letter discussing its basis for concluding that the Order has been satisfied.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by USEC of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than USEC,

may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

If a person other than USEC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E–Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 FR 49139), and was codified in pertinent part at 10 CFR Part 2, Subpart B. The E–Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC=s public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

VII

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 18th day of August 2009.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Deputy Regional Administrator for Operations.

[FR Doc. E9–20817 Filed 8–27–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0369; Docket Nos. 50–250 and 50–251]

Florida Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power & Light Company (the licensee), for operation of Turkey Point, Units 3 and 4 located in Florida City, Florida.

The proposed amendment would revise the TS 6.8.4.j, Steam Generator (SG) Surveillance Program and TS 6.9.1.8, Steam Generator Tube Inspection Report. The purpose of these modifications is to revise the scope of the inservice inspections required in the tubesheet regions of the Turkey Point Units 3 and 4 SGs. The amendment application dated July 23, 2009, contains sensitive unclassified non-safeguards information (SUNSI).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the SG tube rupture (SGTR) event and the steam line break (SLB) postulated accident.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes'' [Reference 7] and NEI [Nuclear Energy Institute] 97–06, ''Steam Generator Program Guidelines'' [Reference 3], are maintained for both normal and postulated accident conditions. For the portion of the tube outside of the tubesheet, the proposed change also has no impact on the structural or leakage integrity. Therefore, the proposed change does not result in a significant increase in the probability of the occurrence of an SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet, which would constitute a failure to meet H*, is considered to be equivalent to a tube rupture. Therefore, the proposed change does not result in a significant increase in the consequences of an SGTR event. In addition, the selected H* value envelopes the depth within the tubesheet required to prevent a tube pullout.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event.

The leak rate factor of 1.82 for Turkey Point Units 3 and 4, for a postulated SLB, has been calculated as shown in Table 9–7 of Reference 2, Westinghouse Electric Company WCAP–17091–P, H*: Alternative Repair Criteria for the tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model 44F). Turkey Point Units 3 and 4 will apply the factor of 1.82 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. Multiplying the leak rate factor of 1.82 by the TS operational leak rate limit of 150 gpd (at room temperature) through any one SG indicates that an assumed primary to secondary accident induced leak rate of 273 gpd or greater through any one SG is required to ensure that the limiting design basis accident assumption is not exceeded. This condition is satisfied by the current UFSAR [Updated Final Safety Analysis Report] assumed primary to secondary accident induced leak rate of 500 gpd (355 gpd adjusted to room temperature) through any one SG for SLB. Since the existing limits on operational leakage continue to ensure that the SLB assumed accident induced leakage will not be exceeded, the consequences of a SLB accident are not increased.

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 1.82 and added to the total leakage from any other source and compared to the allowable accident induced leak rate. For the OA, the difference in the leakage between the allowable leakage and the calculated accident induced leakage from sources other than the tubesheet expansion region will be divided by 1.82 and compared to the observed operational leakage.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the SG inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change that alters the SG inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety. The proposed change defines the safety significant portion of the tube that must be inspected and repaired. WCAP–17091–P identifies the specific inspection depth below which any type of tube degradation is shown to have no impact on the performance criteria in NEI 97–06 Rev. 2, ''Steam Generator Program Guidelines'' [Reference 3] and TS 6.8.4.j, ''Steam Generator (SG) Program.''

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, ''Steam Generator Program Guidelines''

[Reference 3], and NRC Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes'' [Reference 7], are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP–17091–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The SLB leak rate factor for Turkey Point Units 3 and 4 is 1.82 (Table 9–7 in WCAP–17091–P). Multiplying this factor by the room temperature TS operational leak rate limit of 150 gpd through any one SG indicates that an assumed primary to secondary accident induced leak rate of 273 gpd or greater through any one SG is required to ensure that the limiting design basis accident assumption is not exceeded (at room temperature). This condition is satisfied by the current UFSAR assumed primary to secondary accident induced leak rate of 500 gpd (355 gpd adjusted to room temperature) through any one SG for SLB.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/sitehelp/esubmittals/installviewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/sitehelp/esubmittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated July 23, 2009, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/readingrm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCMailCenter.Resource@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this Federal Register notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the potential licensing action;

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff, the NRC staff shall briefly state the reasons for the denial. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI (including with respect to standing) by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 21st day of August 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] See footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[4] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (August 28, 2007; 72 FR 49139). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) in This Proceeding

Day	Event
0	Publication of [**Federal Register** notice/other notice of proposed action and opportunity for hearing], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: Supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' for SUNSI or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A+53 (Contention receipt +25).	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–20808 Filed 8–27–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11849 and #11850]

Tennessee Disaster #TN–00031

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1856–DR), dated 08/21/2009.

Incident: Severe Storms and Flooding.

Incident Period: 07/15/2009 through 07/17/2009.

DATES: *Effective Date:* 08/21/2009.

Physical Loan Application Deadline Date: 10/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/21/2010.

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: Notice is hereby given that as a result of the President's major disaster declaration on 08/21/2009, 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: Chester, Clay, Decatur, Jackson, Overton, Wayne.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11849B and for economic injury is 11850B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–20772 Filed 8–27–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form 1–E, Regulation E; SEC File No. 270–221; OMB Control No. 3235–0232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information of the Office of Management and Budget for extension and approval.

Form 1–E (17 CFR 239.200) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') is the form that a small business investment company (''SBIC'') or business development company (''BDC'') uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Rule 605 of Regulation E (17 CFR 230.605) under the Securities Act requires an SBIC or BDC claiming such an exemption to file an offering circular with the Commission that must also be provided to persons to whom an offer is made. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdictions in which the issuer intends to offer the securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the rule 605 offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately six issuers file eight notifications, together with attached offering circulars, on Form 1–E with the Commission annually. The Commission estimates that the total burden hours for preparing these notifications would be 800 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20705 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60534; File No. SR–FINRA–2009–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2124 (Net Transactions With Customers), 2220 (Options Communications), 4370 (Business Continuity Plans and Emergency Contact Information) and 5250 (Payment for Market Making) in the Consolidated FINRA Rulebook

August 19, 2009.

I. Introduction

On May 21, 2009, the Financial Industry Regulatory Authority, Inc (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), 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 adopt NASD Rules 2220 (Options Communications), 2441 (Net Transactions with Customers), 2460 (Payment for Market Making), 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information) as FINRA Rules in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook''). The proposed rule change would renumber NASD Rule 2220 as FINRA Rule 2220, NASD Rule 2441 as FINRA Rule 2124, and NASD Rule 2460 as FINRA Rule 5250 and would combine NASD Rules 3510 and 3520 as FINRA Rule 4370 in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on June 15, 2009.[3] The Commission received one comment letter on the proposed rule change.[4] FINRA submitted a letter responding to the commenter [5] and on July 24, 2009, filed Amendment No. 1 to the proposed rule change.[6]

II. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letter, and FINRA's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60066 (June 8, 2009), 74 FR 28308 (''Notice'').

[4] *See* letter from Pamela Ziermann, Dougherty and Company LLC to Elizabeth M. Murphy, Secretary, Commission, dated June 30, 2009 (''Dougherty Letter'').

[5] *See* letter from Patricia Albrecht, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dates July 24, 2009.

[6] In Amendment No. 1, FINRA would revise proposed FINRA Rule 4370 to require that only one of a member's two designated emergency contact persons must be a member of senior management and a registered principal of the firm.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*-3(b)(6).

A. Proposed FINRA Rule 2220

FINRA is proposing to adopt NASD Rule 2220 (Options Communications) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2220. NASD Rule 2220 sets forth a member's obligations with respect to its options communications with the public. In 2008, the Commission approved FINRA's proposed revisions to NASD Rule 2220 to make it more consistent with FINRA's general rules on communications with the public and the options communications rules of other self-regulatory organizations (''SROs'').[9] The amended rule became effective on March 4, 2009.[10] As amended, NASD Rule 2220, among other things: (1) Uses, to the extent appropriate, the same terminology and definitions as in FINRA's general rules on communications with the public; (2) makes the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (3) updates the standards on the content of communications that precede the delivery of the options disclosure document (ODD). The Commission believes that it is appropriate to transfer NASD Rule 2220 into the Consolidated FINRA Rulebook as FINRA Rule 2220 with the non-substantive changes proposed by FINRA.

B. Proposed FINRA Rule 2124

FINRA is proposing to adopt NASD Rule 2441 (Net Transactions with Customers) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2124. NASD Rule 2441 requires members to provide disclosure and obtain consent when trading on a ''net'' basis with customers.[11] The Commission approved NASD Rule 2441 in 2006.[12] With respect to non-institutional customers, the member must obtain the customer's written consent on an order-by-order basis prior to executing the transaction and such consent must evidence the customer's understanding of the terms and conditions of the order. With respect to institutional customers, a member must obtain the customer's consent prior to executing the transaction and such consent may be obtained by either: (1) Use of a negative consent letter; (2) oral disclosure and consent on an order-by-order basis; or (3) written consent on an order-by-order basis. The Commission believes that it is appropriate to transfer NASD Rule 2441 into the Consolidated FINRA Rulebook as FINRA Rule 2124 with the non-substantive changes proposed by FINRA.

C. Proposed FINRA Rule 5250

FINRA is proposing to adopt NASD Rule 2460 (Payment for Market Making) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 5250. The Commission approved NASD Rule 2460 in 1997.[13] NASD Rule 2460 prohibits any payments by an issuer or an issuer's affiliates and promoters, directly or indirectly, to a member or person associated with a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The rule contains two exceptions that permit a member to accept: (1) Payment for bona fide services, including, but not limited to, investment banking services; and (2) reimbursement for registration or listing fees. The Commission believes that it is appropriate to transfer NASD Rule 2460 into the Consolidated FINRA Rulebook as FINRA Rule 5250 with the non-substantive changes proposed by FINRA.

D. Proposed FINRA Rule 4370

FINRA is proposing to adopt NASD Rule 3510 (Business Continuity Plans) and NASD Rule 3520 (Emergency Contact Information) into the Consolidated FINRA Rulebook and combine the rules as FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information). NASD Rule 3510 requires members to create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member's business continuity plan must address, to the extent those elements are applicable and necessary to the member's business. NASD Rule 3510 further requires members to update their business continuity plans upon any material change and, at a minimum, conduct an annual review of their plans. Each member also must disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. Each member must make this disclosure, at a minimum, in writing to customers at account opening, by posting it on the member's Web site (if the member maintains a Web site), and by mailing it to customers upon request.

NASD Rule 3510 is one part of the NASD Rule 3500 Series (Emergency Preparedness), which requires members to establish emergency preparedness plans and procedures. NASD Rule 3520, which comprises the remainder of the NASD Rule 3500 Series, requires members to designate two emergency contact persons and provide this information to FINRA via electronic process.[14]

The Dougherty Letter generally supported the proposal, but recommended one change in the area of emergency contact information. The proposed rule, as is the case today in NASD Rule 3510, originally required that each member report to FINRA two emergency contact persons and that each person be a member of senior management and a registered principal of the firm.[15] The Dougherty Letter stated that ''[t]here may be situations where perhaps the best contact person may not be a registered principal but rather a Financial and Operations Principal or a technology manager.'' [16] The Dougherty Letter emphasized that the ''purpose of this rule is for FINRA to be able to contact individuals for business continuity purposes.'' [17] The commenter pointed out that ''the person most knowledgeable on computer

[9] *See* Securities Exchange Act Release No. 58738 (October 6, 2008), 73 FR 60371 (October 10, 2008) (order approving File No. SR–FINRA–2008–013).

[10] *See Regulatory Notice* 08–73 (December 2008) (SEC Approves Amendments to NASD Rule 2220 to Update the Standards for Options Communications). There is no longer a comparable Incorporated NYSE Rule. FINRA previously deleted substantially similar Incorporated NYSE Rule 791 (Communications to Customers) as part of a rule change that, among other things, reduced regulatory duplication for Dual Members during the interim period before the completion of the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving File No. SR–FINRA–2008–036).

[11] A ''net'' transaction is a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

[12] *See* Securities Exchange Act Release No. 54088 (June 30, 2006), 71 FR 38950 (July 10, 2006) (order approving File No. SR–NASD–2004–135).

[13] *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (order approving File No. SR–NASD–97–29).

[14] There is no longer a comparable Incorporated NYSE Rule to NASD Rules 3510 and 3520. FINRA previously deleted from the Transitional Rulebook NYSE Rule 446 (Business Continuity and Contingency Plans), which contained substantially similar requirements as the two NASD rules, as part of the rule change to reduce regulatory duplication for Dual Members during the period before completion of the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving File No. SR–FINRA–2008–036).

[15] *See* proposed FINRA Rule 4370.

[16] *See* Dougherty Letter, *supra* note 4.

[17] *Id.*

systems and business continuity issues may be someone other than a registered principal.'' [18]

In response, FINRA proposes to revise FINRA Rule 4370 to require that only one of a member's two designated emergency contact persons must be a member of senior management and a registered principal of the firm.[19] The proposed rule change, however, would require that someone designated as a second emergency contact person who is not a registered principal must be a member of senior management who has knowledge of the member's business operations.[20] The proposed rule change also would clarify that each emergency contact person must be an associated person of the member.[21] In addition, FINRA proposes to amend FINRA Rule 4370 to codify existing guidance that in the case of a member with only one associated person (*e.g.*, a sole proprietorship without any other associated persons), the second emergency contact person may be an individual, either registered with another firm or nonregistered, who has knowledge of the member's business operations, such as the member's attorney, accountant, or clearing firm contact.[22] The Commission believes that transferring and combining NASD Rules 3510 and 3520 into the Consolidated FINRA Rulebook will help ensure that members are prepared in the event of a significant business disruption.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change, as modified, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. FINRA's proposed changes, with the exception of the proposed revisions contained in Amendment No. 1, were published for comment by the Commission.[24] The Commission believes that Amendment No. 1 provides greater clarity regarding the designation of emergency contact persons and is consistent with a purpose of this rule, which is to provide FINRA with a means to contact a member in the event of a significant business disruption.

Accordingly, the Commission finds that there is good cause, consistent with Section 15A(b)(6) of the Act,[25] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–036 and should be submitted on or before September 18, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–FINRA–2009–036), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20704 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

[18] *Id.*

[19] *See* Amendment No. 1, *supra* note 6.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] 15 U.S.C. 78s(b)(2).

[24] FINRA noted that it proposes to announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60547; File No. SR–Phlx–2009–70]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Late Charges and Provide for Suspension or Termination for Failure To Pay Dues, Fees, or Assessments Owed

August 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX PHLX, Inc., pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange By-Law 14–1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the Exchange. The Exchange also proposes to amend Exchange By-Law 14–5 to dispose of the foreign currency options participation of a member, member organization, participant or participant organization if monies due

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

and owed are not paid within 90 days. Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required and provide for suspension or termination of membership of any member or member organization or any person associating with any member that fails to pay, after written notice, any required dues, fees or other charges or fails to submit a required report or information related to the required dues, fees or other charges. The Exchange also proposes to amend Exchange Rule 960.6 to extend the requirement that the respondents may file a written reply to a summary decision within 21 days instead of 15 days.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Generally the Exchange proposes to amend its rules relating to the failure to pay dues, fees and other charges to harmonize the Exchange rules with Equity Rule 9553 of The NASDAQ Stock Market LLC (''NASDAQ''). To effectuate the proposal, a series of minor amendments are introduced. More specifically, the Exchange proposes to amend Exchange By-Law 14–1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the Exchange. The Exchange is proposing to no longer charge a late charge for the failure to pay any fees, dues or charges owed to the Exchange.

The Exchange also proposes to amend Exchange By-Law 14–5 to change the length of time allowed to dispose the foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid. More specifically the proposed amendment will change the termination of a foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid from within one year to within 90 days to comport with more efficient processing of regular membership or participation.

Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required. Instead, the proposal provides for suspension of membership of any member or member organization or suspension of any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of suspension, any required dues, fees or other charges. The proposal also provides for termination of membership of any member or member organization or termination of any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of termination, any required dues, fees or other charges. Certain Exchange dues, fees or other charges are based upon self-reported information.[5] For this reason, the proposal also provides suspension of membership of any member or member organization or suspension of any person associating with any member or member organization that fails to submit the required report or information related to the dues, fees or other charges within 21 days of service of written notice of suspension. Similarly, the proposal also provides for termination of membership of any member or member organization or termination of any person associating with any member or member organization that fails to submit any report or information related to the dues, fees or other charges within 21 days of service of written notice of termination. The proposed changes will result in a more efficient systematic process of the collection of fees, dues and other charges owed the Exchange and comports with NASDAQ Equity Rule 9553. The proposed changes also provide guidance regarding service of notice of suspension or termination; contents of the notice; effective date of suspension or termination; request for hearing; the failure to request a hearing; and a request for termination of the suspension.

The Exchange also proposes to amend Exchange Rule 960.6 to change the requirement that the respondents may file a written reply to a summary decision within 21 days of service of written notice instead of 15. This proposal is similar to the requirements of the NASDAQ Equity Rule 9553(f).

2. Statutory Basis

The Exchange believes that its proposal to amend By-Laws 14–1 and 14–5 and to eliminate Rule 50 and amend Rule 960.6 is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(7) of the Act[7] in particular in that the proposed amendments provide a fair procedure for the disciplining of members and persons associated with members and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange of a member, member organization, participant or participant organization thereof. The Exchange believes that the proposal is consistent with these obligations in that the amendments provide that members, member organizations, participants, participant organizations or persons associated with such may be suspended or terminated, after written notice, for the failure to pay dues, fees and other charges owed to the Exchange. The Exchange believes that eliminating references to charges for the failure to pay fees, dues and other charges owed the Exchange and to provide for a systematic process to suspend or terminate members or persons associated with members provides for a fair and efficient process for handling the collection of dues, fees and other charges owed to the Exchange. The Exchange's proposal is similar to that of the NASDAQ Stock Market LLC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[5] For a list of fees, see the NASDAQ OMX PHLX Fee Schedule at *http://www.nasdaqtrader.com/Micro.aspx?id=phlx*, Equity Options Customer Fees, NASDAQ OMX PHLX Fee Schedule. Also see NASDAQ OMX PHLX Rules 703(e), *Due Dates, Fees for Late Filing, and 712, Independent Audit.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(7).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) becomes operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2009–70 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20784 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60560; File No. SR–FINRA–2009–045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Transaction-Related Charges for Trade Reporting to the OTC Reporting Facility

August 21, 2009.

On July 1, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 amend Rule 7710, OTC Reporting Facility. The proposed rule change clarifies the application of transaction-related charges for trade reporting to the OTC Reporting Facility (''ORF'') by deleting the reference to ''OTC Equity Security'' in Rule 7710 to clarify that, from March 5, 2007, until June 17, 2009,[3] the trade reporting charges imposed by the rule applied to trade reports in any security sent to the ORF that were not subject to comparison through the ORF. This change to the rule is necessary to correct an inadvertent mistake made in SR–NASD–2007–018.[4] In SR–NASD–2007–018, FINRA deleted a catch-all phrase from Rule 7010(g) which had the effect of excluding from the rule securities such as PORTAL equity securities, which are specifically excluded from the definition of OTC Equity Security. On June 17, 2009, FINRA filed SR–FINRA–2009–043[5] to correct this mistake prospectively. The change made in the instant rule filing corrects the mistake for the period from March 5, 2007 until June 17, 2009, the date of effectiveness of SR–FINRA–2009–043.

The proposed rule change was published for comment in the **Federal Register** on July 13, 2009.[6] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change does not raise any novel issues; it is merely designed to accurately reflect FINRA's intent when it filed SR–NASD–2007–018,[9] as well as its members' understanding of the coverage of the rule. The proposal clarifies that the charges that FINRA assessed with respect to transactions that were reported to the ORF from March 5, 2007, until June 17, 2009 are consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] March 5, 2007, is the effective date for SR–NASD–2007–018 *infra* and June 17, 2009 is the effective date for SR–FINRA–2009–043.

[4] *See* Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007).

[5] *See* Securities Exchange Act Release No. 60168 (June 24, 2009), 74 FR 31471 (July 1, 2009).

[6] *See* Securities Exchange Act Release No. 60239 (July 2, 2009), 74 FR 33492.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] *See* footnote 4, *supra.*

FINRA's intent when it filed SR–NASD–2007–018.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2009–045) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20783 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60549; File No. SR–NYSEArca–2009–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options

August 20, 2009.

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 August 12, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding permissible expiration dates for Flexible Exchange Options (''FLEX Options'').[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to correct certain cross-references and modify the permissible expiration dates for FLEX Options. These options are governed by Flexible Exchange Options, Section 4 pursuant to the Rules of NYSE Arca, Inc. Under current NYSE Arca Rule 5.32, FLEX options may not expire on any business day that falls on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Options (an ''Expiration Friday'').[5] However, subject to aggregation requirements[6] for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options (''QIX'') expire.

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any given business day. Although the expiration date restrictions would be eliminated, the Exchange notes that position and exercise limits under applicable NYSE Arca rules will continue to apply. FLEX Index Options remain subject to position limits under NYSE Arca Rules 6.8 and 5.35, as applicable. Additionally, all FLEX Options remain subject to the position reporting requirements of NYSE Arca Rule 6.8. Moreover, the Exchange has the authority, pursuant to NYSE Arca Rule 5.25, to impose additional margin requirements as deemed advisable.

Beyond the above described position limit and reporting requirements for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under NYSE Arca Rule 5.35 for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX options on the same underlying (*e.g.,* the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as ''Comparable Non-FLEX options''). Such FLEX Options and comparable Non-FLEX options would be subject to the position and exercise limits that are applicable to the Non-FLEX Options.[7] The aggregation requirement would apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.[8]

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading on the Exchange. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with NYSE Arca Rule 5.3, which includes but is not limited to stock options and exchange-traded fund options. Both FLEX Index Options and FLEX Equity Options are subject to the FLEX rules in Section 4.

[5] For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the ''three business day'' expiration restriction.

[6] See NYSE Arca Rule 5.35(b).

[7] Position Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.8; Exercise Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.9; Position Limits for Non FLEX index options are governed by Rules 5.15 and 5.16; Exercise Limits for Non Flex index options are governed by Rule 5.18.

[8] The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as ''triple witching''). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

as Non-FLEX Options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules, as governed by Section 4.

For example, a FLEX trader could establish a FLEX Options position in a European-style, a.m.-settled Mini-Nasdaq 100 Index (''MNX'') 210 Call Option Series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the Non-FLEX, European-style, a.m.-settled MNX 210 Call option series that expires on August 19, 2011 is listed for trading, the established FLEX Option position would be fully fungible with transactions in the Non-FLEX Option series. Any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the blackout period.

NYSE Arca believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides OTP Holders [9] and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).[10] By expanding the eligible expiration dates for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. NYSE Arca believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, in that the proposed rule change will provide OTP Firms and OTP Holders and investors with additional opportunities to trade customized options in an exchange environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[13] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

Under Rule 19b–4(f)(6) of the Act,[16] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange believes that waiver of the 30-day operative date will: (i) Permit the Exchange to offer investors additional opportunities to trade customized options in response to recent member requests; and (ii) level the current competitive landscape by permitting the Exchange to implement changes similar to those recently implemented by another self-regulatory organization. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.[17] The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.[18] That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

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,

[9] See NYSE Arca Rules 1.1(p) and 1.1(q).

[10] Through a Regulatory Services Agreement (''RSA'') between NYSE Regulation, Inc. (''NYSE Regulation'') and NYSE Arca, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Arca options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Arca participants. NYSE Arca represents that, through this RSA, there is appropriate surveillance in place to monitor transactions in FLEX options.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] The Exchange has fulfilled this five day requirement.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[18] Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–75 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–2009–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–75 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20785 Filed 8–27–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60552; File No. SR–NYSEArca–2009–74]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing Four Grail Advisors RP Exchange-Traded Funds

August 20, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 12, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list and trade the following Grail Advisors actively managed exchange-traded funds, or ''ETFs'', under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): RP Growth ETF, RP Focused Large Cap Growth ETF, RP Technology ETF and the RP Financials ETF (each an ''ETF'' or ''Fund'' and collectively the ''ETFs or ''Funds''), each of which is a series of Grail Advisors ETF Trust (''Trust'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[4] (''Shares'') under NYSE Arca Equities Rule 8.600: RP Growth ETF, RP Focused Large Cap Growth ETF, RP Technology ETF and the RP Financials ETF.[5] The Shares will be offered by Grail Advisors ETF 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.[6] Grail Advisors, LLC (the

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under NYSE Arca Equities Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving listing and trading of Grail American Beacon Large Cap Value ETF).

[6] The Trust is registered under the 1940 Act. On June 8, 2009, the Trust filed with the Commission post-effective Amendment No. 1 to its registration

Continued

''Manager''), a majority owned subsidiary of Grail Partners, LLC, acts as the Fund's investment manager. RiverPark Advisors, LLC (''RP'') serves as the primary sub-adviser and Wedgewood Partners, Inc. (''Wedgewood'') serves as sub-adviser to RP Focused Large Cap Growth ETF. RP serves as the exclusive sub-adviser of the RP Growth, RP Technology and RP Financials ETFs.

The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the Funds. ALPS Distributors, Inc. (''Distributor''), serves as the distributor of Creation Units for each ETF on an agency basis. The investment objective of each of the Funds is long-term capital appreciation. The ETFs expect to invest primarily in the securities of US companies, and may also invest in US securities tied economically to foreign investments, such as American Depositary Receipts.

RP Growth ETF

According to the Registration Statement, the RP Growth ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of companies that RP, the ETF's sub-adviser, believes have above-average growth prospects. RP uses a fundamental research driven approach to identifying those industries and companies with the strongest growth prospects for revenue, earnings and/or cash flow over the medium and long term and seeks to buy stock in those companies at attractive valuations. The ETF may invest in companies of any market capitalization and in any industry.

The ETF invests in industries that RP believes are the beneficiaries of long-term secular changes in the global economy and companies within those industries that are gaining market share and have, what RP believes to be, long-term sustainable competitive advantages and positions protected by strong barriers to entry. RP seeks companies with latent pricing power, expanding free cash flow and a high return on invested capital. RP also looks for companies with strong and experienced management teams with clear business objectives. RP believes it can gain an investment advantage not only through its primary research and by developing conviction in business models, but also because it invests with a long-term time horizon.

RP Focused Large Cap Growth ETF

According to the Registration Statement, the RP Focused Large Cap Growth ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of large capitalization companies that Wedgewood, the ETF's sub-adviser, believes have above-average growth prospects. The ETF considers companies with market capitalizations in excess of $5 billion to be large capitalization companies. The ETF is non-diversified and expects to invest in a limited number of companies, generally holding securities of between 20 and 30 companies.

RP Technology ETF

According to the Registration Statement, the RP Technology ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of companies that develop, produce or distribute technology-related products and services. These companies participate in many industries within the economy including industrial and business machines; communications; computer hardware and software; computer services and peripheral products; electronics; electronic media; internet; television and video equipment and services; satellite technology and equipment; and semiconductors.

RP, the ETF's sub-adviser, uses a fundamental research driven approach to identify technology-oriented companies that are suitable for the portfolio, and seeks to buy stock in those companies at attractive valuations. The ETF will primarily invest in companies with mid- to large- market capitalizations, but may invest in companies of any market capitalization. The ETF considers companies with market capitalizations of between $2 billion and $150 billion to be mid- to large-capitalization companies.

RP Financials ETF

According to the Registration Statement, the RP Financials ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of financial services companies. The ETF considers financial services companies to be those companies that participate in any aspect of the financial services industry, including, but not limited to, banking, lending, brokerage, exchanges, insurance, and money management, as well as real estate investment trusts (''REITs'').

RP, the ETF's sub-adviser, uses a fundamental research driven approach to identify financial services companies that are suitable for the portfolio, and seeks to buy stock in those companies at attractive valuations. The ETF will primarily invest in companies with mid- to large- market capitalizations. The ETF considers companies with market capitalizations of between $2 billion and $150 billion to be mid- to large-capitalization companies.

With respect to each of the Funds, under adverse market conditions, the ETF may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. Investment grade obligations include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations rating that security. To the extent the ETF invokes this strategy, its ability to achieve its investment objective may be affected adversely.

None of the Funds will invest in non-U.S. equity securities.

In addition to the investment strategies described in the prospectus for the Funds, each ETF may invest up to 20% of its total assets in debt securities that are investment grade at the time of purchase (as described in the Registration Statement), including obligations of the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed securities, asset-backed securities, master-demand notes, Yankee dollar and Eurodollar bank certificates of deposit, time deposits, bankers' acceptances, commercial paper and other notes, inflation-indexed securities, and other debt securities. Investment grade securities include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations (''Rating Organizations'') rating that security, such as Standard & Poor's Ratings Services or Moody's Investors Service, Inc., or rated in one of the four highest rating categories by one Rating Organization if it is the only Rating Organization rating that security

statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333–148082 and 811–22154) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based on the Registration Statement.

or unrated, if deemed to be of comparable quality by an ETF's sub-adviser and traded publicly on the world market. Obligations rated in the fourth highest rating category are limited to 25% of each ETF's debt allocations. An ETF, at the discretion of its sub-adviser, may retain a debt security that has been downgraded below the initial investment criteria.

The Registration Statement enumerates investment policies which may be changed with respect to an ETF only by a vote of the holders of a majority of the ETF's outstanding voting securities. Among these policies are the following: (1) Regarding diversification, an ETF, with the exception of the RP Focused Large Cap Growth ETF, may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of an ETF's total assets; and (2) regarding concentration, an ETF, with the exception of the RP Technology ETF or RP Financials ETF, may not invest more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries.

According to the Registration Statement, the ETFs may invest in US securities tied economically to foreign investments, such as American Depositary Receipts. Although not currently anticipated, the ETFs may use options and futures for various purposes, including for hedging and investment purposes. The ETFs' ability to write and purchase call and put options is limited by the requirements for qualifying as a regulated investment company under the Internal Revenue Code. An ETF may also invest in over-the-counter (''OTC'') options. To the extent consistent with applicable law, the ETFs may invest in futures contracts on, among other things, financial instruments (such as a U.S. government security or other fixed income security), individual equity securities (''single stock futures''), securities indices, interest rates, currencies, inflation indices, and commodities or commodities indices. An ETF's purchase and sale of index futures is limited to contracts and exchanges approved by the Commodity Futures Trading Commission.

An ETF may engage in transactions involving the use of futures on interest rates. These transactions may be in connection with investments in U.S. government securities and other fixed income securities. An ETF may use options on futures contracts in lieu of writing or buying options directly on the underlying securities or purchasing and selling the underlying futures contracts. An ETF may directly or indirectly use various different types of swaps, such as swaps on securities and securities indices, interest rate swaps, currency swaps, credit default swaps, commodity swaps, inflation swaps, and other types of available swap agreements, depending on the ETF's investment objective and policies. An ETF may use interest rate caps, floors, and collars for the same or similar purposes as they use interest rate futures contracts and related options and, as a result, will be subject to similar risks.

The ETFs may invest in convertible securities, equity-linked securities, preferred stocks, mortgage-related and other asset-backed securities, warrants, rights, repurchase agreements, debt and other fixed income securities, zero coupon securities, high yield securities, municipal securities, real estate investment trusts and other real estate-related investments. An ETF may invest up to 15% of its net assets in illiquid securities. For this purpose, ''illiquid securities'' are securities that an ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities. Each ETF may invest in the securities of other investment companies to the extent permitted by law. Subject to applicable regulatory requirements, an ETF may invest in shares of both open- and closed-end investment companies (including money market funds and ETFs). According to the Registration Statement, the ETFs have claimed an exclusion from the definition of ''commodity pool operator'' under the Commodity Exchange Act and, therefore, are not subject to registration or regulation as a pool operator under that Act.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [7] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

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.[8] In addition, Commentary .07 further 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, Commentary .07 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. RP, the Fund's primary sub-adviser, is not affiliated with a broker-dealer. Wedgewood Partners, Inc. is registered as an investment adviser and as a broker-dealer, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.[9] Any additional

[7] 17 CFR 240.10A–3.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, ''firewall'' procedures as well as procedures designed to prevent the misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[9] The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, and its related personnel, and Wedgewood Partners, Inc., the sub-adviser to RP Focused Large Cap Growth ETF, are subject to Investment Advisers Act

Continued

Fund sub-advisers 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.

Description of the Funds

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as ''Creation Units''. The Creation Unit size for the Fund is 25,000 Shares.

Availability of Information

The Funds' Web site (*http://www.grailadvisors.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[10] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) 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. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on its Web site the Disclosed Portfolio as defined in proposed Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[11] 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, is publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation (''NSCC''). The basket represents one ''Creation Unit of the Fund.'' The Web site information will be publicly available at no charge.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4 p.m. Eastern time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may 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 Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[12] Shares 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). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and

Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The Bid/Ask Price of each Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and its service providers.

[11] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[12] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG.[13]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[14] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–74 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–2009–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–74 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20787 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

[13] For a list of the current members of ISG, see *http://www.isgportal.org.*

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60561; File No. SR–NYSEAmex–2009–56]

Self-Regulatory Organizations; NYSEAmex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Fee for Annual Regulatory Training

August 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule'') in order to adopt a new fee for Annual Regulatory Training. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As required by NYSE Amex Rule 50 Commentary .03–.04, ATP Holders and certain qualified floor personnel are required to participate in an Exchange sponsored mandatory regulatory training program. Pursuant to provisions contained in Rule 50 Commentary .03–.04, the Exchange may charge a per program fee, as indicated in the Schedule, for each participant in any training program. The Exchange is proposing to adopt a $60 per person fee for any ATP Holder or associated person that participates in a regulatory training program.

Beginning in the fourth quarter of 2009, the Exchange will offer regulatory training via a Web-based interactive program that participants in the program may access from any Internet-capable computer. The purpose of this fee is to cover the Exchange's costs associated with the development and delivery of the regulatory training program.

In determining the $60 program fee, the Exchange has evaluated the expenses associated with the program and took into consideration the expected number of individuals that will participate in the program. Upon the completion of the annual training program, the Exchange will review the fee to ensure that the fee continues to properly reflect the Exchange's development and delivery costs. Any revenues collected in a given year that exceed that year's actual development and delivery costs will be credited to the projected development and delivery costs for the succeeding year. Similarly, any deficit may be carried over to the next year for purposes of assessing the fee. If the Exchange determines that further fee changes are necessary, it will submit an appropriate filing with the U.S. Securities and Exchange Commission.[3]

The Exchange also proposes to clarify language contained in the Limit on [sic] Fees on Options Strategy Executions section of the Schedule. The new language states, ''The cap applies to all Strategy Executions executed on the same trading day in the same options class.'' This proposed language is consistent with the way in which the Exchange currently applies the fee cap, and simply seeks to eliminate any potential confusion caused by the current language.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

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)[4] of the Act and subparagraph (f)(2) of Rule 19b–4[5] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The assessment of a fee for Regulatory Training, and the annual evaluation of the program is similar to the program in place at the New York Stock Exchange. *See* Securities and Exchange Act Release No. 59979 (May 27, 2009) 74 FR 26454 (June 2, 2009) (Notice of Filing and Immediate Effectiveness of SR–NYSE–2009–52).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–56 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–56 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20820 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60563; File No. SR–NYSE–2009–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until August 31, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions If They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

August 24, 2009.

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 August 21, 2009, 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 until August 31, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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 until August 31, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[5] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[6] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,[7] the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

[5] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[6] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[7] *See* Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR–NYSE–2008–99).

in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,[8] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009[9] to finalize review of NYSE Arca's proposed amended CEE rule, which included marketwide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).[10] The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included marketwide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009[11] to finalize review of NYSE Arca's proposed amended CEE rule. On July 15, 2009[12] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009[13] to finalize review of NYSE Arca's proposed amended CEE rule. On August 11, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 21, 2009[14] to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until August 31, 2009. Prior to August 31, 2009, the Exchange intends to formally file a 19b–4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[15] for this proposed rule change is the requirement under Section 6(b)(5)[16] 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.

As articulated more fully in the ''Purpose'' Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay[21] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

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.

[8] *See* Securities Exchange Act Release No. 59255 (January 15, 2009), 74 FR 4496 (January 26, 2009) (SR–NYSE–2009–02).

[9] *See* Securities Exchange Act Release No. 59581 (March 9, 2009), 74 FR 12431 (March 24, 2009) (SR–NYSE–2009–26).

[10] *See* Securities Exchange Act Release No. 59838 (April 28, 2009), 74 FR 20767 (May 5, 2009) (SR–NYSEArca–2009–36) (*See* NYSE Arca Rule 7.10).

[11] *See* Securities Exchange Act Release No. 60131 (June 17, 2009), 74 FR 30196 (June 24, 2009) (SR–NYSE–2009–57).

[12] *See* Securities Exchange Act Release No. 60312 (July 15, 2009), 74 FR 36298 (July 22, 2009) (SR–NYSE–2009–70).

[13] *See* Securities Exchange Act Release No. 60419 (August 7, 2009), 74 FR 39987 (August 10, 2009) (SR–NYSE–2009–79).

[14] *See* Securities Exchange Act Release No. 60478 (August 11, 2009), 74 FR 41769 (August 18, 2009) (SR–NYSE–2009–81).

[15] 15 U.S.C. 78f(a). [sic]

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2009–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–87 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20821 Filed 8–27–09; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60559; File No. SR–ISE–2009–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

I. Introduction

On May 11, 2009, the International Securities Exchange, LLC (''ISE'' 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 amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on June 8, 2009.[3] On June 10, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend and adopt new ISE rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[5] Specifically, the Exchange proposes to completely replace Chapter 19 of its rules with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[6] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[7] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[8] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[9] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[10] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[11] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[12]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60014 (June 1, 2009), 74 FR 27224 (''Notice'').

[4] Amendment No. 1 clarified that this proposed rule change will become effective upon the Exchange's withdrawal from the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage and the effectiveness of the Options Order Protection and Locked/Crossed Market Plan. Because the amendment only provided clarification and did not affect the substance of the rule filing, the amendment did not require notice and comment.

[5] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); The NASDAQ Stock Market LLC (''Nasdaq''); NASDAQ OMX BX, Inc. (''BOX''); NASDAQ OMX PHLX, Inc. (''Phlx''); NYSE Amex LLC (''NYSE Amex''); NYSE Arca, Inc. (''NYSE Arca''); and ISE (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[6] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[7] Section 8(c) of the Old Plan.

[8] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[9] Section 2(16) of the Old Plan.

[10] Section 7(a)(i)(C) of the Old Plan.

[11] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[12] 17 CFR 242.608.

orders via private linkages that exist for NMS stocks under Regulation NMS.[13] The Plan requires the Participating Options Exchanges to adopt rules ''reasonably designed to prevent Trade-Throughs.''[14] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[15] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[16] Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[17] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[18] In addition, the Plan contains a new exception for stopped orders and price improvement.[19]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: Require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[20]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and makes amendments to other rules as necessary to conform to the requirements of the Plan.[21] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[22]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[23] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade-throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[24]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[25] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[26]

The Exchange proposes four exceptions to the prohibition against locked and crossed markets: When the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and, with respect to a locking quotation, when the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is (i) not a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (ii) a customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order, and, on a case-by-case basis, the customer specifically authorizes the member to lock such Protected Bid or Protected Offer.[27] The Exchange believes that, in most cases, locked market maker quotes are good for the investing public, but recognizes that the benefits of a locked market become more complicated when one or both of the locking quotations represent a customer order. Where there is market interest willing to trade with a customer, the Exchange believes that the customer order should be filled. Thus, the Exchange proposes that it would not exempt from the locked market prohibition situations involving customer orders unless the customer entering the locking order specifically authorizes the lock on a case-by-case basis.[28] As a result, its members would not be permitted to lock another Participant's quotation unless the Exchange can establish that the quotation on the other Participant's market is not for the account of a customer.

The Exchange also proposes rules to permit it to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are not able to send ISOs in order to avoid Trade-Throughs.[29] The Exchange noted that, even upon the approvals of the Plan and the implementing rules of the various Participating Options Exchanges, it is possible that not all the Participants will be functionally able to operate pursuant to the Plan. Thus, the Exchange has proposed to retain certain rules governing the receipt of P/A Orders and Principal Orders until such time that all Participating Options Exchanges are operating pursuant to the Plan.

The Exchange also proposes changes to its rules relating to an ISE Primary Market Maker's (''PMM'') obligation to address customer orders when there is a better market displayed on another exchange. The Exchange proposes changes to ISE Rule 803(c) and the Supplementary Material to Rule 803 to specify that ISE will discharge its obligations under the Plan to ''establish,

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* the Plan Notice and Plan Approval, *supra* note 5.

[14] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[15] Section 5(a)(ii) of the Plan.

[16] Section 5(b) of the Plan.

[17] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[18] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[19] Subparagraph (x) of Section 5(b) of the Plan.

[20] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[21] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra* note 3.

[22] Proposed ISE Rule 1900.

[23] Proposed ISE Rule 1901(a).

[24] Proposed ISE Rule 1901(b)(1)–(10). In addition, the Exchange proposes to add ISOs as a new type of order under proposed ISE Rule 715(b)(5).

[25] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed ISE Rule 1900(i). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed ISE Rule 1900(e).

[26] Proposed ISE Rule 1902(a).

[27] Proposed ISE Rule 1902(b)(1)–(4).

[28] ISE noted that it can envision a customer authorizing a lock when the fees associated with trading against the locked market make the execution price uneconomical to the customer. *See* Notice, *supra* note 3, at 27226.

[29] Proposed ISE Temporary Rule 1903.

maintain and enforce written policies and procedures * * * reasonably designed to prevent Trade-Throughs'' [30] by requiring PMMs to address customer orders when there is a better market away via the use of ISOs.[31] ISE proposes that a PMM could comply with their obligation either by (i) executing a customer order at a price that at least matches the best price displayed or (ii) sending ISO(s) as agent for the customer to any other exchange(s) displaying a superior price and, with respect to any remaining portion of the customer order, either (a) releasing the remaining portion of the order for execution in the Exchange's auction market or (b) executing the remaining portion of the order at a price superior to the best price in the Exchange's auction market.[32]

ISE further proposes that, in addressing customer orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same option that is better than the best bid or offer on the Exchange, ISE would act in compliance with its rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section (6)(b)(4) and (5) of the Act [33] that the rules of national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[34] ISE also proposes to make clear that all orders entered on ISE and routed by the PMM to another exchange via an ISO pursuant to proposed ISE Rule 803(c)(2) and that result in an execution are binding on the member that entered such orders.[35]

The Exchange also proposes changes to ISE Rule 810, which governs ''informational barriers'' that ISE market makers must maintain within their firms. ISE stated that these barriers restrict the flow of information between personnel handling market making activities on the one hand, and personnel performing other functions, including acting as agent for customer orders, on the other hand. ISE noted that, under the Old Plan, when there was a better market on another exchange, a PMM could send a P/A Order to that exchange in an attempt to access that better price for the customer. ISE believes that this was consistent with Rule 810 under the Old Plan because a P/A Order is a principal order, and a firm is permitted to send such an order from the market-making side of the information barrier. Under the Plan and ISE's proposed rules, PMMs would send ISOs representing the underlying customer orders, rather than P/A Orders, when there is a better market away. Because these ISOs would be orders on behalf of a public customer, ISE notes that current ISE Rule 810 would prohibit a PMM from sending such an order. The Exchange therefore proposes a carve-out to Rule 810 that would permit a PMM to send ISOs solely to comply with its obligation under Rule 803 to address public customer orders when there is a better market on another exchange. ISE states that PMMs would act as agent in these circumstances, and would send the ISOs from the market making side of the information barrier. The Exchange represents that, in all other respects, PMMs would be subject to proposed Rule 810.[36]

Pursuant to Rule 811(b), which governs Directed Orders, ISE market makers may act as agent for customer orders only when handling such orders. ISE proposes to amend that rule to reflect the ability of PMMs to act as agent when sending ISOs under proposed ISE Rule 803(c)(2). The Exchange also proposes a rule to clarify that all public customer ISOs entered by an Electronic Access Member (''EAM'') on behalf of another options exchange shall be represented on the Exchange as Priority Customer Orders, defined in ISE Rule 100(37B), and that an EAM does not have an obligation to determine whether the public customer for whom such other exchange is routing an ISO meets the definition of a Priority Customer.[37]

The Exchange proposes to amend certain other rules to reflect the Plan and its related terms. In particular, the Exchange proposes to amend Rule 714 to reflect terminology under the Plan. The Exchange is also proposing to delete provisions that are no longer applicable under the Plan. Specifically, ISE is deleting current ISE Rule 701(a)(5), which relates to the sending of P/A Orders through the Linkage Hub during the opening, and is deleting Supplemental Material .07 to current ISE Rule 716, relating to block trades and away market prices.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[40] Finally, the Commission finds that the proposed rule change is consistent with the requirements of the Plan.[41]

Proposed ISE Rule 1900 would define applicable terms in a manner that is substantively identical to the defined terms of the Plan.[42] As such, the Commission finds that proposed ISE Rule 1900 is consistent with the Act and the Plan.

Proposed ISE Rule 1901(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed ISE Rule 1901(b) would

[30] Section 5(a) of the Plan.

[31] Proposed ISE Rule 803(c)(2)(ii). ISE noted that the routing of public customer orders to another exchange when the ISE is not at the best price is, in effect, voluntary. *See* Notice, *supra* note 3, at 27227. ISE stated that a customer could avoid such routing by entering an Immediate or Cancel order (''IOC'') or Fill or Kill (''FOK'') order. *See* ISE Rule 715(b)(3) and ISE Rule 715(b)(2) respectively. If ISE cannot immediately execute such orders, it would cancel all of the order (FOK orders) or the unexecuted portion of the order (IOC orders) without routing such orders to another exchange. *See* Notice, *supra* note 3, at 27227.

[32] Proposed ISE Rule 803(c)(2).

[33] 15 U.S.C. 78(f)(b)(4) and (5).

[34] Proposed ISE Rule 803, Supplementary Material, .04.

[35] Proposed ISE Rule 803, Supplementary Material, .05.

[36] Proposed ISE Rule 810.

[37] The Exchange stated that, because other options exchanges have not adopted a distinction between Priority Customer and Professional Orders, ISE does not believe it is practical or appropriate to require ISOs representing customer orders sent from other exchanges to be marked as Professional Orders. *See* Notice, *supra* note 3, at 27227.

[38] 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).

[39] 15 U.S.C. 78f(b)(5).

[40] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their respective rules that will implement the framework of the Plan.''

[41] *See supra* note 5.

[42] The Commission notes that the Exchange's proposed definition of ''Complex Trade'' under proposed ISE Rule 1900(d) is identical to the definition of ''Complex Trade'' under old ISE Rule 1900(3), which is being deleted.

provide for ten exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[43] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed ISE Rule 1901(b)(1) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exception in proposed ISE Rule 1901(b) would be an exception for certain transactions involving ISOs.[44] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

Finally, proposed Supplementary Material .01 to ISE Rule 1901 would ensure that all public customer ISOs routed from another Participant and entered by an Electronic Access Member (''EAM'') would be Priority Customer Orders, rather than ''Professional Orders,'' [45] and would not obligate such EAM to determine whether the public customer for whom the away market is routing the ISO meets the definition of Priority Customer. The Commission believes that this provision clarifies the obligations of EAMs for such orders.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed ISE Rule 1901 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act [46] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed ISE Rule 1902(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed ISE Rule 1902(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to reasonably avoid displaying, and not engaging in a pattern or practice of, locks and crosses is appropriate.

Proposed ISE Rule 1902(b) would permit four exceptions to the Exchange's general rule relating to locked and crossed markets.[47] The first three would be similar to analogous certain trade-through exceptions under proposed ISE Rule 1901(b), and relate to when the Exchange is experiencing systems issues, when there exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The fourth exception would permit an order entered onto the Exchange to lock a Protected Bid or Protected Offer when such order is: (1) Not a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order; or (2) a customer order, and the Exchange can determine that such Protected Bid or Protected Offer does not represent, in whole or in part, a customer order and, on a case-by-case basis, the customer specifically authorizes the Exchange's member to lock such Protected Bid or Protected Offer. This exception would not protect a market maker quote or broker-dealer order from being locked.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

In particular, the Commission believes that the fourth exception is appropriate because it would protect customer orders that are Protected Bids or Protected Offers from being locked, and would only permit a customer order entered onto the Exchange to lock a Protected Bid or Protected Offer when a customer specifically authorizes an Exchange member, and only when such Protected Bid or Protected Offer itself does not represent, in whole or in part, a customer order. Because of the rapidity with which options quotes are

[43] Proposed ISE Rule 1901(b)(1)–(10).

[44] Proposed ISE Rule 1901(b)(4).

[45] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 1, 2009) (SR–ISE–2006–26).

[46] 15 U.S.C. 78f(b)(5).

[47] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

often updated today, particularly in response to changes in the underlying, there is an increasing likelihood that market maker quotations will lock each other. The proposed exception accounts for this dynamic by not prohibiting such locking instances. Importantly, the proposed exception in the Exchange's rules that the Commission is approving would allow non-customer orders to lock an away market's Protected Quotation only if the Exchange is able to affirmatively determine that the Protected Quotation on the away market is not, in whole or in part, for the account of a customer. If any portion of such away market's Protected Quotation is for the account of a customer, such Protected Quotation may not be locked. In addition, the Commission notes that the rule requires that such determination be made via identification available pursuant to the OPRA Plan, which is working with the participating options exchanges on a method to so identify customer quotations through OPRA. The Exchange has represented that, absent the ability to identify a customer quote as part of an exchange's BBO, the Exchange would assume that the quote represents, in whole or in part, a customer order. As such, the Exchange has represented that it would not permit its members to avail themselves of this exemption unless the away market has informed the Exchange that it would designate all customer orders as such in OPRA and such exchange's quotation does not contain such designation. Finally, the Exchange has represented that if an exchange chooses not to identify its customer quotations, the Exchange would treat all of such exchange's quotations as customer orders and, absent application of another exception, would not permit locks of such quotations.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[48] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed ISE Temporary Rule 1903, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,[49] the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.[50] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.[51] Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[52] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the amendments to ISE's rules requiring ISE PMMs to execute or route customer orders when another exchange is displaying a better price are consistent with the Act, and in particular with Section 6(b)(5) of the Act.[53] In this regard, ISE proposes to discharge its obligations under the Plan to ''establish, maintain and enforce written policies and procedures * * * reasonably designed to prevent Trade-Throughs'' [54] by requiring its PMMs to address customer orders when there is a better away market.[55] Pursuant to amended ISE Rule 803(c)(2), PMMs would be required to either: (i) Execute the customer's order at a price that at least matches the best price displayed or (ii) send ISO(s) as agent for the customer order to any exchange(s) displaying a better price and, with respect to any remaining portion of the customer order, either (a) releasing such portion for execution on ISE's auction market or (b) executing such portion at a price better than the best price available on ISE's auction market.

In addressing customer orders that are not automatically executed because there is a better price displayed on another exchange, pursuant to proposed Commentary .04 to Rule 803, ISE will act in compliance with its rules, the Act, and the rules thereunder. In particular, ISE will act in compliance with Sections 6(b)(4) and (5) of the Act[56] which require the Exchange to: (1) Provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and other persons using its facilities; and (2) prohibit unfair discrimination among customers, issuers, brokers or dealers. Customers may choose to avoid having their orders routed away by a PMM by entering their order with an Immediate or Cancel or Fill or Kill designation.[57]

Any PMM that handles customer orders pursuant to ISE Rule 803(c)(2) will be subject to oversight and enforcement responsibilities of a self-regulatory organization (''SRO'') other than ISE.[58] Additionally, ISE Rule 810 imposes certain restrictions on the business activities of ISE market makers, including PMMs. These restrictions prohibit a PMM from, among other things, handling orders as agent on behalf of customers unless there is an information barrier between its market making activities, on the one hand, and certain other activities, including handling customer orders as agent, on the other hand.[59] ISE proposes to amend ISE Rule 810 to permit PMMs to handle public customer orders when ISE is not at the best price. ISE represented that, under the Old Plan, PMMs were not subject to the information barrier requirement between market making activities and agency activities because PMMs sending P/A Orders seeking a better market away were sending a principal order.[60] The Commission finds that it is consistent with the Act to permit an exception to ISE's information barrier rule when a PMM

[48] 15 U.S.C. 78f(b)(5).

[49] *See* Plan Approval, *supra* note 5.

[50] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

[51] The Commission notes that the rules contained in ISE Temporary Rule 1903 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78f(b)(5).

[54] *See* Section 5(a) of the Plan.

[55] *See* Notice, *supra* note 3, at 27227.

[56] 15 U.S.C. 78f(b)(4) and (5).

[57] *See* Notice, *supra* note 3, at 27227.

[58] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11389 (March 2, 2000) (File No. 10–127). A PMM must have as their examining authority designated by the Commission pursuant to Rule 17d–1 of the Act, a SRO other than ISE. As such, such SRO is responsible for the oversight and enforcement of the PMM for compliance with the applicable financial responsibility rules.

[59] *See* ISE Rule 810(a).

[60] *See* Notice, *supra* note 3, at 27227.

sends an ISO as agent for a customer order to comply with its obligations under ISE Rule 803(c)(2), because such activity is limited by ISE's rules, as described above, and does not provide the potential for the type of harm against which ISE Rule 810 is intended to protect, specifically the inappropriate sharing of information that could result in market manipulation. The Commission also finds that the proposed change to ISE Rule 811, governing the Exchange's Directed Order program, to permit ISE PMMs that also handle Directed Orders on an agency basis, to act as agent when routing ISOs under ISE Rule 803(c)(2) is consistent with the Plan and the Act.

The Commission finds that ISE's proposed arrangements with respect to the handling of customer orders when ISE is not at the best price, and related amendment to its information barrier rules and Directed Order program, are designed to comply with its responsibility under the Plan to establish, maintain and enforce written policies and procedures reasonably designed to prevent Trade-Through. Accordingly, the Commission finds ISE's proposed arrangements consistent with the Plan and the Act.

Finally, the Commission finds that ISE's proposed amendments to certain other ISE rules to reflect the provision of the Plan, and to delete provisions of ISE's rules rendered unnecessary due to the Plan, are appropriate and consistent with the Act and the Plan.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[61] that the proposed rule change (SR–ISE–2009–27), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Florence E. Harmon,

Deputy Secretary.

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[61] 15 U.S.C. 78s(b)(2).

[62] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60550; File No. SR–Phlx–2009–61]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 20, 2009.

I. Introduction

On July 20, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' 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 amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on July 28, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend and adopt new Phlx rules to implement the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[4] Specifically, the Exchange proposes to replace the Exchange's current Intermarket Linkage rules (Phlx Rules 1081 and 1083–1087) with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete or modify provisions rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan'').[5] In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer (''trade-through''), although it provides for a number of exceptions to trade-through liability.[6] The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types,[7] namely Principal Acting as Agent Orders (''P/A Orders''), Principal Orders, and Satisfaction Orders.[8] The Old Plan also provided that dissemination of ''locked'' or ''crossed'' markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.[9] Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.[10] The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act (''Regulation NMS'').[11]

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.[12] The Plan requires the Participating Options Exchanges to adopt rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (''Notice'').

[4] The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (''Plan Notice'') and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (''Plan Approval''). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (''CBOE''); International Securities Exchange LLC (''ISE''); NASDAQ OMX BX, Inc. (''BOX''); The NASDAQ Stock Market LLC (''Nasdaq''); NYSE Amex LLC (''NYSE Amex''); NYSE Arca, Inc. (''NYSE Arca''); and Phlx (each exchange individually a ''Participant'' and, together, the ''Participating Options Exchanges'').

[5] On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[6] Section 8(c) of the Old Plan.

[7] The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.

[8] Section 2(16) of the Old Plan.

[9] Section 7(a)(i)(C) of the Old Plan.

[10] *See* Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4–429).

[11] 17 CFR 242.608.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, *see* Plan Notice and Plan Approval, *supra* note 4.

''reasonably designed to prevent Trade-Throughs.'' [13] Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.[14] As further described below, the Plan incorporates a number of exceptions to trade-through liability.[15]

Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.[16] Others are substantially similar to exceptions available for NMS stocks under Regulation NMS, such as exceptions for systems issues, crossed markets, quote flickering, customer stopped orders, benchmark trades and, notably, intermarket sweep orders (''ISOs'').[17] In addition, the Plan contains a new exception for stopped orders and price improvement.[18]

The Plan also requires each Participant to establish, maintain, and enforce written rules that: require its members reasonably to avoid displaying locked and crossed markets; assure the reconciliation of locked and crossed markets; and prohibit its members from engaging in a pattern or practice of displaying locked and crossed markets; subject to exceptions as may be contained in the rules of the Participant, as approved by the Commission.[19]

The Exchange's Proposal

To implement the Plan, the Exchange proposes to replace its current rules relating to the Old Plan with new rules relating to the Plan, and make additional changes to other rules, including changes to conform the Exchange's rules to the requirements of the Plan.[20] As such, the Exchange proposes to adopt all applicable definitions from the Plan into the Exchange's rules.[21]

In addition, the Exchange proposes to prohibit its members from effecting Trade-Throughs, unless an exception applies.[22] Consistent with the Plan, the Exchange also proposes exceptions to the prohibition on trade throughs relating to: System issues; trading rotations; crossed markets; intermarket sweep orders; quote flickering; non-firm quotes; complex trades; customer stopped orders; stopped orders and price improvement; and benchmark trades.[23]

The Exchange also proposes a rule to address locked and crossed markets, as required by the Plan.[24] Specifically, the Exchange proposes that, except for quotations that fall within a stated exception, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protected Quote.[25]

The Exchange proposes three exceptions to the prohibition against locked and crossed markets: When the Exchange is experiencing a failure, material delay, or malfunction of its systems or equipment; when the locking or crossing quotation was displayed at a time where there is a crossed market; and when an Exchange member simultaneously routes an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.[26]

The Exchange also proposes rules to permit the Exchange to continue to accept P/A Orders and Principal Orders from Participating Options Exchanges that are not able to send ISOs in order to avoid Trade-Throughs.[27]

The Exchange proposes to rely upon the order routing arrangements already in place on its market, except that the Exchange proposes amendments to Rules 1080(m)(iv)(B) and (C) concerning FIND [28] and SRCH [29] Orders to ensure that these order types comply with requirements of the Plan.[30] The Exchange also proposes to amend its rules concerning orders that have been subject to its Quote Exhaust and Market Exhaust processes to conform their use to the terms of the Plan.[31] Finally, the Exchange proposes to delete various other provisions of the Phlx rules to reflect the Exchange's withdrawal from the Old Plan, and to amend other provisions of Phlx rules to, among other things, reflect the Plan.[32]

The Exchange proposes to implement this proposed rule change upon withdrawal from the current Linkage Plan and effectiveness of the new Plan.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [34] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Rule 608(c) of Regulation NMS under the Act, which requires that each exchange comply with the terms of any effective national market system plan of which it is a participant.[35] Finally, the

[13] Under the Plan, a ''Trade-Through'' is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.'' *See* Section 2(21) of the Plan. A ''Protected Bid'' and ''Protected Offer'' generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan, and is the Best Bid or Best Offer. *See* Section 2(17) of the Plan. A ''Best Bid'' or ''Best Offer'' means the highest bid price and the lowest offer price. Section (2)(1) of the Plan. ''Protected Bid'' and ''Protected Offer,'' together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Plan.

[14] Section 5(a)(ii) of the Plan.

[15] Section 5(b) of the Plan.

[16] Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

[17] Subparagraphs (i), (iii), (vi), (ix), (xi), and (iv)–(v), respectively, of Section 5(b) of the Plan.

[18] Subparagraph (x) of Section 5(b) of the Plan.

[19] Section 6 of the Plan. The Plan also contains provisions relating to the operation of the Plan including, for example, provisions relating to the entry of new parties to the Plan; withdrawal from the Plan; and amendments to the Plan.

[20] A more detailed description of the Exchange's proposed rule change may be found in the Notice, *supra,* note 3.

[21] Proposed Phlx Rule 1083.

[22] Proposed Phlx Rule 1084(a).

[23] Proposed Phlx Rule 1084(b)(i)–(xi). In addition, the Exchange proposes to add ISOs as a new type of order under proposed Phlx Rule 1066(i).

[24] A ''locked market'' is defined as a quoted market in which a Protected Bid is equal to a Protected Offer. Proposed Phlx Rule 1083(i). A ''crossed market'' is defined as a quoted market in which a Protected Bid is higher than a Protected Offer. Proposed Phlx Rule 1083(e).

[25] Proposed Phlx Rule 1086(a).

[26] Proposed Phlx Rule 1086(b).

[27] Proposed Phlx Temporary Rule 1088.

[28] A FIND order is an order that is routable upon receipt, or any time the option goes through an opening process. *See* Phlx Rule 1080(m)(iv)(B).

[29] A SRCH order is an order that is routable at any time. *See* Phlx Rule 1080(m)(iv)(C).

[30] *See* Notice, *supra* note 3 at 37272 for a complete description of these changes.

[31] *See* Notice, *supra* note 3 at 37272–37273 for a complete description of these changes.

[32] *See* Notice, *supra* note 3 at 37273–37274 discussing proposed changes to Phlx By-Law Article XII, Section 12–11; Phlx Rule 1017(k); Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice F–32; Phlx Rule 1034(a)(i)(C); Phlx Rule 1080(b)(i)(A), (B) and (C); Phlx Rule 1080(c)(iv)(F); and Phlx Rule 1080(c)(vi).

[33] 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).

[34] 15 U.S.C. 78f(b)(5).

[35] 17 CFR 242.608(c). Section 1 of the Plan provides in pertinent part that, ''The Participants will submit to the [Commission] for approval their

Continued

Commission finds that the proposed rule change is consistent with the requirements of the Plan.[36]

Proposed Phlx Rule 1083 would define applicable terms in a manner that are substantively identical to the defined terms of the Plan. As such, the Commission finds that proposed Phlx Rule 1083 is consistent with the Act and the Plan.

Proposed Phlx Rule 1084(a) would prohibit members from effecting Trade-Throughs unless an exception applies. Proposed Phlx Rule 1084(b) would provide for eleven exceptions to the general Trade-Through prohibition, relating to systems issues, trading rotations, crossed markets, ISOs, quote flickering, non-firm quotes, complex trades, customer stopped orders, stopped orders and price improvement, and benchmark trades.[37] Aside from the proposed exception relating to systems issues, each proposed exception would be substantively identical to the parallel exception under Section 5(b) of the Plan.

The systems issues exception under proposed Phlx Rule 1084(b)(i) would implement the parallel exception available under Section 5(b)(i) of the Plan and would permit the Exchange to bypass the Protected Quotation of another Participant if such other Participant repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations. The Exchange's rule would require the Exchange to notify such non-responding Participant immediately after (or at the same time as) electing self-help, and assess whether the cause of the problem lies with the Exchange's own systems and, if so, take immediate steps to resolve the problem. Finally, the Exchange would be required to promptly document its reasons supporting any such determination to bypass a Protected Quotation. The Commission believes that this exception should provide the Exchange with the necessary flexibility for dealing with problems that occur on an away market during the trading day. At the same time, the exception's requirements to immediately notify such away market of its determination and also assess its own system should help prevent the use of this exception when there in fact is a problem with the Exchange's own systems, rather than those of an away market.

The Commission notes that included among the exceptions in proposed Phlx Rule 1084(b) would be exceptions for certain transactions involving ISOs.[38] An order identified as an ISO would be immediately executable by the Exchange (or any other Plan Participant that received such an order) based on the premise that the market participant sending the ISO has already attempted to access all better-priced Protected Quotations up to their displayed size. The Commission believes that this exception should help ensure more efficient and faster executions in the options markets.

The Commission notes that, in addition to these rules regarding Trade-Throughs, the Plan requires that each Participant establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an applicable exception and, if relying on such exception, that are reasonably designed to assure compliance with the terms of the exception. In addition, the Commission notes that the Plan requires each Participant to conduct surveillance of its market on a regular basis to ascertain the effectiveness of such policies and procedures and to take prompt action to remedy any deficiencies in such policies and procedures.

Accordingly, the Commission finds that proposed Phlx Rule 1084 is consistent with Section 5 of the Plan and Section 6(b)(5) of the Act[39] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Proposed Phlx Rule 1086(a) would require Exchange members to reasonably avoid displaying, and not engage in a pattern or practice of displaying, any quotation that locks or crosses a Protected Quotation, subject to certain exceptions delineated in proposed Phlx Rule 1086(b). The Commission recognizes that locked and crossed markets may occur accidentally and cannot always be avoided. However, the Commission believes that giving priority to the first-displayed Protected Bid or Protected Offer, particularly when it includes a public customer's order, will encourage price discovery and contribute to fair and orderly markets. Therefore, the Commission believes that the proposed rule, which corresponds to the Plan's language, to require members to reasonably avoid displaying, and not engaging in a pattern or practice of, locks and crosses is appropriate.

Proposed Phlx Rule 1085(b) would permit three exceptions to the Exchange's general rule relating to locked and crossed markets.[40] These exceptions would be similar to analogous certain trade-through exceptions under proposed Phlx Rule 1084(b), and relate to when the Exchange is experiencing systems issues, when there is exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act[41] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that proposed Phlx Temporary Rule 1088, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,[42] the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that

respective rules that will implement the framework of the Plan.''

[36] *See supra* note 5.

[37] Proposed Phlx Rule 1084(b)(i)–(xi).

[38] Proposed Phlx Rule 1084(b)(iv) and (v).

[39] 15 U.S.C. 78f(b)(5).

[40] Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Plan Approval, *supra,* note 5.

exist currently under the Old Plan.[43] The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.[44] Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act[45] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that Phlx's proposed amendments to its rules concerning FIND and SRCH orders, as well as the changes proposed to the Quote Exhaust and Market Exhaust processes, are consistent with the Act and the Plan. These changes should help ensure that the order types and order handling processes will operate in accordance with the principles and provisions of the Plan. The Commission also finds that that Phlx's proposals to amend provisions of other Phlx rules to, among other things, reflect the termination of the Old Plan and implement the Plan are appropriate and consistent with the Act.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[46] for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will give Phlx members certainty with regard to the rules under which they will be expected to operate under prior to the date of implementation of these rules and the Plan, which the Exchange anticipates for August 31, 2009. The Commission notes that the proposed rule change has been subject to a full comment period and no comments have been received. Accordingly, the Commission finds there is good cause, consistent with Section 6(b)(5) of the Act[47] to approve the Exchange's proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–Phlx–2009–61), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20786 Filed 8–27–09; 8:45 am]

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[43] The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

[44] The Commission notes that the rules contained in Proposed Phlx Temporary Rule 1088 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

[45] 15 U.S.C. 78f(b)(5).

[46] 15 U.S.C. 78s(b)(2).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0033]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming quarterly panel meeting.

DATES: September 16, 2009, 8:30 a.m.–5 p.m. (PDT); September 17, 2009, 8:30 a.m.–5 p.m. (PDT)

Location: Westin Bonaventure Hotel and Suites.

ADDRESSES: 404 South Figueroa Street, Los Angeles, California 90071.

By Teleconference: Toll-Free: (866) 283–8246; Leader/Host: Debra Tidwell-Peters.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency on creating an occupational information system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Wednesday, September 16, 2009, from 8:30 a.m. until 5 p.m. and Thursday, September 17, 2009, from 8:30 a.m. until 5 p.m. The agenda will be available on the Internet one week prior to the meeting at *http://www.socialsecurity.gov/oidap/meeting_information.htm.*

The tentative agenda for this meeting includes presentations on information required for a proposed occupational information system and user needs outreach plans; discussion, deliberation and voting by the Panel on core recommendations to be included in the upcoming report to the agency; and an administrative business meeting.

The Panel will hear public comment during the Quarterly Meeting on Wednesday, September 16, 2009 from 3 p.m. to 4 p.m. and on Thursday, September 17, 2009 from 10 a.m. to 11 a.m. In order to provide comment, members of the public must request a time slot—assigned on a first come, first served basis. In the event public comment does not take the entire period allotted, the Panel may use any remaining time to deliberate or conduct other business.

Persons interested in providing comment in person at the meeting or by teleconference should contact the Panel staff by e-mail to *OIDAP@ssa.gov.* Individuals are limited to a maximum five minute, verbal presentation. Organizational representatives will be allotted a maximum ten minute, verbal presentation. Written testimony, no longer than five (5) pages, may be submitted at any time either in person, mail, fax or e-mail to *OIDAP@ssa.gov* for Panel consideration.

Seating is limited. Individuals who need special accommodation in order to attend or participate in the meeting (*e.g.,* assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than September 4, 2009. SSA will attempt to meet requests made but

cannot guarantee availability of services. All meeting locations are barrier free.

The meeting may be accessed by teleconference by using the dial-in instructions included above.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Telephone: 410–965–9617. Fax: 202–410–597–0825. E-mail to *OIDAP@ssa.gov.* For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap.*

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. E9–20829 Filed 8–27–09; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0026]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement (HHS/ACF/OCSE)—Match (#1074)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of existing computer matching agreements, which are scheduled to expire on October 11, 2009 and August 17, 2010. This agreement consolidates and continues these data exchange operations previously governed by two separate and distinct agreements between the parties.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with OCSE.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 16, 2009.

Mary Glenn-Croft,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA With the HHS/ACF/OCSE

A. Participating Agencies

SSA and HHS/ACF/OCSE

B. Purpose of the Matching Program

The purpose of this matching program is to assist us in (1) establishing or verifying eligibility or payment amounts, or both under the Supplemental Security Income (SSI) program; (2) establishing or verifying eligibility or continuing entitlement under the Disability Insurance (DI) program; and (3) in administering the Ticket to Work and Self-Sufficiency (Ticket to Work) program.

C. Authority for Conducting the Matching Program

The legal authority for us to conduct this matching activity is contained in Sections 453(j)(4), 1631(e)(1)(B) and (f), and 1148(d)(1) of the Social Security Act (Act). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3) and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r) of the Privacy Act of 1974, as amended. Section 1148(d)(1) of the Act requires us to verify earnings of beneficiaries/recipients to ensure accurate payments to employer network providers under the Ticket to Work program.

D. Categories of Records and Individuals Covered by the Matching Program

1. Specified Data Elements Used in the Match

We will provide certain identifying information extracted from our Supplemental Security Record and Special Veterans Benefits (SSR) and from our Completed Determination Record—Continuing Disability Determination File (CDR–CDD) systems of records to OCSE. Both agencies will conduct a match of the quarterly wage and unemployment insurance from the National Directory of New Hires of its Location and Collection system of records. Online access queries will be conducted only as needed to the quarterly wage, unemployment insurance, and new hire information screens from the National Directory of New Hires of its Location and Collection system of records.

2. Systems of Records

OCSE will provide us electronic files containing quarterly wage, unemployment insurance, and new hire information from its system of records, the Location and Collection System (HHS/OCSE, 09–90–0074) last published at 72 FR 51446 on September 7, 2007.

Quarterly, we will match OCSE information with electronic files from our system of records, the Supplemental Security Record and Special Veterans Benefits (SSA/OEEAS 60–0103) last published at 71 FR 1830 on January 11, 2006. Our online access queries are from information in our system of records, the Completed Determination Record—Continuing Disability Determination File (SSA/OD 60–0050) last published at 72 FR 1813 on January 11, 2007.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E9–20819 Filed 8–27–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 15, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0188.

Date Filed: August 12, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 2009.

Description: Application of Rugby Aviation, LLC d/b/a Northwest Sky Ferry requesting authority to engage in scheduled passenger operations as a commuter air carrier.

Docket Number: DOT–OST–2009–0189.

Date Filed: August 12, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 2009.

Description: Application of Monarch Airlines Limited (''Monarch'') requesting amendment/reissuance of its foreign air carrier permit to authorize: (a) Scheduled and charter foreign air transportation of persons, property and mail from any point or points behind any Member State of the European Community via any point or points in any Member state and via intermediate points to any point or points in the United States and beyond; (b) scheduled and foreign transportation of persons, property and mail between any point or points in the United States and any point or points in the European Common Aviation Area; (c) other charters pursuant to the prior approval requirements; and (d) scheduled and charter transportation authorized by any additional route rights that may be authorized in the future under the U.S.-EU agreement. Monarch also seeks an exemption to permit its operation as a scheduled and/or charter foreign air carrier within the full scope of the permit requested, pending effectiveness of that amended permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–20776 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 468X)]

BNSF Railway Company—Abandonment Exemption—in Kootenai County, ID

On August 10, 2009, BNSF Railway Company (BNSF) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 6.23-mile rail line between milepost 6.10, near Post Falls, and milepost 12.33, at Coeur d'Alene, in Kootenai County, ID.[1] The line traverses United States Postal Service Zip Codes 83814 and 83854 and includes the stations of Post Falls and Coeur d'Alene.[2]

In addition to an exemption from 49 U.S.C. 10903, BNSF seeks exemption from the offer of financial assistance (OFA) and the public use provisions at 49 U.S.C. 10904 and 49 U.S.C. 10905, respectively. In support, BNSF contends that an exemption from these provisions is necessary to permit conveyance of the line so that it can be developed as part of the Coeur D'Alene Education Corridor. BNSF states that it has received a firm offer to purchase the portion of the line between milepost 8.66 and milepost 12.33 for development of this corridor, and that the Bureau of Land Management (BLM) has reached a tentative agreement with the City of Coeur D'Alene to exchange the federally granted right-of-way on the line for other land in the area that is more suitable to BLM's use. The portion of the line between milepost 6.10 and milepost 8.66 will be reclassified as industry track and used for storage of surplus rail cars. These additional exemption requests will be addressed in the final decision.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 27, 2009.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than

[1] In its environmental and historic reports, BNSF erroneously stated that the end of the line was milepost 12.34; BNSF now indicates that the portion of the line between milepost 12.33 and 12.34 has already been abandoned.

[2] The line contains federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

September 17, 2009. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 468X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131. Replies to the petition are due on or before September 17, 2009.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: August 24, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20752 Filed 8–27–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35291]

Sterlite (USA), Inc.—Acquisition and Operation Exemption—Copper Basin Railway, Inc.

Sterlite (USA), Inc. (Sterlite), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire and operate all of Copper Basin Railway, Inc.'s (CBRY) rail assets, including its main line between Magma (milepost 949.5) [2] and Winkelman (milepost 1003.5), and all spurs from that main line, including the spur between Ray Junction (milepost 0) and Ray Mine (milepost 4), and the spur between Hayden Junction (milepost 0) and Hayden Smelter (milepost 2),[3] in Pinal and Gila Counties, AZ, for a total of 54 route miles (not including industrial track or the Ray Mine and Hayden Smelter spurs).[4]

Sterlite certifies that, based on representations made to it by CBRY regarding CBRY's annual revenues, Sterlite's projected annual revenues would be those of a Class III rail carrier.

Because Sterlite's projected annual revenues will exceed $5 million, Sterlite is required, at least 60 days before an exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, to post a copy of the notice at the workplace of the employees on the affected lines, and to certify to the Board that it has done so. 49 CFR 1150.32(e). Sterlite has certified to the Board that on August 14, 2009, it posted a notice at the workplace of the employees on the affected lines, containing the information required in 49 CFR 1150.32(e). However, Sterlite has noted that none of the employees on the affected lines are represented by a labor union and, therefore, no notice has been provided to the national office of any labor union. Accordingly, Sterlite simultaneously has filed a petition for waiver from the requirements of 49 CFR 1150.32(e) regarding notice to labor of the proposed transaction to permit the exemption to become effective 30 days after the notice of exemption was filed, rather than the requisite 60 days. Sterlite's waiver request will be addressed by the Board in a subsequent decision.

Sterlite states that, if the waiver request is not granted, it intends to consummate the transaction on or after October 13, 2009 (60 days from the date the notice was posted at the worksite of affected CBRY employees), and, if the waiver petition is granted in a decision served later than September 13, 2009, then Sterlite intends to consummate the transaction on or after such time established by the Board.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than 7 days before the exemption becomes effective.[5]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35291, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Paul A. Cunningham, Esquire, Harkins Cunningham LLP, 1700 K Street, NW., Suite 400, Washington, DC 20006–3804.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 21, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–20659 Filed 8–27–09; 8:45 am]

BILLING CODE 4915–01–P

[1] On August 19, 2009, Sterlite filed an amendment to its verified notice of exemption stating that the proposed acquisition and operation would not involve any provision or agreement of the kind described in 49 CFR 1150.33(h).

[2] According to Sterlite, CBRY uses the milepost designations on the line that were assigned by CBRY's former owner, Southern Pacific Transportation Company.

[3] Sterlite states that it does not represent that these two spurs constitute ''railroad lines'' whose acquisition is subject to the Board's jurisdiction under 49 U.S.C. 10901. To the extent, however, that there is any question regarding the status of these tracks, Sterlite requests that they be covered by this verified notice of exemption.

[4] Sterlite states that, on or about March 6, 2009, a Settlement and Purchase and Sale Agreement (PSA) among ASARCO LLC, AR Silver Bell, Inc., CBRY, ASARCO Santa Cruz, Inc., Sterlite, and Sterlite Industries (India), Ltd., was executed, providing for the acquisition by Sterlite of the rail assets of CBRY. According to Sterling, closing under the PSA cannot take place unless and until the Debtors' Sixth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as Modified, is approved by the United States Bankruptcy Court for the Southern District of Texas and by the United States District Court for the Southern District of Texas in the proceedings in *In re* ASARCO LLC (Case No. 05–21207).

[5] In the absence of a waiver granted by the Board, the earliest the exemption could become effective would be October 13, 2009 (60 days after Sterlite has certified that it has satisfied the requirements of 49 CFR 1150.32(e)).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35257]

Progressive Rail, Incorporated—Acquisition Exemption—Rail Lines of Wisconsin Central, Ltd.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire 23.97 miles of railroad from Wisconsin Central, Ltd. (WCL).[1] One line that PGR is acquiring, the Almena-Cameron Branch, extends between milepost 80.88, at or near Almena and milepost 97.80, at or near Cameron, a distance of 16.92 miles. The other, the Rice Lake-Cameron Branch, extends between Milepost 49.0, at or near Cameron, and milepost 56.05, at or near Rice Lake, a distance of 7.05 miles. Both lines are located in Barron County, WI.[2]

The proposed transaction is scheduled to be consummated on or after October 11, 2009.

PGR certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, PGR also has certified to the Board that it has complied with the employee notice requirements of 49 CFR 1150.42(e). Pursuant to that provision, the exemption may not become effective until 60 days from the August 12, 2009 date of the revised certification to the Board, which would be October 11, 2009.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than October 2, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35257, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on James H. M. Savage, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 24, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20748 Filed 8–27–09; 8:45 am]

BILLING CODE 4915–01–P

[1] PGR currently operates the lines under a lease from WCL. See *Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Lines of Wisconsin Central, Ltd.,* STB Finance Docket No. 34600 (STB served Nov. 12, 2004).

[2] Following the consummation of this transaction, PGR states that it plans to convey the right-of-way and rail assets to the Wisconsin Department of Transportation. PGR will retain the common carrier obligation. PGR acknowledges that Board authority is required for these transactions.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 8, 2009, vol. 74, no. 108, page 27233–27234. Runway incursions are a risk to the public traveling in aircraft. Feedback from these surveys is used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

DATES: Please submit comments by September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauneyfaa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Information for the Prevention of Aircraft Collisions at Towered Airports.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0692.

Forms(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 8,900 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 16.5 minutes per response.

Estimated Annual Burden Hours: An estimated 2510 hours annually.

Abstract: Runway incursions are a risk to the public traveling in aircraft. Feedback from these surveys is used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oirasubmission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 21, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–20703 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Annual Materials Report on New Bridge Construction and Bridge Rehabilitation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 1114 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) continued the highway bridge program to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads. Section 1114(f) amended 23 United State Code (U.S.C.) 144 by adding subsection (r), requiring the Secretary of Transportation to publish in the **Federal Register** a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects. As part of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), 23 U.S.C. 144 subsection (r) became subsection (q), but the reporting requirement remained the same.

ADDRESSES: The report is posted on the FHWA Web site at: *http://www.fhwa.dot.gov/bridge/britab.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Shemaka, Office of Bridge Technology, HIBT–30, (202) 366–1575, or Mr. Thomas Everett, Office of Bridge Technology, HIBT–30, (202) 366–4675, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In conformance with 23 U.S.C. 144(q), the FHWA has produced a report that summarizes the types of construction materials used in new bridge construction and bridge rehabilitation projects. Data on Federal-aid and non-Federal-aid highway bridges are included in the report for completeness. The December 2008 National Bridge Inventory (NBI) dataset was used to identify the material types for bridges that were new or replaced within the defined time period. The FHWA's Financial Management Information System and the 2008 NBI were used to identify the material types for bridges that were rehabilitated within the defined time period. Currently preventative maintenance projects are included in the rehabilitation totals.

The report, which is available at *http://www.fhwa.dot.gov/bridge/britab.htm,* consists of the following tables:

- Construction Materials for New and Replaced Bridges, a summary report which includes Federal-aid highways and non-Federal-aid highways built in 2007 and 2006.
- Construction Materials for Rehabilitated Bridges, a summary report which includes Federal-aid and non-Federal-aid highways rehabilitated in 2007 and 2006.
- Construction Materials for Combined New, Replaced and Rehabilitated Bridges, a summary report which combines the first two tables cited above.
- *Federal-aid Highways:* Construction Materials for New and Replaced Bridges 2007, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2007.
- *Federal-aid Highways:* Construction Materials for New and Replaced Bridges 2006, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2006.
- *Non-Federal-aid Highways:* Construction Materials for New and Replaced Bridges 2007, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2007.
- *Non-Federal-aid Highways:* Construction Materials for New and Replaced Bridges 2006, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2006.
- *Federal-aid Highways:* Construction Materials for Rehabilitated Bridges 2007, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2007.
- *Federal-Aid Highways:* Construction Materials for Rehabilitated Bridges 2006, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2006.
- *Non-Federal-aid Highways:* Construction Materials for Rehabilitated Bridges 2007, a detailed State-by-State report with counts and areas for non-Federal-aid bridges rehabilitated in 2007.
- *Non-Federal-aid Highways:* Construction Materials for Rehabilitated Bridges 2006, a detailed State-by-State report with counts and areas for non-Federal-aid bridges rehabilitated in 2006.
- *Federal-aid Highways:* Construction Materials for New, Replaced and Rehabilitated Bridges 2007, which combines the 2007 reports on new, replaced and rehabilitated Federal-aid bridges.
- *Federal-aid Highways:* Construction Materials for New, Replaced and Rehabilitated Bridges 2006, which combines the 2006 reports on new, replaced and rehabilitated Federal-aid bridges.
- *Non-Federal-aid Highways:* Construction Materials for New, Replaced and Rehabilitated Bridges 2007, which combines the 2007 reports on new, replaced and rehabilitated non-Federal-aid bridges.
- *Non-Federal-aid Highways:* Construction Materials for New Replaced and Rehabilitated Bridges 2006, which combines the 2006 reports on new, replaced and rehabilitated non-Federal-aid bridges.

The tables provide data for 2 years: 2006 and 2007. The 2006 data is considered complete for new, replaced and rehabilitated bridges, with a minimal likelihood of upward changes in the totals. The 2007 data is considered partially complete for new bridges and complete for rehabilitated bridges, because many new bridges built in 2007 will not appear in the NBI until they are placed into service the following year. Therefore, next year's report will include 2007's data on new bridge construction, because the data will be complete.

Each table displays simple counts of bridges and total bridge deck area. Total bridge deck area is measured in square meters, by multiplying the bridge length by the deck width out-to-out. Culverts under fill are included in the counts but not in the areas because a roadway width is not collected. The data is categorized by the following material types, which are identified in the NBI: Steel, concrete, pre-stressed concrete, and other. The category ''other'' includes wood, timber, masonry, aluminum, wrought iron, cast iron, and other. Material type is the predominate type for the main span(s).

(Authority: 23 U.S.C. 144(q); Sec. 1114(f), Pub. L. 109–59, 119 Stat. 1144)

Issued on: August 19, 2009.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. E9–20712 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106511–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

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. Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106511–00, Estate Tax Returns; Form 706, Extension to File (20.6081–1(b)).

DATES: Written comments should be received on or before October 27, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at (*Evelyn.J.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Estate Tax Returns; Form 706, Extension to File.

OMB Number: 1545–1707.

Regulation Project Number: REG–106511–00.

Abstract: Section 6075(a) of the Internal Revenue Code (the Code) requires the executor of a decedent's estate to file the Federal estate tax return (Form 706, ''United States Estate (and Generation-Skipping Transfer) Tax Return'') within 9 months after the date of the decedent's death. Section 608(a) provides that the Secretary may grant a reasonable extension of time for filing any return; however, except in the case of executors who are abroad, no such extension may be for more than 6 months. Executors currently request an extension of time to file Form 706 by filing Form 4768, ''Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.'' The regulation grants executors of decedents' estates an automatic 6-month extension of time to file the Form 706 and requires that executors continue to file Form 4768 to receive the automatic extension.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

The reporting burden contained in section 20.6081–1(b) is reflected in the burden of Form 4768, ''Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.''

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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; (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.

Approved: August 18, 2009.

Paul H. Finger,

Tax Analyst.

[FR Doc. E9–20635 Filed 8–27–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
August 28, 2009

Part II

Environmental Protection Agency

40 CFR Parts 80, 85, 86, et al.
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, 86, 94, 1027, 1033, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068

[EPA–HQ–OAR–2007–0121; FRL–8926–5]

RIN 2060–AO38

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing emission standards for new marine diesel engines with per cylinder displacement at or above 30 liters (called Category 3 marine diesel engines) installed on U.S. vessels, under section 213 of the Clean Air Act (CAA or ''the Act''). The proposed engine standards are equivalent to the nitrogen oxides (NO_X) limits recently adopted in the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI) and are based on the position advanced by the United States Government as part of those international negotiations. The near-term standards for newly-built engines would apply beginning in 2011. Long-term standards would begin in 2016 and are based on the application of high-efficiency aftertreatment technology. We are also proposing a change to our diesel fuel program that would forbid the production and sale of marine fuel oil above 1,000 ppm sulfur for use in the waters within the proposed U.S. ECA and internal U.S. waters and allow for the production and sale of 1,000 ppm sulfur fuel for use in Category 3 marine vessels.

This proposal is part of a coordinated strategy to ensure that all ships that affect U.S. air quality meet stringent NO_X and fuel sulfur requirements. In addition, on March 27, 2009, the U.S. Government forwarded a proposal to the International Maritime Organization (IMO) to amend MARPOL Annex VI to designate an Emission Control Area (ECA) off U.S. coasts. If this proposed amendment is not timely adopted by IMO, we intend to take supplemental action to control emissions from vessels affecting U.S. air quality.

We project that in 2030 this coordinated strategy would reduce annual emissions of NO_X and particulate matter (PM) from ocean-going vessels by 1.2 million and 143,000 tons, respectively. These reductions are estimated to annually prevent between 13,000 and 32,000 PM-related premature deaths, between 220 and 980 ozone-related premature deaths, 1,500,000 work days lost, and 10,000,000 minor restricted-activity days. The estimated annual monetized health benefits of this coordinated strategy in 2030 would be between $110 and $280 billion, assuming a 3 percent discount rate (or between $100 and $260 billion assuming a 7 percent discount rate). The annual costs would be significantly less, at approximately $3.1 billion.

The proposed regulations also include technical amendments to our motor vehicle and nonroad engine regulations. Many of these changes involve minor adjustments or corrections to our recently finalized rule for new nonroad spark-ignition engines, or adjustment to other regulatory provisions to align with this recent final rule.

DATES: Comments must be received September 28, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 28, 2009, thirty days after date of publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0121, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Ave., NW., Room: 3334, Mail Code: 2822T, Washington DC. 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–2007–0121. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document, and also go to Section X.A of the Public Participation section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA–HQ–OAR–2007–0121 Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA–HQ–OAR–2007–0121 is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Amy Kopin, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4417; fax number: (734) 214–4050; e-mail address: *Kopin.Amy@epa.gov,* or Assessment and Standards Division Hotline; telephone number: (734) 214–4636.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action will affect companies that manufacture, sell, or import into the United States new marine compression-ignition engines with per cylinder displacement at or above 30 liters for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Additionally, this action may affect companies and persons that rebuild or maintain these engines. Finally, this action may also affect those that manufacture, import, distribute, sell, and dispense fuel for use by Category 3 marine vessels. Affected categories and entities include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum Refineries.
Industry	424710, 424720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.

Note:
[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 80.501, 94.1, 1042.1, and 1065.1, and the proposed regulations. If you have questions, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Additional Information About This Rulemaking

The current emission standards for new compression-ignition marine engines with per cylinder displacement at or above 30 liters per cylinder were adopted in 2003 (see 68 FR 9746, February 28, 2003). This notice of proposed rulemaking relies in part on information that was obtained for that rule, which can be found in Public Docket EPA–HQ–OAR–2003–0045. This docket is incorporated into the docket for this action, EPA–HQ–OAR–2007–0121.

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I. Overview

This proposal is part of a coordinated strategy to address emissions from ocean-going vessels and is an important step in EPA's ongoing National Clean Diesel Campaign (NCDC). In recent years, we have adopted major new programs designed to reduce emissions from new diesel engines, including those used in highway (66 FR 5001, January 18, 2001), nonroad (69 FR 38957, June 29, 2004), locomotive, and marine applications (73 FR 25098, May 6, 2008). When fully phased in, these programs will significantly reduce emissions of harmful regulated pollutants from these categories of engines and vehicles. This Notice of Proposed Rulemaking (NPRM) sets out the next step in this ambitious effort by addressing emissions from the largest marine diesel engines, called Category 3 (C3) marine diesel engines. These are engines with per cylinder displacement at or above 30 liters per cylinder, which are used primarily for propulsion power on ocean-going vessels (OGV).

Emissions from OGV remain at high levels. The Category 3 engines on these vessels use emission control technology that is comparable to that used by nonroad engines in the early 1990s, and use fuel that can have a sulfur content of 30,000 ppm or more. As a result, these engines emit high levels of pollutants that contribute to unhealthy air in many areas of the U.S. Nationally, in 2009, emissions from Category 3 engines account for about 10 percent of mobile source nitrogen oxides (NO_X) emissions, about 24 percent of mobile source diesel $PM_{2.5}$ emissions (with $PM_{2.5}$ referring to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm), and about 80 percent of mobile source sulfur oxides (SO_X) emissions. As we look into the future, however, emissions from ocean-going vessels are expected to become a dominant inventory source. This will be due to both emission reductions from other mobile sources as new emission controls go into effect and to the anticipated activity growth for ocean transportation. Without new controls, we anticipate the contribution of ocean-going vessels to national emission inventories to increase to about 24 percent, 34 percent, and 93 percent of mobile source NO_X, $PM_{2.5}$, and SO_X emissions, respectively in 2020, growing to 40 percent, 48 percent, and 95 percent respectively in 2030. The coordinated emission control strategy will lead to significant reductions in these emissions and important benefits to public health.

The evolution of EPA's strategy to control mobile source diesel emissions has followed a technology progression, beginning with the application of high-efficiency advanced aftertreatment approaches and low sulfur fuel requirements first to highway vehicles, then to nonroad engines and equipment, followed by locomotives and smaller marine diesel engines. The benefits of this approach include maximizing air quality benefits by focusing on the largest populations of sources with the shortest service lives, allowing engine manufacturers to spread initial research and development costs over a larger population of engines, and allowing manufacturers to address the challenges of applying advanced emission controls on smaller engines.

EPA has been working with engine manufacturers and other industry stakeholders for many years to identify and resolve challenges associated with applying advanced diesel engine technology to Category 3 engines to achieve significant NO_X emission reductions. This work was fundamental in developing the emission limits for Category 3 engines that we are proposing in this action and informed the position advocated by the United States in the international negotiations for more stringent tiers of international engine emission limits.

Our coordinated strategy to control emissions from ocean-going vessels consists of actions at both the national and international levels. It includes: (1) The engine and fuel controls we are proposing in this action under our Clean Air Act authority; (2) the proposal [1] submitted by the United States Government (USG) to the International Maritime Organization (IMO) to amend Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI) to designate U.S. coasts as an Emission Control Area (ECA) [2] in which all vessels, regardless of flag, would be required to meet the most stringent engine and marine fuel sulfur requirements in Annex VI; and (3) the new engine emission and fuel sulfur limits contained in the amendments to Annex VI that are applicable to all vessels regardless of flag and that are implemented in the U.S. through the Act to Prevent Pollution from Ships (APPS).

The amendments to APPS to incorporate Annex VI provide the authority to ensure compliance with MARPOL Annex VI by U.S. and foreign vessels that enter U.S. ports or operate in U.S. waters. In light of this, we are deciding not to revisit our existing approach with respect to foreign vessels in this rule. However, the MARPOL Annex VI Tier III NO_X and stringent fuel sulfur limits are geographically based and would not become effective absent designation of U.S. coasts as an ECA. As noted above, the United States forwarded a proposal to IMO to amend Annex VI to designate U.S. coasts as an ECA. If this amendment is not adopted in a timely manner by IMO, we intend to take supplemental action to control emissions from vessels that affect U.S. air quality.

Our coordinated strategy for ocean-going vessels would significantly reduce emissions from foreign and domestic

[1] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter,* Submitted by the United States and Canada. IMO Document MEPC59/6/5, 27 March, 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc–59–eca–proposal.pdf.*

[2] For the purpose of this proposal, the term ''ECA'' refers to both the ECA and internal U.S. waters. Refer to Section VI.B. for a discussion of the application of the fuel sulfur and engine emission limits to U.S. internal waters through APPS.

vessels that affect U.S. air quality, and the impacts on human health and welfare would be substantial. We project that by 2030 this program would reduce annual emissions of NO_X and particulate matter (PM) by 1.2 million and 143,000 tons, respectively, and the magnitude of these reductions would continue to grow well beyond 2030.[3] These reductions are estimated to annually prevent between 13,000 and 32,000 PM-related premature deaths, between 220 and 980 ozone-related premature deaths, 1,500,000 work days lost, and 10,000,000 minor restricted-activity days. The estimated annual monetized health benefits of this coordinated strategy in 2030 would be between $110 and $280 billion, assuming a 3 percent discount rate (or between $100 and $260 billion assuming a 7 percent discount rate). The annual cost of the overall program in 2030 would be significantly less, at approximately $3.1 billion.

A. What Are the Elements of EPA's Coordinated Strategy for Ocean-Going Vessels?

Our coordinated strategy for ocean-going vessels, including the CAA emission standard proposed in this action, continues EPA's program to progressively apply advanced aftertreatment emission control standards to diesel engines and reflects the evolution of this technology from the largest inventory source (highway engines), to land-based nonroad engines, to locomotives and marine diesel engines up to 30 liters per cylinder. The results of these forerunner programs are dramatic reductions in NO_X and $PM_{2.5}$ emissions on the order of 80 to 90 percent, which will lead to significant improvements in national air quality.

The combination of controls in the coordinated strategy for ocean-going vessels is expected to provide significant reductions in $PM_{2.5}$, NO_X, SO_X, and toxic compounds, both in the near term (as early as 2011) and in the long term. These reductions would be achieved in a manner that: (1) Is very cost effective compared to additional controls on portside vehicles and equipment and other land-based mobile sources that are already subject to stringent technology-forcing emission standards; (2) leverages the international program adopted by IMO to ensure that all ships that operate in areas that affect U.S. air quality are required to use stringent emission control technology; and (3) provides the lead time needed to deal with the engineering design workload that is involved in applying advanced high-efficiency aftertreatment technology to these very large engines. Overall, the coordinated strategy constitutes a comprehensive program that addresses the problems caused by ocean-going vessel emissions from both a near-term and long-term perspective. It does this while providing for an orderly and cost-effective implementation schedule for the vessel owners and manufacturers, and in a way that is consistent with the international requirements for these vessels.

The human health and welfare impacts of emissions from ocean-going vessels, along with estimates of their contribution to national emission inventories, are described in Section II. The proposed new tiers of Clean Air Act engine emission standards to address these emissions, and our justifications for them, are discussed in Section III. Section IV contains proposed changes to our existing marine diesel fuel program. In Section V, we describe a key component of the coordinated strategy: the recently-submitted proposal to amend MARPOL Annex VI to designate U.S. coasts as an ECA, as well as the IMO approval process.

In addition to the new emission limits, we are proposing several revisions to our Clean Air Act testing, certification, and compliance provisions to better ensure emissions control in use. We are also proposing several regulations for the purpose of implementing MARPOL Annex VI pursuant to the Act to Prevent Pollution From Ships (33 USC 1901 *et seq.*). These revisions are described in Section VI. Sections VII and VIII present the estimated costs and benefits of our coordinated program to address OGV emissions, and Section IX presents the analysis of programmatic alternatives and a discussion of a potential Voluntary Marine Verification Program.

(1) What CAA Standards Is EPA Proposing?

We are proposing new tiers of Category 3 marine diesel engine standards under our Clean Air Act authority, as well as certain revisions to our marine fuel program.

Category 3 Engine Standards. Our current standards for Category 3 engines were adopted in 2003. These Tier 1 standards are equivalent to the first tier of MARPOL Annex VI NO_X limits and require the use of control technology comparable to that used by nonroad engines in the early 1990s. We did not adopt PM standards at that time because the vast majority of PM emissions from Category 3 engines are the result of the sulfur content of the residual fuel they use and because of measurement issues.[4] The combination of the engine and fuel standards we are proposing in this NPRM and the USG proposal for ECA designation will require all vessels that operate in coastal areas that affect U.S. air quality to meet advanced engine standards and fuel controls.

We are proposing to revise our CAA engine program to include two additional tiers of NO_X standards for new marine diesel engines with per cylinder displacement at or above 30 liters (Category 3 engines) installed on vessels flagged or registered in the United States. The proposed near-term Tier 2 standards would apply beginning in 2011 and would require more efficient use of engine technologies being used today, including engine timing, engine cooling, and advanced computer controls. The proposed long-term Tier 3 standards would apply beginning in 2016 and would require the use of high-efficiency aftertreatment technology such as selective catalytic reduction.

Because much of the operation of U.S. vessels occurs in areas that would have little, if any, impact on U.S. air quality, we are proposing that our Clean Air Act program allow the use of alternative emission control devices (AECDs) that would permit a ship to meet less stringent requirements on the open sea. The use of these devices would be subject to certain restrictions, including a requirement that the AECD not disable emission controls while operating in areas where emissions could reasonably be expected to adversely affect U.S. air quality, and that the engine is equipped with a NO_X emission monitoring device. In addition, the engine would be required to meet the Tier 2 NO_X limits when the AECD is implemented, and an AECD would not be allowed on any Tier 2 or earlier engine.

In addition to the NO_X emission limits, we are proposing standards for emissions of hydrocarbons (HC) and carbon monoxides (CO) from new Category 3 engines. As explained in

[3] These emission inventory reductions include reductions from ships operating within the 24 nautical mile regulatory zone off the California Coastline, beginning with the effective date of the Coordinated Strategy program elements. The California regulation contains a provision that would sunset the requirements of the rule if the Federal program achieves equivalent emission reductions. See *http://www.arb.ca.gov/regact/2008/fuelogv08/fro13.pdf* at 13 CCR 2299.2(j)(1).

[4] As explained in the NPRM, there were no acceptable procedures for measuring PM from Category 3 marine engines. Specifically, established PM test methods showed unacceptable variability when sulfur levels exceed 0.8 weight percent, which was common at that time for both residual and distillate marine fuels for Category 3 engines, and no PM test method or calculation methodology had been developed to correct that variability for these engines. See 67 FR 37569, May 29, 2002.

Section III.B.1, below, we are not proposing to set a standard for PM emissions for Category 3 engines. However, significant PM emissions benefits will be achieved through the ECA fuel sulfur requirements that will apply to ships that operate in areas that affect U.S. air quality. We are also proposing to require engine manufacturers to measure and report PM emissions pursuant to our authority in section 208 of the Act.

Fuel Sulfur Limits. EPA is in this notice proposing fuel sulfur limits under section 211(c) of the Clean Air Act that match the limits that apply under Annex VI in ECAs. First, we are proposing to forbid the production and sale of fuel oil with a sulfur content above 1,000 ppm for use in the waters within the proposed ECA (as well as internal U.S. waters). Second, we are proposing a revision to our existing diesel fuel program to allow for the production and sale of 1,000 ppm sulfur fuel for use in Category 3 marine vessels. This would allow production and distribution of fuel consistent with the new sulfur limits that will become applicable, under Annex VI, in ECAs beginning in 2015. Our current diesel fuel program sets a sulfur limit of 15 ppm that will be fully phased-in by December 1, 2014 for nonroad, locomotive, and marine (NRLM) diesel fuel produced for distribution/sale and use in the U.S. Without this proposed change to our existing diesel fuel regulations, fuel with a sulfur content of up to 1,000 ppm could be used in C3 marine vessels, but it could not be legally produced in the U.S. after June 1, 2014.

(2) What is the United States Government Proposal for Designation of an Emission Control Area?

MARPOL Annex VI contains the international standards for air emissions from ships, including NO_X and SO_X /PM emissions. The Annex VI NO_X and SO_X /PM limits are set out in Table I–1. Annex VI was originally adopted by the Parties in 1997 but did not go into force until 2005, after it was ratified by fifteen countries representing at least 50 percent of the world's merchant shipping tonnage. The initial program consisted of engine NO_X emission standards and fuel sulfur limits. The NO_X standards apply to all engines above 130 kW installed on a ship constructed on or after January 1, 2000 and were intended to reduce NO_X emissions by about 30 percent from uncontrolled. There were two fuel sulfur limits: A global limit of 45,000 ppm and a more stringent 15,000 ppm limit that applies in SO_X Emission Control Areas (SECAs). This approach ensured that the cleanest fuel was used in areas that demonstrated a need for additional SO_X reductions, while retaining the ability of ships to use higher sulfur residual fuel on the open ocean.

Annex VI was amended in October 2008, adding two tiers of NO_X limits (Tier II and Tier III) and two sets of fuel sulfur standards.[5] These amendments will enter into force on July 1, 2010 unless an objection is raised before January 1, 2010 by at least one-third of the parties to the Annex or by parties that represent at least 50 percent of the world's gross merchant tonnage. The most stringent NO_X and fuel sulfur limits are regionally based and will apply only in designated ECAs.

TABLE I—1—ANNEX VI NO_X EMISSION STANDARDS AND FUEL SULFUR LIMITS

			Less than 130 RPM	130–2000 RPM [a]	Over 2000 RPM
NO_X	Tier I	[b] 2004	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
	Tier II	2011	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
	Tier III	2016	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

	Global		ECA	
Fuel Sulfur	2004	45,000 ppm [c] ..	2005	15,000 ppm [c]
	2012	35,000 ppm [c] ..	2010	10,000 ppm [c]
	2020	5,000 ppm [c d] ...	2015	1,000 ppm [c]

NOTES:
[a] Applicable standards are calculated from n (maximum in-use engine speed in revolutions per minute (rpm)), rounded to one decimal place.
[b] Tier 1 NO_X standards apply for engines originally manufactured after 2004, and proposed to also to certain earlier engines.
[c] Annex VI standards are in terms of percent sulfur. Global sulfur limits are 4.5%; 3.5%; 0.5%. ECA sulfur limits are 1.5%; 1.0%; 0.1%.
[d] Subject to a feasibility review in 2018; may be delayed to 2025.

To realize the benefits from the MARPOL Annex VI Tier III NO_X and fuel sulfur controls, areas must be designated as Emission Control Areas. On March 27, 2009, the U.S. and Canadian governments submitted a proposal to amend MARPOL Annex VI to designate North American coastal waters as an ECA (referred to as the ''U.S./Canada ECA'' or the ''North American ECA'').[6] A description of this submittal and the IMO approval process is set out in Section V. ECA designation would ensure that ships that affect U.S. air quality meet stringent NO_X and fuel sulfur requirements while operating within 200 nautical miles of U.S. coasts. We expect the U.S./Canadian proposal will be adopted by the Parties to MARPOL Annex VI in March 2010. If, however, the proposed amendment is not adopted in a timely manner, we intend to take supplemental action to control harmful emissions from vessels that affect U.S. air quality.

(3) Regulations To Implement Annex VI

The United States became a party to MARPOL Annex VI by depositing its instrument of ratification with IMO on October 8, 2008. This was preceded by the President signing into law the Maritime Pollution Prevention Act of 2008 (Pub. L. 110–280) on July 21, 2008, that contains amendments to the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*). These APPS amendments require compliance with Annex VI by all persons subject to the engine and

[5] Note that the MARPOL Annex VI standards are referred to as Tiers I, II, and III; EPA's Category 3 emission standards are referred to as Tiers 1, 2, and 3.

[6] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter, Submitted by the United States and Canada.* IMO Document MEPC59/6/5, 27 March, 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc–59–eca–proposal.pdf.*

vessel requirements of Annex VI. The amendments also authorize the United States Coast Guard and EPA to enforce the provisions of Annex VI against domestic and foreign vessels and to develop implementing regulations, as necessary. In addition, APPS gives EPA sole authority to certify engines installed on U.S. vessels to the Annex VI requirements. This NPRM contains proposed regulations to implement several aspects of the Annex VI engine and fuel regulations, which we are proposing under that APPS authority. Our cost and benefit analyses for the coordinated strategy includes the costs for U.S. vessels of implementing those provisions of the MARPOL Annex VI program that are in addition to the ECA requirements.

(4) Technical Amendments

The proposed regulations also include technical amendments to our motor vehicle and nonroad engine regulations. Many of these changes involve minor adjustments or corrections to our recently finalized rule for new nonroad spark-ignition engines, or adjustment to other regulatory provisions to align with this recent final rule.

(5) Summary

The coordinated strategy emission control requirements are the MARPOL Annex VI global Tier II NO_X standards included in the amendments to Annex VI and the ECA Tier 3 NO_X limits and fuel sulfur limits that will apply when the U.S. coasts are designated as an ECA through an additional amendment to Annex VI. The Annex VI requirements, including the future ECA requirements, will be enforceable for U.S. and foreign vessels operating in the United States waters through the Act to Prevent Pollution from Ships.

We are also adopting the engine controls for Category 3 engines on U.S. vessels under our Clean Air Act program, as required by Section 213 of the Act.

Finally, we are proposing additional requirements that are not part of the Annex VI program or the ECA. These are: Limits on hydrocarbon and carbon monoxide emissions for Category 3 engines; PM measurement requirement, to obtain data on PM emissions from engines operating on distillate fuel; and changes to our Clean Air Act diesel fuel program to allow production and sale of ECA-compliant fuel. We are also considering changes to our emission control program for smaller marine diesel engines to harmonize with the Annex VI NO_X requirements, for U.S. vessels that operate internationally.

B. Why is EPA Making This Proposal?

(1) OGV Contribute to Serious Air Quality Problems

Ocean-going vessels subject to this proposal generate significant emissions of $PM_{2.5}$, SO_X, and NO_X that contribute to nonattainment of the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and ground-level ozone (smog). NO_X and SO_X are both precursors to secondary $PM_{2.5}$ formation. Both $PM_{2.5}$ and NO_X adversely affect human health. NO_X is a key precursor to ozone as well. NO_X, SO_X and $PM_{2.5}$ emissions from ocean-going vessels also cause harm to public welfare, including contributing to deposition of nitrogen and sulfur, visibility impairment and other harmful environmental impacts across the U.S.

The health and environmental effects associated with these emissions are a classic example of a negative externality (an activity that imposes uncompensated costs on others). With a negative externality, an activity's social cost (the costs borne to society imposed as a result of the activity taking place) is not taken into account in the total cost of producing goods and services. In this case, as described in this section below and in Section II, emissions from ocean-going vessels impose public health and environmental costs on society, and these added costs to society are not reflected in the costs of providing the transportation services. The market system itself cannot correct this externality because firms in the market are rewarded for minimizing their production costs, including the costs of pollution control. In addition, firms that may take steps to use equipment that reduces air pollution may find themselves at a competitive disadvantage compared to firms that do not. To correct this market failure and reduce the negative externality from these emissions, we propose to set a cap on the rate of emission production from these sources. EPA's coordinated strategy for ocean-going vessels will accomplish this since both domestic and foreign ocean-going vessels will be required to reduce their emissions to a technologically feasible limit.

Emissions from ocean-going vessels account for substantial portions of the country's ambient $PM_{2.5}$, SO_X and NO_X levels. We estimate that in 2009 these engines account for about 80 percent of mobile source sulfur dioxide (SO_2) emissions, 10 percent of mobile source NO_X emissions and about 24 percent of mobile source diesel $PM_{2.5}$ emissions. Emissions from ocean-going vessels are expected to dominate the mobile source inventory in the future, due to both the expected emission reductions from other mobile sources as a result of more stringent emission controls and due to growth in the demand for ocean transportation services. By 2030, the coordinated strategy would reduce annual SO_2 emissions from these diesel engines by 1.3 million tons, annual NO_X emissions by 1.2 million tons, and $PM_{2.5}$ emissions by 143,000 tons, and those reductions would continue to grow beyond 2030 as fleet turnover to the clean engines continues. While a share of these emissions occur at sea, our air quality modeling results described in Section II show they have a significant impact on ambient air quality far inland.

Both ozone and $PM_{2.5}$ are associated with serious public health problems, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, lost work days, and restricted activity days), changes in lung function and increased respiratory symptoms, altered respiratory defense mechanisms, and chronic bronchitis. Diesel exhaust is of special public health concern, and since 2002 EPA has classified it as likely to be carcinogenic to humans by inhalation at environmental exposures. Recent studies are showing that populations living near large diesel emission sources such as major roadways, rail yards, and marine ports are likely to experience greater diesel exhaust exposure levels than the overall U.S. population, putting them at greater health risks.[7] [8] [9]

EPA recently updated its initial screening-level analysis [10] of selected marine port areas to better understand the populations that are exposed to diesel particulate matter emissions from

[7] U.S. EPA. (2004). *Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines, Chapter 3*. Report No. EPA420–R–04–007. *http://www.epa.gov/nonroad-diesel/2004fr.htm#ria.*

[8] State of California Air Resources Board. *Roseville Rail Yard Study*. Sacramento, CA: California EPA, California Air Resources Board (CARB). Stationary Source Division. This document is available electronically at: *http://www.arb.ca.gov/diesel/documents/rrstudy.htm.*

[9] Di, P., Servin, A., Rosenkranz, K., Schwehr, B., Tran, H., (2006). *Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach*. Sacramento, CA: California EPA, California Air Resources Board (CARB). Retrieved March 19, 2009 from *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf.*

[10] This type of screening-level analysis is an inexact tool and not appropriate for regulatory decision-making; it is useful in beginning to understand potential impacts and for illustrative purposes. Additionally, the emissions inventories used as inputs for the analyses are not official estimates and likely underestimate overall emissions because they are not inclusive of all emission sources at the individual ports in the sample.

these facilities.[11] [12] [13] [14] This screening-level analysis focused on a representative selection of national marine ports.[15] Of the 45 marine ports selected, the results indicate that at least 18 million people, including a disproportionate number of low-income households, African-Americans, and Hispanics, live in the vicinity of these facilities and are being exposed to ambient diesel PM levels that are 2.0 $\mu g/m^3$ and 0.2 $\mu g/m^3$ above levels found in areas further from these facilities. Considering only ocean-going marine engine diesel PM emissions, the results indicate that 6.5 million people are exposed to ambient diesel particulate matter (DPM) levels that are 2.0 $\mu g/m^3$ and 0.2 $\mu g/m^3$ above levels found in areas further from these facilities. Because those populations exposed to diesel PM emissions from marine ports are more likely to be low-income and minority residents, these populations would benefit from the controls being proposed in this action. The detailed findings of this study are available in the public docket for this rulemaking.

Even outside port areas, millions of Americans continue to live in areas that do not meet existing air quality standards today. With regard to $PM_{2.5}$ nonattainment, in 2005 EPA designated 39 nonattainment areas for the 1997 $PM_{2.5}$ NAAQS (70 FR 943, January 5, 2005). These areas are composed of 208 full or partial counties with a total population exceeding 88 million. The 1997 $PM_{2.5}$ NAAQS was recently revised and the 2006 $PM_{2.5}$ NAAQS became effective on December 18, 2006. As of December 22, 2008, there are 58 2006 $PM_{2.5}$ nonattainment areas composed of 211 full or partial counties. These numbers do not include individuals living in areas that may fail to maintain or achieve the $PM_{2.5}$ NAAQS in the future. Currently, ozone concentrations exceeding the 8-hour ozone NAAQS occur over wide geographic areas, including most of the nation's major population centers. As of December 2008, there are approximately 132 million people living in 57 areas (293 full or partial counties) designated as not in attainment with the 8-hour ozone NAAQS. These numbers do not include people living in areas where there is a potential that the area may fail to maintain or achieve the 8-hour ozone NAAQS.

In addition to public health impacts, there are serious public welfare and environmental impacts associated with $PM_{2.5}$ and ozone emissions. Specifically, NO_X and SO_X emissions from diesel engines contribute to the acidification, nitrification, and eutrophication of water bodies. NO_X, SO_X and direct emissions of $PM_{2.5}$ can contribute to the substantial impairment of visibility in many parts of the U.S. where people live, work, and recreate, including national parks, wilderness areas, and mandatory class I Federal areas.[16] The deposition of airborne particles can also reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion. Finally, ozone causes damage to vegetation which leads to crop and forestry economic losses, as well as harm to national parks, wilderness areas, and other natural systems.

While EPA has already adopted many emission control programs that are expected to reduce ambient $PM_{2.5}$ and ozone levels, including the Nonroad Spark Ignition Engine rule (73 FR 59034, Oct. 8, 2008), the Locomotive and Marine Diesel Engine Rule (73 FR 25098, May 6, 2008), the Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005) and the Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004), the Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, Jan. 18, 2001), and the Tier 2 Vehicle and Gasoline Sulfur Program (65 FR 6698, Feb. 10, 2000), the additional $PM_{2.5}$, SO_X and NO_X emission reductions resulting from the coordinated approach described in this action would assist states in attaining and maintaining the $PM_{2.5}$ and ozone NAAQS near term and in the decades to come.

Air quality modeling conducted by EPA projects that in 2020 at least 13 counties with about 30 million people may violate the 1997 standards for $PM_{2.5}$ and 50 counties with about 50 million people may violate the 2008 standards for ozone. These numbers likely underestimate the impacted population since they do not include the people who live in areas which do not meet the 2006 $PM_{2.5}$ NAAQS. In addition, these numbers do not include the additional 13 million people in 12 counties who live in areas that have air quality measurements within 10 percent of the 1997 $PM_{2.5}$ NAAQS and the additional 80 million people in 135 counties who live in areas that have air quality measurements within 10% of the 2008 ozone NAAQS. The emission reductions resulting from this coordinated strategy would assist these and other states to both attain and maintain the $PM_{2.5}$ and ozone NAAQS.

State and local governments are working to protect the health of their citizens and comply with requirements of the Clean Air Act. As part of this effort, they recognize the need to secure additional major reductions in diesel $PM_{2.5}$, SO_X and NO_X emissions by undertaking numerous state level actions, while also seeking Agency action, including the setting of the CAA Category 3 engine standards being proposed in this NPRM and the U.S. proposal to IMO to amend Annex VI to designate U.S. coastal areas as an ECA, and related CAA certification and fuel provisions to complement that ECA proposal. EPA's coordinated strategy to reduce OGV emissions through engine emission controls and fuel sulfur limits would play a critical part in state efforts to attain and maintain the NAAQS through the next two decades.

In addition to regulatory programs, the Agency has a number of innovative programs that partner government, industry, and local communities together to help address challenging air quality problems. Under the National Clean Diesel Campaign, EPA promotes a variety of emission reduction strategies such as retrofitting, repairing, replacing and repowering engines, reducing idling and switching to cleaner fuels.

In 2008, Congress appropriated funding for the Diesel Emissions

[11] ICF International. September 28, 2007. Estimation of diesel particulate matter concentration isopleths for marine harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[12] ICF International. September 28, 2007. Estimation of diesel particulate matter population exposure near selected harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[13] ICF International, December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions. Memorandum to EPA under Work Assignment Number 2–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[14] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions. Memorandum to EPA under Work Assignment Number 1–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[15] The Agency selected a representative sample from the top 150 U.S. ports including coastal and Great Lake ports.

[16] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977. Section 169 of the Clean Air Act provides additional authority to address existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I Federal areas.

Reduction Program (DERA) under the Energy Policy Act of 2005 (EPAct 2005) to reduce emissions from heavy-duty diesel engines in the existing fleet. The EPAct 2005 directs EPA to break the funding into two different components: A National competition and a State allocation program. The National Program, with 70 percent of the funding, consists of three separate competitions: (1) The National Clean Diesel Funding Assistance Program; (2) the National Clean Diesel Emerging Technologies Program; and (3) the SmartWay Clean Diesel Finance Program. The State Clean Diesel Grant and Loan Program utilizes the remaining 30 percent of the funding. In the first year of the program, EPA awarded 119 grants totaling $49.2 million for diesel emissions reduction projects and programs across the country for cleaner fuels, verified technologies and certified engine configurations.

Through $300 million in funding provided to the DERA program under the American Reinvestment and Recovery Act of 2009, EPA will promote and preserve jobs while improving public health and achieving significant reductions in diesel emissions.

Furthermore, EPA's National Clean Diesel Campaign, through its Clean Ports USA program, is working with port authorities, terminal operators, shipping, truck and rail companies to promote cleaner diesel technologies and strategies today through education, incentives, and financial assistance for diesel emissions reductions at ports. Part of these efforts involves clean diesel programs that can further reduce emissions from the existing fleet of diesel engines. Finally, many of the companies operating in states and communities suffering from poor air quality have voluntarily entered into Memoranda of Understanding (MOUs) designed to ensure that the cleanest technologies are used first in regions with the most challenging air quality issues.

In addition to the above innovative programs, we are seeking comment on a Voluntary Marine Verification Program to address emissions from existing Category 3 engines. This voluntary program would extend our existing diesel retrofit verification program to these largest marine vessels. The concept is described in Section IX.C.3 below.

Taken together, these voluntary approaches can augment the coordinated strategy and help states and communities achieve larger reductions sooner in the areas of our country that need them the most. The Agency remains committed to furthering these programs and others so that all of our citizens can breathe clean healthy air.

(2) Advanced Emission Technology Solutions are Available

Air pollution from marine diesel exhaust is a challenging problem. However, we believe it can be addressed effectively through the use of existing technology to reduce engine-out emissions combined with high-efficiency catalytic aftertreatment technologies. As discussed in greater detail in Section III.C, the development of these aftertreatment technologies for highway and nonroad diesel applications has advanced rapidly in recent years, so that very large emission reductions in NO_X emissions can be achieved.

Control of NO_X emissions from Category 3 engines can be achieved with high-efficiency exhaust emission control technologies. Such technologies have already been applied to meet our light-duty passenger car standards and are expected to be used to meet the stringent NO_X standards included in EPA's heavy-duty highway diesel, nonroad Tier 4, and locomotive and marine diesel engine programs. They have been in production for heavy duty trucks in Europe since 2005, as well as in many stationary source applications throughout the world. These technologies are discussed further in Section III.C. While these technologies can be sensitive to sulfur, their use will be required only in ECAs designated under MARPOL Annex VI, and they are expected to be able to operate on ECA fuel meeting a 1,000 ppm fuel sulfur. With the lead time available and the assurance of 1,000 ppm fuel for ocean-going vessels in 2015, as would be required through ECA designation for U.S. coasts, we are confident the proposed application of advanced NO_X technology to Category 3 marine engines will proceed at a reasonable rate of progress and will result in systems capable of achieving the proposed standards on the proposed schedule. Use of this lower sulfur fuel will also result in substantial PM emission reductions, since most of the PM emissions from Category 3 engines is due to the use of high sulfur residual fuel.

C. Statutory Basis for Action

Authority for the actions proposed in this documents is granted to the Environmental Protection Agency by sections 114, 203, 205, 206, 207, 208, 211, 213, 216, and 301(a) of the Clean Air Act as amended in 1990 (42 U.S.C. 7414, 7522, 7524, 7525, 7541, 7542, 7545, 7547, 7550 and 7601(a)), and by sections 1901–1915 of the Act to Prevent Pollution from Ships (33 U.S.C. 1909 *et seq.*).

(1) Clean Air Act Basis for Action

EPA is proposing the fuel requirements pursuant to its authority in section 211 (c) of the Clean Air Act, which allow EPA to regulate fuels that contribute to air pollution which endangers public health or welfare (42 U.S.C. 7545(c)). As discussed previously in EPA's Clean Air Nonroad Diesel rule (69 FR 38958) and below in Section II of this preamble, the combustion of high sulfur diesel fuel by nonroad, locomotive, and marine diesel engines contributes to air quality problems that endanger public health and welfare. Section II also discusses the significant contribution to these air quality problems by Category 3 marine vessels. Additional support for the procedural and enforcement-related aspects of the fuel controls in the proposed rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA (42 U.S.C. Sections 7414 (a) and 7601 (a)).

EPA is proposing emissions standards for new Category 3 marine diesel engines pursuant to its authority under section 213(a)(3) of the Clean Air Act, which directs the Administrator to set standards regulating emissions of NO_X, volatile organic compounds (VOCs), or CO for classes or categories of engines, like marine diesel engines, that contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. These ''standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles, giving appropriate consideration to cost, lead time, noise, energy, and safety factors associated with the application of such technology.''

EPA is proposing a PM measurement requirement for new Category 3 marine diesel engines pursuant to its authority under section 208, which requires manufacturers and other persons subject to Title II requirements to ''provide information the Administrator may reasonably require * * * to otherwise carry out the provisions of this part* * *''

EPA is also acting under its authority to implement and enforce the Category 3 marine diesel emission standards. Section 213(d) provides that the standards EPA adopts for marine diesel engines ''shall be subject to Sections 206, 207, 208, and 209'' of the Clean Air Act, with such modifications that the Administrator deems appropriate to the

regulations implementing these sections.'' In addition, the marine standards ''shall be enforced in the same manner as [motor vehicle] standards prescribed under section 202'' of the Act. Section 213(d) also grants EPA authority to promulgate or revise regulations as necessary to determine compliance with and enforce standards adopted under section 213.

As required under section 213(a)(3), we believe the evidence provided in Section III.C of this Preamble and in Chapter 4 of draft Regulatory Impact Analysis (RIA) indicates that the stringent NO_X emission standards proposed in this NPRM for newly-built Category 3 marine diesel engines are feasible and reflect the greatest degree of emission reduction achievable through the use of technology that will be available in the model years to which they apply. We have given appropriate consideration to costs in proposing these standards. Our review of the costs and cost-effectiveness of these standards indicate that they will be reasonable and comparable to the cost-effectiveness of other mobile source emission reduction strategies that have been required. We have also reviewed and given appropriate consideration to the energy factors of this rule in terms of fuel efficiency as well as any safety and noise factors associated with these proposed standards.

The information in Section II of this preamble and Chapter 2 of the draft RIA regarding air quality and public health impacts provides strong evidence that emissions from Category 3 marine diesel engines significantly and adversely impact public health or welfare. EPA has already found in previous rules that emissions from new marine diesel engines contribute to ozone and CO concentrations in more than one area which has failed to attain the ozone and carbon monoxide NAAQS (64 FR 73300, December 29, 1999).

The NO_X and PM emission reductions expected to be achieved through the coordinated strategy would be important to states' efforts to attain and maintain the Ozone and the $PM_{2.5}$ NAAQS in the near term and in the decades to come, and would significantly reduce the risk of adverse effects to human health and welfare.

(2) APPS Basis for Action

EPA is proposing regulations to implement MARPOL Annex VI pursuant to its authority in section 1903 of the Act to Prevent Pollution from Ships (APPS). Section 1903 gives the Administrator the authority to prescribe any necessary or desired regulations to carry out the provisions of Regulations 12 through 19 of Annex VI.

The Act to Prevent Pollution from Ships implements and makes Annex VI requirements enforceable domestically. However, certain clarifications are necessary with respect to implementing Regulation 13 and the requirements of the NO_X Technical Code with respect to issuance of Engine International Air Pollution Prevention (EIAPP) certificates, approval of alternative compliance methods. Clarification is also needed with respect to the application of the Annex VI requirements to certain U.S. and foreign vessels that operate in U.S. waters.

II. Air Quality, Health and Welfare Impacts

The proposed NO_X limits combined with the ECA designation for U.S. coasts and related proposed fuel standards are expected to significantly reduce emissions of NO_X, PM, and SO_X from ocean-going vessels. Emissions of these compounds contribute to nonattainment of the NAAQS for PM and ozone. In addition to contributing to PM nonattainment, these engines are emitting diesel particulate matter, which is associated with a host of adverse health effects, including cancer. In addition to their health effects, emissions from these engines also contribute to welfare and environmental effects including deposition, visibility impairment and harm to ecosystems from ozone.

This section summarizes the general health and welfare effects of these emissions. Interested readers are encouraged to refer to the draft RIA for more in-depth discussions.

A. Public Health Impacts

(1) Particulate Matter

(a) Background

Particulate matter is a generic term for a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. Since 1987, EPA has delineated that subset of inhalable particles small enough to penetrate to the thoracic region (including the tracheobronchial and alveolar regions) of the respiratory tract (referred to as thoracic particles). Current NAAQS use $PM_{2.5}$ as the indicator for fine particles (with $PM_{2.5}$ referring to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm), and use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10} (referred to as thoracic coarse particles or coarse-fraction particles; generally including particles with a nominal mean aerodynamic diameter greater than 2.5 μm and less than or equal to 10 μm, or $PM_{10-2.5}$). Ultrafine particles are a subset of fine particles, generally less than 100 nanometers (0.1 μm) in aerodynamic diameter.

Fine particles are produced primarily by combustion processes and by transformations of gaseous emissions (*e.g.,* SO_X, NO_X and VOC) in the atmosphere. The chemical and physical properties of $PM_{2.5}$ may vary greatly with time, region, meteorology, and source category. Thus, $PM_{2.5}$ may include a complex mixture of different pollutants including sulfates, nitrates, organic compounds, elemental carbon and metal compounds. These particles can remain in the atmosphere for days to weeks and travel hundreds to thousands of kilometers.[17]

(b) Health Effects of PM

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in EPA's 2004 Particulate Matter Air Quality Criteria Document (PM AQCD) and the 2005 PM Staff Paper.[18] Further discussion[19] of health effects associated[20] with PM can also be found in the draft RIA for this rule.

Health effects associated with short-term exposures (hours to days) to ambient PM include premature mortality, aggravation of cardiovascular and lung disease (as indicated by increased hospital admissions and

[17] U.S. EPA. (2005). *Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–05–005a. Retrieved March 19, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[18] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter.* Volume I EPA600/P–99/002aF and Volume II EPA600/P–99/002bF. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[19] U.S. EPA. (2005). *Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–05–005a. Retrieved March 19, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[20] The PM NAAQS is currently under review and the EPA is considering all available science on PM health effects, including information which has been published since 2004, in the development of the upcoming PM Integrated Science Assessment Document (ISA). A first draft of the PM ISA was completed in December 2008 and was submitted for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. Comments from the general public have also been requested. For more information, see *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201805.*

emergency department visits), increased respiratory symptoms including cough and difficulty breathing, decrements in lung function, altered heart rate rhythm, and other more subtle changes in blood markers related to cardiovascular health.[21] Long-term exposure to $PM_{2.5}$ and sulfates has also been associated with mortality from cardiopulmonary disease and lung cancer, and effects on the respiratory system such as reduced lung function growth or development of respiratory disease. A new analysis shows an association between long-term $PM_{2.5}$ exposure and a measure of atherosclerosis development.[22, 23]

Studies examining populations exposed over the long term (one or more years) to different levels of air pollution, including the Harvard Six Cities Study and the American Cancer Society Study, show associations between long-term exposure to ambient $PM_{2.5}$ and both total and cardiopulmonary premature mortality.[24] In addition[25], an extension[26] of the American Cancer Society Study shows an association between $PM_{2.5}$ and sulfate concentrations and lung cancer mortality.[27]

(c) Health Effects of Diesel Particulate Matter

Marine diesel engines emit diesel exhaust (DE), a complex mixture composed of carbon dioxide, oxygen, nitrogen, water vapor, carbon monoxide, nitrogen compounds, sulfur compounds and numerous low-molecular-weight hydrocarbons. A number of these gaseous hydrocarbon components are individually known to be toxic, including aldehydes, benzene and 1,3-butadiene. The diesel particulate matter (DPM) present in DE consists of fine particles (< 2.5 μm), including a subgroup with a large number of ultrafine particles (< 0.1 μm). These particles have a large surface area which makes them an excellent medium for adsorbing organics and their small size makes them highly respirable. Many of the organic compounds present in the gases and on the particles, such as polycyclic organic matter (POM), are individually known to have mutagenic and carcinogenic properties. Diesel exhaust varies significantly in chemical composition and particle sizes between different engine types (heavy-duty, light-duty), engine operating conditions (idle, accelerate, decelerate), and fuel formulations (high/low sulfur fuel). Also, there are emissions differences between on-road and nonroad engines because the nonroad engines are generally of older technology. This is especially true for marine diesel engines.[28]

After being emitted in the engine exhaust, diesel exhaust undergoes dilution as well as chemical and physical changes in the atmosphere. The lifetime for some of the compounds present in diesel exhaust ranges from hours to days.[29]

(i) Diesel Exhaust: Potential Cancer Effects

In EPA's 2002 Diesel Health Assessment Document (Diesel HAD),[30] exposure to diesel exhaust was classified as likely to be carcinogenic to humans by inhalation from environmental exposures, in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar classifications. However, EPA also concluded in the Diesel HAD that it is not possible currently to calculate a cancer unit risk for diesel exhaust due to a variety of factors that limit the current studies, such as limited quantitative exposure histories in occupational groups investigated for lung cancer.

For the Diesel HAD, EPA reviewed 22 epidemiologic studies on the subject of the carcinogenicity of workers exposed to diesel exhaust in various occupations, finding increased lung cancer risk, although not always statistically significant, in 8 out of 10 cohort studies and 10 out of 12 case-control studies within several industries. Relative risk for lung cancer associated with exposure ranged from 1.2 to 1.5, although a few studies show relative risks as high as 2.6. Additionally, the Diesel HAD also relied on two independent meta-analyses, which examined 23 and 30 occupational studies respectively, which found statistically significant increases in smoking-adjusted relative lung cancer risk associated with exposure to diesel exhaust of 1.33 to 1.47. These meta-analyses demonstrate the effect of pooling many studies and in this case show the positive relationship between diesel exhaust exposure and lung cancer across a variety of diesel exhaust-exposed occupations.[31,32]

In the absence of a cancer unit risk, the Diesel HAD sought to provide additional insight into the significance of the diesel exhaust-cancer hazard by

[21] U.S. EPA. (2006). *National Ambient Air Quality Standards for Particulate Matter; Proposed Rule.* 71 FR 2620, January 17, 2006.

[22] Künzli, N., Jerrett, M., Mack, W.J., *et al.* (2004). Ambient air pollution and atherosclerosis in Los Angeles. *Environ Health Perspect.,113,* 201–206

[23] This study is included in the 2006 Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure. The provisional assessment did not and could not (given a very short timeframe) undergo the extensive critical review by CASAC and the public, as did the PM AQCD. The provisional assessment found that the ''new'' studies expand the scientific information and provide important insights on the relationship between PM exposure and health effects of PM. The provisional assessment also found that ''new'' studies generally strengthen the evidence that acute and chronic exposure to fine particles and acute exposure to thoracic coarse particles are associated with health effects. Further, the provisional science assessment found that the results reported in the studies did not dramatically diverge from previous findings, and taken in context with the findings of the AQCD, the new information and findings did not materially change any of the broad scientific conclusions regarding the health effects of PM exposure made in the AQCD. However, it is important to note that this assessment was limited to screening, surveying, and preparing a provisional assessment of these studies. For reasons outlined in Section I.C of the preamble for the final PM NAAQS rulemaking in 2006 (see 71 FR 61148–49, October 17, 2006), EPA based its NAAQS decision on the science presented in the 2004 AQCD.

[24] Dockery, D.W., Pope, C.A. III, Xu, X, *et al.* (1993). An association between air pollution and mortality in six U.S. cities. *N Engl J Med, 329,* 1753–1759. Retrieved on March 19, 2009 from *http://content.nejm.org/cgi/content/full/329/24/1753.*

[25] Pope, C.A., III, Thun, M.J., Namboodiri, M.M., Dockery, D.W., Evans, J.S., Speizer, F.E., and Heath, C.W., Jr. (1995). Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. *Am. J. Respir. Crit. Care Med, 151,* 669–674.

[26] Krewski, D., Burnett, R.T., Goldberg, M.S., *et al.* (2000). *Reanalysis of the Harvard Six Cities study and the American Cancer Society study of particulate air pollution and mortality.* A special report of the Institute's Particle Epidemiology Reanalysis Project. Cambridge, MA: Health Effects Institute. Retrieved on March 19, 2009 from *http://es.epa.gov/ncer/science/pm/hei/Rean-ExecSumm.pdf.*

[27] Pope, C. A., III, Burnett, R.T., Thun, M. J., Calle, E.E., Krewski, D., Ito, K., Thurston, G.D., (2002). Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *J. Am. Med. Assoc., 287,* 1132–1141.

[28] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* pp. 1–1 1–2.

[29] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.*

[30] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* pp. 1–1 1–2.

[31] Bhatia, R., Lopipero, P., Smith, A. (1998). Diesel exposure and lung cancer. *Epidemiology, 9(1),* 84–91.

[32] Lipsett, M., Campleman, S. (1999). Occupational exposure to diesel exhaust and lung cancer: a meta-analysis. *Am J Public Health, 80(7),* 1009–1017.

estimating possible ranges of risk that might be present in the population. An exploratory analysis was used to characterize a possible risk range by comparing a typical environmental exposure level for highway diesel sources to a selected range of occupational exposure levels. The occupationally observed risks were then proportionally scaled according to the exposure ratios to obtain an estimate of the possible environmental risk. A number of calculations are needed to accomplish this, and these can be seen in the EPA Diesel HAD. The outcome was that environmental risks from diesel exhaust exposure could range from a low of 10^{-4} to 10^{-5} to as high as 10^{-3}, reflecting the range of occupational exposures that could be associated with the relative and absolute risk levels observed in the occupational studies. Because of uncertainties, the analysis acknowledged that the risks could be lower than 10^{-4} or 10^{-5}, and a zero risk from diesel exhaust exposure was not ruled out.

(ii) Diesel Exhaust: Other Health Effects

Noncancer health effects of acute and chronic exposure to diesel exhaust emissions are also of concern to the EPA. EPA derived a diesel exhaust reference concentration (RfC) from consideration of four well-conducted chronic rat inhalation studies showing adverse pulmonary effects.[33,34,35,36] The RfC is 5 μg/m^3 for diesel exhaust as measured by DPM. This RfC does not consider allergenic effects such as those associated with asthma or immunologic effects. There is growing evidence, discussed in the Diesel HAD, that exposure to diesel exhaust can exacerbate these effects, but the exposure-response data are presently lacking to derive an RfC. The EPA Diesel HAD states, ''With DPM [diesel particulate matter] being a ubiquitous component of ambient PM, there is an uncertainty about the adequacy of the existing DE [diesel exhaust] noncancer database to identify all of the pertinent DE-caused noncancer health hazards.'' (p. 9–19). The Diesel HAD concludes ''that acute exposure to DE [diesel exhaust] has been associated with irritation of the eye, nose, and throat, respiratory symptoms (cough and phlegm), and neurophysiological symptoms such as headache, lightheadedness, nausea, vomiting, and numbness or tingling of the extremities.''[37]

(iii) Ambient $PM_{2.5}$ Levels and Exposure to Diesel Exhaust PM

The Diesel HAD also briefly summarizes health effects associated with ambient PM and discusses the EPA's annual $PM_{2.5}$ NAAQS of 15 μg/m^3. There is a much more extensive body of human data showing a wide spectrum of adverse health effects associated with exposure to ambient PM, of which diesel exhaust is an important component. The $PM_{2.5}$ NAAQS is designed to provide protection from the noncancer and premature mortality effects of $PM_{2.5}$ as a whole.

(iv) Diesel Exhaust PM Exposures

Exposure of people to diesel exhaust depends on their various activities, the time spent in those activities, the locations where these activities occur, and the levels of diesel exhaust pollutants in those locations. The major difference between ambient levels of diesel particulate and exposure levels for diesel particulate is that exposure accounts for a person moving from location to location, proximity to the emission source, and whether the exposure occurs in an enclosed environment.

Occupational Exposures

Occupational exposures to diesel exhaust from mobile sources, including marine diesel engines, can be several orders of magnitude greater than typical exposures in the non-occupationally exposed population.

Over the years, diesel particulate exposures have been measured for a number of occupational groups. A wide range of exposures have been reported, from 2 μg/m^3 to 1,280 μg/m^3, for a variety of occupations. As discussed in the Diesel HAD, the National Institute of Occupational Safety and Health (NIOSH) has estimated a total of 1,400,000 workers are occupationally exposed to diesel exhaust from on-road and nonroad vehicles including marine diesel engines.

Elevated Concentrations and Ambient Exposures in Mobile Source-Impacted Areas

Regions immediately downwind of marine ports may experience elevated ambient concentrations of directly-emitted $PM_{2.5}$ from diesel engines. Due to the unique nature of marine ports, emissions from a large number of diesel engines are concentrated in a small area.

A 2006 study from the California Air Resources Board (CARB) evaluated air quality impacts of diesel engine emissions within the Ports of Long Beach and Los Angeles in California, one of the largest ports in the U.S.[38] The port study employed the ISCST3 dispersion model. With local meteorological data used in the modeling, annual average concentrations were substantially elevated over an area exceeding 200,000 acres. Because the ports are located near heavily-populated areas, the modeling indicated that over 700,000 people lived in areas with at least 0.3 μg/m^3 of port-related diesel PM in ambient air, about 360,000 people lived in areas with at least 0.6 μg/m^3 of diesel PM, and about 50,000 people lived in areas with at least 1.5 μg/m^3, of ambient diesel PM directly from the port. This study highlights the substantial contribution ports can make to elevated ambient concentrations in populated areas.

EPA recently updated its initial screening-level analysis of a representative selection of national marine port areas to better understand the populations that are exposed to DPM emissions from these facilities.[39, 40, 41, 42] As part of this study,

[33] Ishinishi, N. Kuwabara, N. Takaki, Y., *et al.* (1988) Long-term inhalation experiments on diesel exhaust. In: *Diesel exhaust and health risks.* Results of the HERP studies. Ibaraki, Japan: Research Committee for HERP Studies; pp. 11–84.

[34] Henrich, U., Fuhst, R., Rittinghausen, S., *et al.* (1995). Chronic inhalation exposure of Wistar rats and two different strains of mice to diesel engine exhaust, carbon black, and titanium dioxide. *Inhal Toxicol, 7,* 553–556.

[35] Mauderly, J.L., Jones, R.K., Griffith, W.C., *et al.* (1987). Diesel exhaust is a pulmonary carcinogen in rats exposted chronically by inhalation. *Fundam. Appl. Toxicol., 9,* 208–221.

[36] Nikula, K.J., Snipes, M.B., Barr, E.B., *et al.* (1995). Comparative pulmonary toxicities and carcinogenicities of chronically inhaled diesel exhaust and carbon black in F344 rats. *Fundam. Appl. Toxicol, 25,* 80–94.

[37] U.S. EPA (2002). *Health Assessment Document for Diesel Engine Exhaust.* EPA/600/8–90/057F Office of Research and Development, Washington DC. Retrieved on March 17, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060.* p. 9–9.

[38] Di, P., Servin, A., Rosenkranz, K., Schwehr, B., Tran, H., (2006). *Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach.* Sacramento, CA: California EPA, California Air Resources Board (CARB). Retrieved March 19, 2009 from *http://www.arb.ca.gov/regact/marine2005/portstudy0406.pdf.*

[39] ICF International. September 28, 2007. Estimation of diesel particulate matter concentration isopleths for marine harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[40] ICF International. September 28, 2007. Estimation of diesel particulate matter population exposure near selected harbor areas and rail yards. Memorandum to EPA under Work Assignment Number 0–3, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[41] ICF International, December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions. Memorandum to EPA under Work Assignment Number 2–9. Contract Number

a computer geographic information system (GIS) was used to identify the locations and property boundaries of 45 marine ports.[43] Census information was used to estimate the size and demographic characteristics of the population living in the vicinity of the ports. The results indicate that at least 18 million people, including a disproportionate number of low-income households, African-Americans, and Hispanics, live in the vicinity of these facilities and are being exposed to ambient DPM levels that are 2.0 $\mu g/m^3$ and 0.2 $\mu g/m^3$ above levels found in areas further from these facilities. These populations will benefit from the combination of the proposed CAA standards along with ECA designations through MARPOL Annex VI. This study is discussed in greater detail in Chapter 2 of the draft RIA and detailed findings of this study are available in the public docket for this rulemaking.

(2) Ozone

(a) Background

Ground-level ozone pollution is typically formed by the reaction of VOC and NO_X in the lower atmosphere in the presence of heat and sunlight. These pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, such as highway and nonroad motor vehicles and engines, power plants, chemical plants, refineries, makers of consumer and commercial products, industrial facilities, and smaller area sources.

The science of ozone formation, transport, and accumulation is complex.[44] Ground-level ozone is produced and destroyed in a cyclical set of chemical reactions, many of which are sensitive to temperature and sunlight. When ambient temperatures and sunlight levels remain high for several days and the air is relatively stagnant, ozone and its precursors can build up and result in more ozone than typically occurs on a single high-temperature day. Ozone can be transported hundreds of miles downwind from precursor emissions, resulting in elevated ozone levels even in areas with low local VOC or NO_X emissions.

(b) Health Effects of Ozone

The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 Air Quality Criteria Document (ozone AQCD) and 2007 Staff Paper.[45,46] Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply; breathing may also become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require medical attention and/or the use of additional medication. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and highly suggestive evidence that short-term ozone exposure directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality, but additional research is needed to clarify the underlying mechanisms causing these effects. In a recent report on the estimation of ozone-related premature mortality published by the National Research Council (NRC), a panel of experts and reviewers concluded that short-term exposure to ambient ozone is likely to contribute to premature deaths and that ozone-related mortality should be included in estimates of the health benefits of reducing ozone exposure.[47] Animal toxicological evidence indicates that with repeated exposure, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. People who are more susceptible to effects associated with exposure to ozone can include children, the elderly, and individuals with respiratory disease such as asthma. Those with greater exposures to ozone, for instance due to time spent outdoors (*e.g.,* children and outdoor workers), are of particular concern.

The 2006 ozone AQCD also examined relevant new scientific information that has emerged in the past decade, including the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital admissions and premature mortality. Animal toxicological studies have suggested potential interactions between ozone and PM with increased responses observed to mixtures of the two pollutants compared to either ozone or PM alone. The respiratory morbidity observed in animal studies along with the evidence from epidemiologic studies supports a causal relationship between acute ambient ozone exposures and increased respiratory-related emergency room visits and hospitalizations in the warm season. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and non-accidental and cardiopulmonary mortality.

(3) NO_X and SO_X

(a) Background

Nitrogen dioxide (NO_2) is a member of the NO_X family of gases. Most NO_2 is formed in the air through the oxidation of nitric oxide (NO) emitted when fuel is burned at a high temperature. SO_2, a member of the sulfur oxide (SO_X) family of gases, is formed from burning fuels containing sulfur (*e.g.,* coal or oil derived), extracting gasoline from oil, or extracting metals from ore.

SO_2 and NO_2 can dissolve in water vapor and further oxidize to form sulfuric and nitric acid which react with ammonia to form sulfates and nitrates, both of which are important components of ambient PM. The health effects of ambient PM are discussed in Section II.A.1 of this preamble. NO_X along with non-methane hydrocarbon (NMHC) are the two major precursors of ozone. The health effects of ozone are covered in Section II.A.2.

(b) *Health Effects of NO_X*

Information on the health effects of NO_2 can be found in the U.S. Environmental Protection Agency Integrated Science Assessment (ISA) for Nitrogen Oxides.[48] The U.S. EPA has

EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[42] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions. Memorandum to EPA under Work Assignment Number 1–9. Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[43] The Agency selected a representative sample from the top 150 U.S. ports including coastal, inland, and Great Lake ports.

[44] U.S. EPA. (2006). *Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final).* EPA/600/R–05/004aF-cF. Washington, DC: U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[45] U.S. EPA. (2006). *Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final).* EPA/600/R–05/004aF-cF. Washington, DC: U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[46] U.S. EPA (2007). *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–07–003. Washington, DC, U.S. EPA. Retrieved on March 19, 2009 from Docket EPA–HQ–OAR–2003–0190 at *http://www.regulations.gov/.*

[47] National Research Council (NRC), 2008. *Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution.* The National Academies Press: Washington, DC.

[48] U.S. EPA (2008). *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report).* EPA/600/R–08/071. Washington, DC: U.S.EPA. Retrieved on March 19, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645.*

concluded that the findings of epidemiologic, controlled human exposure, and animal toxicological studies provide evidence that is sufficient to infer a likely causal relationship between respiratory effects and short-term NO_2 exposure. The ISA concludes that the strongest evidence for such a relationship comes from epidemiologic studies of respiratory effects including symptoms, emergency department visits, and hospital admissions. The ISA also draws two broad conclusions regarding airway responsiveness following NO_2 exposure. First, the ISA concludes that NO_2 exposure may enhance the sensitivity to allergen-induced decrements in lung function and increase the allergen-induced airway inflammatory response at exposures as low as 0.26 ppm NO_2 for 30 minutes. Second, exposure to NO_2 has been found to enhance the inherent responsiveness of the airway to subsequent nonspecific challenges in controlled human exposure studies of asthmatic subjects. Enhanced airway responsiveness could have important clinical implications for asthmatics since transient increases in airway responsiveness following NO_2 exposure have the potential to increase symptoms and worsen asthma control. Together, the epidemiologic and experimental data sets form a plausible, consistent, and coherent description of a relationship between NO_2 exposures and an array of adverse health effects that range from the onset of respiratory symptoms to hospital admission.

Although the weight of evidence supporting a causal relationship is somewhat less certain than that associated with respiratory morbidity, NO_2 has also been linked to other health endpoints. These include all-cause (nonaccidental) mortality, hospital admissions or emergency department visits for cardiovascular disease, and decrements in lung function growth associated with chronic exposure.

(c) Health Effects of SO_X

Information on the health effects of SO_2 can be found in the U.S. Environmental Protection Agency Integrated Science Assessment for Sulfur Oxides.[49] SO_2 has long been known to cause adverse respiratory health effects, particularly among individuals with asthma. Other potentially sensitive groups include children and the elderly. During periods of elevated ventilation, asthmatics may experience symptomatic bronchoconstriction within minutes of exposure. Following an extensive evaluation of health evidence from epidemiologic and laboratory studies, the EPA has concluded that there is a causal relationship between respiratory health effects and short-term exposure to SO_2. Separately, based on an evaluation of the epidemiologic evidence of associations between short-term exposure to SO_2 and mortality, the EPA has concluded that the overall evidence is suggestive of a causal relationship between short-term exposure to SO_2 and mortality.

B. Environmental Impacts

(1) Deposition of Nitrogen and Sulfur

Emissions of NO_X and SO_X from ships contribute to atmospheric deposition of nitrogen and sulfur in the U.S. Atmospheric deposition of nitrogen and sulfur contributes to acidification, altering biogeochemistry and affecting animal and plant life in terrestrial and aquatic ecosystems across the U.S. The sensitivity of terrestrial and aquatic ecosystems to acidification from nitrogen and sulfur deposition is predominantly governed by geology. Prolonged exposure to excess nitrogen and sulfur deposition in sensitive areas acidifies lakes, rivers and soils. Increased acidity in surface waters creates inhospitable conditions for biota and affects the abundance and nutritional value of preferred prey species, threatening biodiversity and ecosystem function. Over time, acidifying deposition also removes essential nutrients from forest soils, depleting the capacity of soils to neutralize future acid loadings and negatively affecting forest sustainability. Major effects include a decline in sensitive forest tree species, such as red spruce (*Picea rubens*) and sugar maple (*Acer saccharum*), and a loss of biodiversity of fishes, zooplankton, and macro invertebrates.

In addition to the role nitrogen deposition plays in acidification, nitrogen deposition also causes ecosystem nutrient enrichment leading to eutrophication that alters biogeochemical cycles. Excess nitrogen also leads to the loss of nitrogen sensitive lichen species as they are outcompeted by invasive grasses as well as altering the biodiversity of terrestrial ecosystems, such as grasslands and meadows. Nitrogen deposition contributes to eutrophication of estuaries and the associated effects including toxic algal blooms and fish kills. For a broader explanation of the topics treated here, refer to the description in Section 2.3.1 of the draft RIA.

There are a number of important quantified relationships between nitrogen deposition levels and ecological effects. Certain lichen species are the most sensitive terrestrial taxa to nitrogen with species losses occurring at just 3 kg N/ha/yr in the Pacific Northwest, southern California and Alaska. A United States Forest Service study conducted in areas within the Tongass Forest in Southeast Alaska found evidence of sulfur emissions impacting lichen communities.[50] The authors concluded that the main source of nitrogen and sulfur found in lichens from Mt. Roberts (directly north of the City of Juneau in southeastern Alaska) is likely the burning of fossil fuels by cruise ships and other vehicles and equipment in Juneau.

Lichen are an important food source for caribou. This is causing concern about the potential role damage to lichens may be having on the Southern Alaska Peninsula Caribou Herd, which is an important food source to local subsistence-based cultures. This herd has been decreasing in size, exhibiting both poor calf survival and low pregnancy rates, which are signs of dietary stress. Currently, there is a complete caribou hunting ban, including a ban on subsistence hunting.

Across the U.S., there are many terrestrial and aquatic ecosystems that have been identified as particularly sensitive to nitrogen deposition. The most extreme effects resulting from nitrogen deposition on aquatic ecosystems are due to nitrogen enrichment which contributes to ''hypoxic'' zones devoid of life. Three hypoxia zones of special concern in the U.S. are the zones located in the Gulf of Mexico, the Chesapeake Bay in the mid-Atlantic region, and Long Island Sound in the northeast U.S.[51]

(2) Deposition of Particulate Matter and Air Toxics

The combination of the proposed CAA NO_X standards along with ECA designation through amendment to MARPOL Annex VI would reduce NO_X, SO_X, and $PM_{2.5}$ emissions from ships.

[49] U.S. EPA. (2008). *Integrated Science Assessment (ISA) for Sulfur Oxides—Health Criteria (Final Report).* EPA/600/R–08/047F. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198843*

[50] Dillman, K., Geiser, L., & Brenner, G. (2007). *Air Quality Bio-Monitoring with Lichens.* The Togass National Forest. USDA Forest Service. Retrieved March 18, 2009 from *http://gis.nacse.org/lichenair/?page=reports.*

[51] U.S. EPA. (2008). *Nitrogen Dioxide/Sulfur Dioxide Secondary NAAQS Review: Integrated Science Assessment (ISA).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=180903*

Ship emissions of $PM_{2.5}$ contain small amounts of metals: nickel, vanadium, cadmium, iron, lead, copper, zinc, aluminum.[52] [53] [54] Investigations of trace metals near roadways and industrial facilities indicate that a substantial burden of heavy metals can accumulate on vegetative surfaces. Copper, zinc, and nickel are directly toxic to vegetation under field conditions.[55] While metals typically exhibit low solubility, limiting their bioavailability and direct toxicity, chemical transformations of metal compounds occur in the environment, particularly in the presence of acidic or other oxidizing species. These chemical changes influence the mobility and toxicity of metals in the environment. Once taken up into plant tissue, a metal compound can undergo chemical changes, accumulate and be passed along to herbivores, or can re-enter the soil and further cycle in the environment.

Although there has been no direct evidence of a physiological association between tree injury and heavy metal exposures, heavy metals have been implicated because of similarities between metal deposition patterns and forest decline.[56] [57] This correlation was further explored in high elevation forests in the northeast U.S. and the data strongly imply that metal stress causes tree injury and contributes to forest decline in the Northeast.[58] Contamination of plant leaves by heavy metals can lead to elevated soil levels. Trace metals absorbed into the plant frequently bind to the leaf tissue, and then are lost when the leaf drops. As the fallen leaves decompose, the heavy metals are transferred into the soil.[59] [60]

Ships also emit air toxics, including polycyclic aromatic hydrocarbons (PAHs), a class of polycyclic organic matter (POM) that contains compounds which are known or suspected carcinogens. Since the majority of PAHs are adsorbed onto particles less than 1.0 μm in diameter, long range transport is possible. Particles of this size can remain airborne for days or even months and travel distances up to 10,000 km before being deposited on terrestrial or aquatic surfaces.[61] Atmospheric deposition of particles is believed to be the major source of PAHs to the sediments of Lake Michigan, Chesapeake Bay, Tampa Bay and other coastal areas of the U.S.[62] [63] [64] [65] [66] PAHs tend to accumulate in sediments and reach high enough concentrations in some coastal environments to pose an environmental health threat that includes cancer in fish populations, toxicity to organisms living in the sediment, and risks to those (*e.g.,* migratory birds) that consume these organisms.[67] [68] PAHs tend to accumulate in sediments and bioaccumulate in fresh water, flora and fauna.

The deposition of airborne particles can reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion.[69] Particles affect materials principally by promoting and accelerating the corrosion of metals, by degrading paints, and by deteriorating building materials such as concrete and limestone. Particles contribute to these effects because of their electrolytic, hygroscopic, and acidic properties, and their ability to adsorb corrosive gases (principally sulfur dioxide). The rate of metal corrosion depends on a number of factors, including the deposition rate and nature of the pollutant; the influence of the metal protective corrosion film; the amount of moisture present; variability in the electrochemical reactions; the presence and concentration of other surface electrolytes; and the orientation of the metal surface.

(3) Impacts on Visibility

Emissions from ships contribute to poor visibility in the U.S. through their primary $PM_{2.5}$ emissions, as well as NO_X and SO_X emissions which contribute to the formation of secondary $PM_{2.5}$.[70] Visibility can be defined as the degree to which the atmosphere is transparent to visible light. Airborne particles degrade visibility by scattering and absorbing light. Visibility is important because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly where they live and work and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and wilderness areas, and special emphasis is given to

[52] Agrawal H., Malloy Q.G.J., Welch W.A., Wayne Miller J., Cocker III D.R. (2008) In-use gaseous and particulate matter emissions from a modern ocean going container vessel. *Atmospheric Environment, 42(21),* 5504–5510.

[53] Miller, W., *et al.* (2008 June 10). *Measuring Emissions from Ocean Going Vessels.* Presentation presented at the Fuel, Engines, and Control Devices Workshop, San Pedro, California.

[54] Isakson J., Persson T.A., E. Selin Lindgren E. (2001) Identification and assessment of ship emissions and their effects in the harbour of Gteborg, Sweeden. *Atmospheric Environment, 35(21),* 3659–3666.

[55] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

[56] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

[57] Gawel, J. E.; Ahner, B. A.; Friedland, A. J.; Morel, F. M. M. (1996) Role for heavy metals in forest decline indicated by phytochelatin measurements. *Nature (London), 381,* 64–65.

[58] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

[59] Cotrufo M.F., De Santo A.V., Alfani A., Bartoli G., De Cristofaro A. (1995) Effects of urban heavy metal pollution on organic matter decomposition in Quercus ilex L. Woods. *Environmental Pollution, 89(1),* 81–87.

[60] Niklinska M., Laskowski R., Maryanski M. (1998). Effect of heavy metals and storage time on two types of forest litter: basal respiration rate and exchangeable metals. *Ecotoxicological Environmental Safety, 41,* 8–18.

[61] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

[62] Dickhut R.M., Canuel E.A., Gustafson K.E., Liu K., Arzayus K.M., Walker S.E., Edgecombe G., Gaylor M.O., MacDonald E.H. (2000). Automotive Sources of Carcinogenic Polycyclic Aromatic Hydrocarbons Associated with Particulate Matter in the Chesapeake Bay Region. *Environmental Science & Technology, 34(21),* 4635–4640.

[63] Simcik M.F., Eisenreich, S.J., Golden K.A., *et al.* (1996) Atmospheric Loading of Polycyclic Aromatic Hydrocarbons to Lake Michigan as Recorded in the Sediments. *Environmental Science and Technology, 30,* 3039–3046.

[64] Simcik M.F., Eisenreich S.J., Lioy P.J. (1999) Source apportionment and source/sink relationship of PAHs in the coastal atmosphere of Chicago and Lake Michigan. *Atmospheric Environment, 33,* 5071–5079.

[65] Poor N., Tremblay R., Kay H., *et al.* (2002) Atmospheric concentrations and dry deposition rates of polycyclic aromatic hydrocarbons (PAHs) for Tampa Bay, Florida, USA. *Atmospheric Environment, 38,* 6005–6015.

[66] Arzavus K.M., Dickhut R.M., Canuel E.A. (2001) Fate of Atmospherically Deposited Polycyclic Aromatic Hydrocarbons (PAHs) in Chesapeake Bay. *Environmental Science & Technology, 35,* 2178–2183.

[67] Simcik M.F., Eisenreich, S.J., Golden K.A., *et al.* (1996) Atmospheric Loading of Polycyclic Aromatic Hydrocarbons to Lake Michigan as Recorded in the Sediments. *Environmental Science and Technology, 30,* 3039–3046.

[68] Simcik M.F., Eisenreich S.J., Lioy P.J. (1999) Source apportionment and source/sink relationship of PAHs in the coastal atmosphere of Chicago and Lake Michigan. *Atmospheric Environment, 33,* 5071–5079.

[69] U.S. EPA. (2005). Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. Retrieved on April 9, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[70] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

protecting visibility in these areas. For more information on visibility, see the final 2004 PM AQCD as well as the 2005 PM Staff Paper.[71, 72]

EPA is pursuing a two-part strategy to address visibility. First, to address the welfare effects of PM on visibility, EPA has set secondary $PM_{2.5}$ standards which act in conjunction with the establishment of a regional haze program. In setting this secondary standard, EPA has concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. Second, section 169 of the Clean Air Act provides additional authority to address existing visibility impairment and prevent future visibility impairment in the 156 national parks, forests and wilderness areas categorized as mandatory class I Federal areas (62 FR 38680–81, July 18, 1997).[73] In July 1999, the regional haze rule (64 FR 35714) was put in place to protect the visibility in mandatory class I Federal areas. Visibility can be said to be impaired in both $PM_{2.5}$ nonattainment areas and mandatory class I Federal areas.

(4) Plant and Ecosystem Effects of Ozone

Elevated ozone levels contribute to environmental effects, with impacts to plants and ecosystems being of most concern. Ozone can produce both acute and chronic injury in sensitive species depending on the concentration level and the duration of the exposure. Ozone effects also tend to accumulate over the growing season of the plant, so that even low concentrations experienced for a longer duration have the potential to create chronic stress on vegetation. Ozone damage to plants includes visible injury to leaves and a reduction in food production through impaired photosynthesis, both of which can lead to reduced crop yields, forestry production, and use of sensitive ornamentals in landscaping. In addition, the reduced food production in plants and subsequent reduced root growth and storage below ground, can result in other, more subtle plant and ecosystems impacts. These include increased susceptibility of plants to insect attack, disease, harsh weather, interspecies competition and overall decreased plant vigor. The adverse effects of ozone on forest and other natural vegetation can potentially lead to species shifts and loss from the affected ecosystems, resulting in a loss or reduction in associated ecosystem goods and services. Lastly, visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance like national parks and wilderness areas. The final 2006 ozone AQCD presents more detailed information on ozone effects on vegetation and ecosystems.

C. Air Quality Modeling Results

Air quality modeling was performed to assess the impact of the combination of the proposed CAA NO_X standards along with ECA designation through Amendment to MARPOL Annex VI. We looked at impacts on future ambient $PM_{2.5}$ and ozone levels, as well as nitrogen and sulfur deposition levels and visibility impairment. In this section, we present information on current levels of pollution as well as model projected levels of pollution for 2020 and 2030.[74]

The air quality modeling uses EPA's Community Multiscale Air Quality (CMAQ) model. The CMAQ modeling domain is rectangular in shape and encompasses all of the lower 48 states, portions of Canada and Mexico, and areas extending into the ocean up to 1,000 nautical miles (nm), depending on the coast. The smallest area of ocean coverage is over the northeast U.S. In places like Maine and Cape Cod, the easternmost points of the contiguous U.S., the distance to the edge of the CMAQ modeling domain is approximately 150 nm. The rest of the U.S. shoreline has at least 200 nm between the shoreline and boundary of the air quality modeling. The CMAQ modeling domain is described in more detail in Section 2.4.5.2 of the draft RIA. The performance of the CMAQ modeling was evaluated over a 2002 base case. More detail about the performance evaluation is contained within the Section 2.4.5.4 of the draft RIA. The model was able to reproduce historical concentrations of ozone and $PM_{2.5}$ over the land with low amounts of bias and error. While we are not able to evaluate the model's performance over the ocean, there is no evidence to suggest that model performance is unsatisfactory over the ocean.

(1) Particulate Matter

The vast majority of PM emissions from Category 3 engines are the result of the sulfur content of the residual fuel they use (67 FR 37569, May 29, 2002).[75] Although this proposed rule would not set PM standards, ECA designation would require the use of fuel meeting the most stringent MARPOL Annex VI fuel sulfur limits, yielding significant PM and SO_X reductions.

(a) Current Levels

$PM_{2.5}$ concentrations exceeding the level of the $PM_{2.5}$ NAAQS occur in many parts of the country. In 2005, EPA designated 39 nonattainment areas for the 1997 $PM_{2.5}$ NAAQS (70 FR 943, January 5, 2005). These areas are composed of 208 full or partial counties with a total population exceeding 88 million. The 1997 $PM_{2.5}$ NAAQS was recently revised and the 2006 24-hour $PM_{2.5}$ NAAQS became effective on December 18, 2006. Area designations for the 2006 24-hour $PM_{2.5}$ NAAQS are expected to be promulgated in 2009 and become effective 90 days after publication in the **Federal Register**.

(b) Projected Levels

A number of state governments have told EPA that they need the reductions the coordinated strategy will provide in order to meet and maintain the $PM_{2.5}$ NAAQS.[76] Most areas designated as not attaining the 1997 $PM_{2.5}$ NAAQS will need to attain the 1997 standards in the 2010 to 2015 time frame, and then maintain them thereafter. The 2006 24-hour $PM_{2.5}$ nonattainment areas will be required to attain the 2006 24-hour $PM_{2.5}$ NAAQS in the 2014 to 2019 time frame and then be required to maintain the 2006 24-hour $PM_{2.5}$ NAAQS

[71] U.S. EPA. (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903*

[72] U.S. EPA. (2005). *Review of the National Ambient Air Quality Standard for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper.* EPA–452/R–05–005. Washington, DC: US Environmental Protection Agency.

[73] These areas are defined in section 162 of the Act as those national parks exceeding 6,000 acres, wilderness areas and memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977.

[74] As discussed in Section 3.7 of the draft RIA, the inventories used for the air quality modeling in 2020 and 2030 differ slightly from each other. The difference between 2020 and 2030 is small and was due to an error in calculating the 200 nautical miles distance. In addition, as discussed in Section 3.7 of the draft RIA, the 2020 air quality control case does not include global controls for areas that are beyond 200 nautical miles but within the air quality modeling domain. The impact of this latter difference is expected to be minimal.

[75] As explained in the NPRM, there were no acceptable procedures for measuring PM from Category 3 marine engines. Specifically, established PM test methods showed unacceptable variability when sulfur levels exceed 0.8 weight percent, which was common at that time for both residual and distillate marine fuels for Category 3 engines, and no PM test method or calculation methodology had been developed to correct that variability for these engines.

[76] See the Advanced Notice of Proposed Rule Making at Docket Number: EPA–HQ–OAR–2007–0121.

thereafter. The fuel sulfur emission standards will become effective in 2010 and 2015, and the NO_X engine emission standards will become effective in 2016. Therefore, the coordinated strategy emission reductions will be useful to states in attaining or maintaining the $PM_{2.5}$ NAAQS.

EPA has already adopted many emission control programs that are expected to reduce ambient $PM_{2.5}$ levels and which will assist in reducing the number of areas that fail to achieve the $PM_{2.5}$ NAAQS. Even so, our air quality modeling for this proposal projects that in 2020, with all current controls but excluding the reductions expected to occur as a result of the coordinated strategy, that at least 13 counties with a population of almost 30 million may not attain the 1997 annual $PM_{2.5}$ standard of 15 $\mu g/m^3$.[77] These numbers do not account for additional areas that have air quality measurements above the 2006 24-hour standard of 35 $\mu g/m^3$. The numbers also do not account for those areas that are close to (*e.g.,* within 10 percent of) the 1997 or 2006 $PM_{2.5}$ standard. These areas, although not violating the standards, will also benefit from the additional reductions from this rule ensuring long term maintenance of the $PM_{2.5}$ NAAQS.

Air quality analysis modeling the expected impacts of the coordinated strategy shows that in 2020 and 2030 all of the modeled counties would experience decreases in their annual $PM_{2.5}$ design values. For areas with current annual $PM_{2.5}$ design values greater than 15 $\mu g/m^3$, the modeled future-year, population-weighted annual $PM_{2.5}$ design values are expected to decrease on average by 0.8 $\mu g/m^3$ in 2020 and by 1.7 $\mu g/m^3$ in 2030.[78] The maximum decrease for annual $PM_{2.5}$ design values are projected to be in Miami, FL, with a 3.1 $\mu g/m^3$ decrease for 2020 and a 6.0 $\mu g/m^3$ decrease for 2030. The air quality modeling methodology and the projected reductions are discussed in more detail in Chapter 2 of the draft RIA.

(2) Ozone

(a) Current Levels

The U.S. EPA has recently amended the ozone NAAQS (73 FR 16436, March 27, 2008). That final 2008 ozone NAAQS rule set forth revisions to the previous 1997 NAAQS for ozone to provide increased protection of public health and welfare. As of March 4, 2009, there are 57 areas designated as nonattainment for the 1997 8-hour ozone NAAQS, comprising 293 full or partial counties with a total population of approximately 132 million people. These numbers do not include the people living in areas where there is a future risk of failing to maintain or attain the 1997 8-hour ozone NAAQS. The numbers above likely underestimate the number of counties that are not meeting the ozone NAAQS because the nonattainment areas associated with the more stringent 2008 8-hour ozone NAAQS have not yet been designated. Table II–1 provides an estimate, based on 2005–07 air quality data, of the counties with design values greater than the 2008 8-hour ozone NAAQS of 0.075 ppm.

TABLE II–1—COUNTIES WITH DESIGN VALUES GREATER THAN THE 2008 OZONE NAAQS BASED ON 2005–2007 AIR QUALITY DATA

	Number of counties	Population [a]
1997 Ozone Standard: counties within the 57 areas currently designated as nonattainment (as of 4/3/09)	293	131,977,890
2008 Ozone Standard: additional counties that would not meet the 2008 NAAQS [b]	227	41,285,262
Total	520	173,263,152

Notes:
[a] Population numbers are from 2000 census data.
[b] Attainment designations for the 2008 ozone NAAQS have not yet been made. Nonattainment for the 2008 Ozone NAAQS will be based on three years of air quality data from later years. Also, the county numbers in this row include only the counties with monitors violating the 2008 Ozone NAAQS. The numbers in this table may be an underestimate of the number of counties and populations that will eventually be included in areas with multiple counties designated nonattainment.

(b) Projected Levels (Including Ozone Welfare)

States with 8-hour ozone nonattainment areas are required to take action to bring those areas into compliance in the future. Based on the final rule designating and classifying 8-hour ozone nonattainment areas for the 1997 standard (69 FR 23951, April 30, 2004), most 8-hour ozone nonattainment areas will be required to attain the ozone NAAQS in the 2007 to 2013 time frame and then maintain the NAAQS thereafter. Many of these nonattainment areas will need to adopt additional emission reduction programs, and the NO_X and VOC reductions that would result from the combination of the proposed CAA NO_X standards along with ECA designation through amendment to MARPOL Annex VI would be particularly important for these states. In addition, EPA's revision of the ozone NAAQS was completed with the final rule published on March 27, 2008. The ozone NAAQS revision in 2008 started the process for nonattainment areas to be designated under that standard. While EPA is not relying on the 2008 standard for purposes of justifying this rule, the emission reductions from this rulemaking will also be helpful to states for the more stringent ozone NAAQS.

EPA has already adopted many emission control programs that are expected to reduce ambient ozone levels and assist in reducing the number of areas that fail to achieve the ozone NAAQS. Even so, our air quality modeling projects that in 2020, with all current controls but excluding the reductions achieved through the coordinated strategy, up to 50 counties with a population of almost 50 million may not attain the 2008 ozone standard of 0.075 ppm. These numbers do not account for those areas that are close to (*e.g.,* within 10 percent of) the 2008 ozone standard. These areas, although not violating the standards, will also benefit from the additional reductions from this rule ensuring long-term maintenance of the ozone NAAQS.

[77] See Section 2.4.1.2.2 of the draft RIA, specifically Table 2–9, for more detail.

[78] Note that the 2030 projections are based on a 100 nm ECA so are an underestimate of likely changes to $PM_{2.5}$ design values. Additional detail on the air quality modeling is included in Chapter 2 of the draft RIA.

These air quality modeling results suggest that the proposed emission reductions would improve both the average and population-weighted average ozone concentrations for the U.S. in 2020 and 2030. In addition, the air quality modeling shows that on average the coordinated program described in this action would help bring counties closer to ozone attainment as well as assist counties whose ozone concentrations are within 10 percent below the standard. For example, in projected nonattainment counties, on a population-weighted basis, the 8-hour ozone design value will on average decrease by 0.5 ppb in 2020 and 1.6 ppb in 2030.[79] The air quality modeling methodology and the projected reductions are discussed in more detail in Chapter 2 of the draft RIA.

It should be noted that even though our air quality modeling predicts important reductions in nationwide ozone levels, four counties (of 661 that have monitored data) are expected to experience an increase in their ozone design values in 2030. There are two counties in southern California, Orange County and San Bernardino County, and two counties in Washington, Clallam County and Clark County, which would experience 8-hour ozone design value increases due to the NO_X disbenefits which occur in these VOC-limited ozone nonattainment areas. Briefly, NO_X reductions at certain times and in some areas can lead to increased ozone levels. The air quality modeling methodology (Section 2.4.5), the projected reductions (Section 2.4), and the limited NO_X disbenefits (Section 2.4.2.2.2), are discussed in more detail in Chapter 2 of the draft RIA.

(c) Case Study of Shipping Emissions and Ozone Impacts on Forests

The section below attempts to estimate the impacts of the coordinated strategy on ecological impacts through a case study.

Assessing the impact of ground-level ozone on forests in the eastern United States involves understanding the risk/effect of tree species to ozone ambient concentrations and accounting for the prevalence of those species within the forest. As a way to quantify the risk/effect of particular plants to ground-level ozone, scientists have developed ozone-exposure/tree-response functions by exposing tree seedlings to different ozone levels and measuring reductions in growth as ''biomass loss''.[80]

With knowledge of the distribution of sensitive species and the level of ozone at particular locations, it is possible to estimate a ''biomass loss'' for each species across their range. EPA performed an analysis for 2020 in which we examined biomass loss with and without ship emissions to determine the benefit of reducing these emissions on sensitive tree species in the eastern half of the U.S.[81] The biomass loss attributable to shipping appears to range from 0–6.5% depending on the particular species. The most sensitive species in the U.S. to ozone related biomass loss is black cherry (*Prunus serotina*); the area of its range with more than 10% total biomass loss in 2020 decreased by 8.5% in the case in which emissions from ships were removed. Likewise, yellow-poplar (*Liriodendron tulipifera*), eastern white pine (*Pinus strobus*), aspen (*Populus spp.*), and ponderosa pine (*Pinus ponderosa*) saw areas with more then 2% biomass loss reduced by 2.1% to 3.8% in 2020. This 2% level of biomass loss is important, because a consensus workshop on ozone effects reported that a 2% annual biomass loss causes harm due to the potential for compounding effects over multiple years as short-term negative effects on seedlings affect long-term forest health.[82, 83]

(3) Nitrogen and Sulfur Deposition

(a) Current Levels

Modeling conducted by the EPA for the coordinated strategy shows that in 2020 ships would add significant amounts to sulfur deposition in sensitive ecological areas across the U.S., ranging from 10% to more than 25% of total sulfur deposition along the entire Atlantic, Gulf of Mexico, and Pacific coastal areas of the U.S. This same level of impact would extend inland for hundreds of kilometers, affecting thousands of sensitive ecological areas. This deposition would contribute to the serious problem acidification causes in terrestrial and aquatic ecosystems.

Nitrogen deposition contributes to both acidification and nutrient enrichment. In 2020, ships would contribute a significant percentage of the annual U.S. total nitrogen deposition to many terrestrial and aquatic areas within the U.S. that are potentially sensitive to excess nitrogen. The contribution from ships would range from about 9% to more than 25% along the entire U.S. Atlantic, Pacific and Gulf of Mexico coastal regions. See the draft RIA for more information and detailed maps on sulfur and nitrogen deposition.

(b) Projected Levels

The emissions reductions that would result from the combination of the proposed CAA NO_X standards along with ECA designation through amendment to MARPOL Annex VI and related proposed fuel standards would significantly reduce the annual total sulfur and nitrogen deposition occurring in sensitive U.S. ecosystems including forests, wetlands, lakes, streams, and estuaries. For sulfur deposition, adopting the coordinated strategy would result in reductions ranging from 5% to 20% along the entire Atlantic and Gulf coasts with higher levels of reduction, exceeding 25%, occurring in the near-land coastal waters of the U.S. In a few land areas on the Atlantic and Gulf coasts, such as the southern parts of the States of Louisiana, Texas, and Florida, 2020 sulfur deposition reductions would be much higher, *i.e.,* over 30%. Along the Pacific Coast, sulfur deposition reductions would exceed 25% in the entire Southern California area, and the Pacific Northwest. For a map of 2020 sulfur reductions and additional information on these impacts see Section 2.4.3 of the draft RIA.

Overall, nitrogen deposition reductions in 2020 resulting from the coordinated strategy described in this action are less than sulfur deposition reductions. Nitrogen deposition reductions would range from 3% to 7% along the entire Atlantic, Pacific and Gulf Coasts. As with sulfur deposition reductions, a few areas such as the southern parts of the States of Louisiana, Texas, and Florida would experience larger reductions of nitrogen up to 9%. The Pacific coastal waters would see higher nitrogen reductions, exceeding 20% in some instances. See Section 2.4.3 of the draft RIA for a map and additional information on nitrogen deposition impacts.

[79] Note that the 2030 projections are based on a 100 nm ECA so are an underestimate of likely changes to ozone design values. Additional detail on the air quality modeling is included in Chapter 2 of the draft RIA.

[80] Chappelka, AH, Samuelson, LJ. (1998). Ambient ozone effects on forest trees of the Eastern United States: a review. *New Phytologist, 139,* 91–108.

[81] Note that while the coordinated strategy does not eliminate ship emissions, it will be directionally helpful in reducing ship emissions.

[82] Prasad, A.M, Iverson L.R. (2003). Little's range and FIA importance value database for 135 eastern US tree species. Northeastern Research Station, USDA Forest Service, Delaware, Ohio. [online] Retrieved on March 19, 2009 from http://www.fs.fed.us/ne/delaware/4153/global/littlefia/index.html.

[83] Heck W.W., Cowling E.B. (1997) The need for a Long Term Cumulative Secondary Ozone Standard—an Ecological Perspective. *Air and Waste Management Association, EM,* 23–33.

(4) Visibility

(a) Current Levels

As of March 12, 2008, over 88 million people live in nonattainment areas for the 1997 $PM_{2.5}$ NAAQS. These populations, as well as large numbers of individuals who travel to these areas, are likely to experience visibility impairment. In addition, while visibility trends have improved in mandatory class I Federal areas, the most recent data show that these areas continue to suffer from visibility impairment. In summary, visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote mandatory class I Federal areas.

(b) Projected Levels

The air quality modeling conducted for the coordinated strategy also was used to project visibility conditions in 133 mandatory class I Federal areas across the U.S. in 2020 and 2030. The results indicate that improvements in visibility due to OGV emissions reductions would occur in all 133 class I Federal areas in the future, although all areas would continue to have annual average deciview levels above background in 2020 and 2030.[84] The average visibility on the 20 percent worst days at these scenic locales is projected to improve by 0.21 deciviews, or 1.2 percent.

The greatest improvements in visibilities would occur in coastal areas. For instance, the Agua Tibia Wilderness area (near Los Angeles) would see a 9% improvement (2.17 DV) in 2020 as a result of the emission reductions from the coordinated strategy. National parks and national wilderness areas in other parts of the country would also see improvements. For example, the Cape Romain National Wildlife Refuge (South Carolina) would have a 5% improvement in visibility (1.16 DV) and Acadia National Park (Maine) would have a 4% improvement (0.76 DV) with a 200 nm ECA. Other areas would experience important benefits as well due to the contribution of OGVs to visibility impairment. For example, in 2002, about 3% of visibility impairment in southern Florida's Everglades National Park was due to international shipping (0.61 DV), and this will double to 6% (1.35 DV) by 2020. Even in inland class I Federal areas, international shipping activity is contributing to visibility degradation. In 2020, about 2.5% (0.28 DV) of visibility degradation in the Grand Canyon National Park located in the state of Arizona will be from international shipping, while almost 6% (0.81 DV) of visibility degradation in the State of Washington's North Cascades National Park would be from international shipping emissions. For the table which contains the full visibility results over the 133 analyzed areas see Section 2.2.4.2 of the draft RIA.

D. Emissions From Ships With Category 3 Engines

(1) Overview

This section describes the contribution of Category 3 vessels to national emission inventories of NO_X, $PM_{2.5}$, and SO_2. A Category 3 vessel has a Category 3 propulsion engine. Emissions from a Category 3 vessel include the emissions from both the propulsion and auxiliary engines on that vessel. Propulsion and auxiliary engine emissions were estimated separately to account for differences in emission factors, engine size and load, and activity.

We estimate that in 2009, Category 3 vessels will contribute almost 913,000 tons (10 percent) to the national mobile source NO_X inventory, about 71,000 tons (24 percent) to the mobile source diesel $PM_{2.5}$ inventory, and nearly 597,000 tons (80 percent) to the mobile source SO_2 inventory. Expressed as a percentage of all anthropogenic emissions, Category 3 vessels contribute 6 percent to the national NO_X inventory, 3 percent to the national $PM_{2.5}$ inventory, and 11 percent to the total SO_2 inventory in 2009. In 2030, absent the strategy discussed in this proposal, these vessels will contribute about 2.1 million tons (40 percent) to the mobile source NO_X inventory, 168,000 tons (75 percent) to the mobile source diesel $PM_{2.5}$ inventory, and about 1.4 million tons (95 percent) to the mobile source SO_2 inventory. Expressed as a percentage of all anthropogenic emissions, Category 3 vessels will contribute 19 percent to the national NO_X inventory, 5 percent to the national $PM_{2.5}$ inventory, and 15 percent to the total SO_2 inventory in 2030. Under this strategy, by 2030, annual NO_X emissions from these vessels would be reduced by 1.2 million tons, $PM_{2.5}$ emissions by 143,000 tons, and SO_2 emissions by 1.3 million tons.[85]

Each sub-section below discusses one of the three affected pollutants, including expected emission reductions that would result from the combination of the proposed CAA NO_X standards along with the ECA designation through amendment to MARPOL Annex VI and related proposed fuel standards. Table II–2 summarizes the impacts of these reductions for 2020 and 2030. Table II–3 provides the estimated 2030 NO_X emission reductions (and PM reductions) for the coordinated strategy compared to the Locomotive and Marine rule, Clean Air Nonroad Diesel (CAND) program, and the Heavy-Duty Highway rule. Further details on our inventory estimates are available in Chapter 3 of the draft RIA.

As described in Chapter 3 of the draft RIA, the ocean-going vessel emission inventories presented in this section are estimated by combining two sets of emissions inventories, one for U.S. port areas and one for operation on the open ocean. With regard to operation on the open ocean, it was necessary to specify an outer boundary of the modeling domain; otherwise, emissions from ships operating as far away as Asia or Europe would be included in the U.S. emission inventory. For simplicity, we set the outer boundary for inventory modeling roughly equivalent to the U.S. Exclusive Economic Zone (EEZ). It consists of the area that extends 200 nautical miles (nm) from the official U.S. baseline, which is recognized as the low-water line along the coast as marked on the official U.S. nautical charts in accordance with the articles of the Law of the Sea. The U.S. region was then clipped to the boundaries of the U.S. EEZ. While this area will exclude emissions that occur outside the 200 nm boundary but that are transported to the U.S. landmass, it has the advantage of corresponding to an area in which the United States has a clear environmental interest. This area also corresponds well to the CMAQ modeling domain for most coasts.

[84] The level of visibility impairment in an area is based on the light-extinction coefficient and a unit less visibility index, called a ''deciview'', which is used in the valuation of visibility. The deciview metric provides a scale for perceived visual changes over the entire range of conditions, from clear to hazy. Under many scenic conditions, the average person can generally perceive a change of one deciview. The higher the deciview value, the worse the visibility. Thus, an improvement in visibility is a decrease in deciview value.

[85] These emission inventory reductions include reductions from ships operating within the 24 nautical mile regulatory zone off the California Coastline, beginning with the effective date of the Coordinated Strategy program elements. The California regulation contains a provision that would sunset the requirements of the rule if the Federal program achieves equivalent emission reductions. See *http://www.arb.ca.gov/regact/2008/fuelogv08/fro13.pdf* at 13 CCR 2299.2(j)(1).

TABLE II–2—ESTIMATED NATIONAL (50 STATE) REDUCTIONS IN EMISSIONS FROM CATEGORY 3 COMMERCIAL MARINE VESSELS [a]

Pollutant [short tons]	2020	2030
NO_X:		
NO_X Emissions without Coordinated Strategy	1,361,000	2,059,000
NO_X Emissions with Coordinated Strategy	952,000	878,000
NO_X Reductions Resulting from Coordinated Strategy	409,000	1,181,000
Direct $PM_{2.5}$:		
$PM_{2.5}$ Emissions without Coordinated Strategy	110,000	168,000
$PM_{2.5}$ Emissions with Coordinated Strategy	16,000	25,000
$PM_{2.5}$ Reductions Resulting from Coordinated Strategy	94,000	143,000
SO_2:		
SO_2 Emissions without Coordinated Strategy	928,000	1,410,000
SO_2 Emissions with Coordinated Strategy	51,000	78,000
SO_2 Reductions Resulting from Coordinated Strategy	877,000	1,332,000

Notes:
[a] Emissions are included within 200 nautical miles of the U.S. coastline.

TABLE II–3—PROJECTED 2030 EMISSIONS REDUCTIONS FROM RECENT MOBILE SOURCE RULES (SHORT TONS) [a]

Rule	NO_X	$PM_{2.5}$
Category 3 Marine Proposal	1,181,000	143,000
Locomotive and Marine	795,000	27,000
Clean Air Nonroad Diesel	738,000	129,000
Heavy-Duty Highway	2,600,000	109,000

Notes:
[a] Locomotive and Marine Rule (73 FR 25098, May 6, 2008); Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004); Heavy-Duty Highway Rule (66 FR 5001, January 18, 2001).

(2) NO_X Emission Reductions

In 2009, annual emissions from Category 3 commercial [86] marine vessels will total about 913,000 tons. Earlier Tier 1 NO_X engine standards became effective in 2000, but the reductions due to the Tier 1 standards are offset by the growth in this sector, resulting in increased NO_X emissions of 1.4 million tons and 2.1 million tons in 2020 and 2030, respectively.

As shown in Table II–2, the coordinated strategy would reduce annual NO_X emissions from the current national inventory baseline by 409,000 tons in 2020 and 1,181,000 tons in 2030.

As shown in Table II–3, the 2030 NO_X reductions for the coordinated strategy would exceed those for the other two nonroad rules.

(3) $PM_{2.5}$ Emissions Reductions

In 2009, annual emissions from Category 3 commercial marine vessels will total about 71,000 tons. By 2030, these engines, absent the coordinated strategy, would contribute about 168,000 tons.

As shown in Table II–2, the coordinated strategy would reduce annual $PM_{2.5}$ emissions by 94,000 tons in 2020 and 143,000 tons in 2030. As seen in Table II–3, the 2030 $PM_{2.5}$ emission reduction would be larger than any of the reductions achieved with other recent rules.

(4) SO_2 Emissions Reductions

In 2009, annual emissions from Category 3 commercial marine vessels will total about 597,000 tons. By 2030, these engines, absent the coordinated strategy, would contribute about 1.4 million tons.

As shown in Table II–2 the coordinated strategy would reduce annual SO_2 emissions by 877,000 tons in 2020 and 1.3 million tons in 2030.

III. Engine Standards

This section details the emission standards, implementation dates, and other major requirements being proposed under the Clean Air Act. A detailed discussion of the technological feasibility of the proposed NO_X standards follows the description of the proposed program.

Other elements of our coordinated strategy to control emissions from OGV are discussed in subsequent sections. Provisions related to our Clean Air Act fuel controls are described in Section IV. Section V summarizes the U.S. and Canada's recent proposal to amend MARPOL Annex VI to designate much of the U.S. and Canadian coasts as an Emission Control Area.[87] Finally, provisions revising our Clean Air Act test procedures and related certification requirements, provisions to implement MARPOL Annex VI through APPS, and various changes we are considering to our Categories 1 and 2 (marine diesel engines with per cylinder displacement less than 30 liters per cylinder) marine diesel engine program are described in Section VI.

A. What Category 3 Marine Engines are Covered?

Consistent with our existing marine diesel emission control program, the proposed engine emission standards would apply to any new marine diesel engine with per cylinder displacement at or above 30 liters installed on a vessel flagged or registered in the United States.

With regard to marine diesel engines on foreign vessels that enter U.S. ports, we are proposing to retain our current approach and not apply this Clean Air Act program to those engines. This is appropriate because engines on foreign vessels are subject to the same NO_X limits through MARPOL Annex VI, and the United States can enforce compliance pursuant to Annex VI and the recent amendments to the Act to Prevent Pollution from Ships (33 USC

[86] These engines are included within EPA's commercial marine category to differentiate them from recreational marine engines.

[87] The ECA proposal and associated Technical Support Document can be found at *http://www.epa.gov/otaq/oceanvessels.htm*

1901 *et seq.*). At the same time, however, the effectiveness of this approach is contingent on the designation of U.S. coasts as an ECA pursuant to MARPOL Annex VI, since the Annex VI Tier III NO_X limits are geographic in scope and apply only in designated ECAs. We anticipate that MARPOL Annex VI will be amended to include the U.S. and Canadian government proposal. If, however, the proposed amendment is not adopted in a timely manner by IMO, we intend to take supplemental action to control harmful emissions from all vessels affecting U.S. air quality. Section V contains a description of the ECA designation process and further discussion of the application of the Act to engines on foreign vessels if ECA designation is delayed or not approved.

The combination of this Clean Air Act program, MARPOL Annex VI, and APPS will apply comparable emission standards to the vast majority of vessels entering U.S. ports or operating in U.S. waters.[88] Most significantly, these vessels will be required to meet the NO_X limits described below. As is described later in this Section III and in Section VI, there would be some minor differences between the proposed Clean Air Act program and the requirements that apply under MARPOL Annex VI. Nevertheless, with respect to U.S. air quality, these differences would have a negligible effect on emissions from foreign vessels.

Although we are not proposing standards for existing engines on vessels already in the U.S. fleet, we are seeking comment on a programmatic alternative that would help reduce emissions from those engines. This Voluntary Marine Verification Program is described in Section IX.

B. What Standards are we Proposing for Freshly Manufactured Engines?

This subsection details the emission standards (and implementation dates) we are proposing for freshly manufactured (*i.e.,* new) Category 3 engines on U.S. vessels. As described in Section III.C, we believe the proposed standards will be challenging to manufacturers, yet ultimately feasible and cost-effective within the proposed lead time. These standards, along with other parts of our program, are the outcome of our work with stakeholders to resolve the challenges associated with applying advanced diesel engine technology to Category 3 engines to achieve significant NO_X reductions.

(1) NO_X Standards

We are proposing new NO_X emission standards for Category 3 marine diesel engines. Our existing Tier 1 NO_X standards for Category 3 engines are dependent on the rated speed of the engine for speeds between 130 revolutions per minute (rpm) and 2000 rpm. Fixed standards apply for lower and higher speeds. Thus, the standards are expressed as an equation that applies for speeds between 130 rpm and 2000 rpm, along with fixed values that are calculated from the equation for 130 rpm and 2000 rpm that apply for lower and higher speeds. This was done to account for the fact that brake-specific NO_X emissions are inherently higher for lower speed engines (and lower for higher speed engines). Note that this same approach is used by the IMO for the same technical reasons. We are proposing to continue this approach for Tier 2 and Tier 3, as shown in Table III–1.

TABLE III–1—PROPOSED NO_X EMISSION STANDARDS FOR CATEGORY 3 ENGINES (G/KW-HR)

		Less than 130 RPM	130–2000 RPM [a]	Over 2000 RPM
Tier 1	[b] 2004	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
Tier 2	2011	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 3	2016	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

Notes:
[a] Applicable standards are calculated from n (maximum in-use engine speed in RPM), rounded to one decimal place.
[b] Tier 1 NO_X standards apply for engines originally manufactured after 2004, and proposed to also to certain earlier engines.

Our analysis, which is described in the draft RIA, shows that these standards will give the greatest degree of emission control achievable considering compliance costs, lead time, and other relevant factors. The technological bases are also discussed briefly below.

Note that other important provisions related to compliance with these standards are described in Section VI. This includes provisions to ensure effective control of NO_X emissions over a broad range of operating conditions.

(a) Tier 2 NO_X Limits

We are proposing new Tier 2 NO_X emission standards for Category 3 marine diesel engines. In-cylinder emission control technology for Category 3 marine engines has progressed substantially in recent years. Significant reductions can be achieved in the near term with little or no impact on overall vessel performance. These technologies include traditional engine-out controls such as electronically-controlled high-pressure common-rail fuel systems, turbocharger optimization, compression-ratio changes, and electronically-controlled exhaust valves. We are setting a near-term NO_X emission standard requiring a reduction of approximately 20 percent below the current Tier 1 standard beginning 2011.

(b) Tier 3 NO_X Limits

While the Tier 2 standards will achieve modest reductions quickly, the proposed Tier 3 standards are intended to achieve much greater emission reductions through the use of advanced aftertreatment such as selective catalytic reduction (SCR). These standards would achieve reductions of about 80 percent from the current Tier 1 standards. As explained in Section IX.B below regarding regulatory alternatives, we evaluated the possibility of requiring the Tier 3 limits on an earlier schedule than 2016. However, we found that a schedule requiring Tier 3 limits prior to 2016 had significant feasibility issues, and are therefore proposing the 2016 implementation date for Tier 3 standards. Under the proposed approach, manufacturers of Category 3 engines will have about the same amount of lead time allowed manufacturers for smaller marine engines and locomotives.

[88] Certain foreign public vessels such as military vessels and foreign vessels in innocent passage may be exempt.

(2) PM and SO_X Standards

We are not proposing new engine standards for PM or SO_X emissions. We intend to rely instead on the use of cleaner fuels as described in Section IV and V. SO_X emissions and the majority of the direct PM emissions from Category 3 marine engines operated on residual fuels are a direct result of fuel quality, most notably the sulfur in the fuel, and engine-based PM controls are not currently feasible for engines using these fuels. Other components of residual fuel, such as ash and heavy metals, also contribute directly to PM.

Using cleaner distillate fuel is the most effective means to achieve significant PM and SO_X reductions for Category 3 engines. We are proposing substantial reductions in the sulfur content of fuel purchased in the U.S. for use in an ECA. This complements Annex VI which requires that fuels used in ECAs around the world have sulfur levels below 1,000 ppm. This sulfur limit is expected to necessitate the use of distillate fuel which will result not only in reductions in sulfate PM emissions, but also reductions in organic PM and metallic ash particles in the exhaust.

Even though the sulfur limit is much lower than current levels, it is not clear if this fuel sulfur level would be low enough to allow Category 3 engines to be equipped with the catalytic PM filters similar to those being used by trucks today. If we were to require technology that needs lower sulfur fuel, such as 15 ppm, ship operators would need to have access to this fuel around the world. Operating on higher sulfur fuel, such as for outside of our waters, could otherwise result in damage to the PM control equipment. At this time, it is not clear if 15 ppm sulfur fuel could be made available around the world. In any case, the 1,000 ppm sulfur fuel requirement alone will eliminate 85 percent of PM emissions from ships operating in ECAs.

To further our understanding of PM emissions from ships, we are proposing to require engine manufacturers to measure and report PM emissions even though we are not proposing a PM standard. The information gathered will help support our efforts as we continue to evaluate the feasibility of achieving further PM reductions through engine-based controls. It will also help us to better characterize the PM emission rates associated with operating Category 3 engines on distillate fuel. If we determine that further PM reductions are feasible or that a specific PM limit is necessary to ensure anticipated reductions in PM emissions from ships, we may propose PM standards for Category 3 engines in the future.

(3) HC and CO Standards

We are proposing HC and CO standards of 2.0 g/kW-hr and 5.0 g/kW-hr, respectively. Emission control technologies for C3 marine engines have been concentrated on reducing NO_X and PM emissions, but these emission standards will prevent increases in emissions of HC and CO that might otherwise occur as a result of use of certain technologies for controlling NO_X, such as those that significantly degrade combustion efficiency.

(4) CO_2 Standards

We are not proposing to adopt CO_2 standards for marine diesel engines at this time. Marine diesel engines are included in other ongoing Agency actions, including our Advance Notice of Proposed Rulemaking (ANPRM) for mobile sources (73 FR 44353, July 30, 2008) and our Greenhouse Gas Reporting Rule (74 FR 16448, April 10, 2009). In addition, EPA is participating in the U.S. Government delegation to IMO, which is currently engaged in negotiations for an international program to address greenhouse emissions from ships.

C. Are the Standards Feasible?

We have analyzed a variety of technologies available for NO_X reduction in the Category 3 marine sector. As described in more detail in our draft RIA, we are projecting that marine diesel engine manufacturers will choose to use in-cylinder, or engine design-based emission control technologies to achieve the 15 to 20 percent NO_X reductions required to meet the proposed Tier 2 standard. To achieve the 80 percent NO_X reductions required to meet the proposed Tier 3 standard, we believe many manufacturers will choose SCR exhaust aftertreatment technology. In addition, manufacturers may choose a combination of other in-cylinder technologies, such fuel-water emulsification, direct water injection, intake air humidification, or exhaust gas recirculation (EGR) to reduce NO_X emissions and meet the proposed standards. These ''in-cylinder'' approaches could be calibrated and applied in one manner to achieve Tier 3 NO_X levels when operating with an ECA, and then adjusted, or re-calibrated, in another manner to achieve Tier 2 NO_X levels when operating outside an ECA.

The in-cylinder, or engine-out, NO_X emissions of a diesel engine can be controlled by utilizing engine design and calibration parameters (*e.g.,* fuel delivery and valve timing) to limit the formation of NO_X. NO_X formation rate has a strong exponential relationship to combustion temperature. Therefore, high temperatures result in high NO_X formation rates.[89] [90] Any changes to engine design and calibration which can reduce the peak temperature realized during combustion will also reduce NO_X emissions. Many of the approaches and technologies for reducing in-cylinder NO_X emissions are discussed in our draft RIA.

SCR is a commonly-used technology for meeting stricter NO_X emissions standards in diesel applications worldwide. Stationary power plants fueled with coal, diesel and natural gas have used SCR for three decades as a means of controlling NO_X emissions, and European heavy-duty truck manufacturers are currently using this technology to meet Euro 5 emissions limits. To a lesser extent, SCR has been introduced on diesel engines in the U.S. market, but the applications have been limited to marine ferryboat and stationary electrical power generation demonstration projects in California and several of the Northeast states. SCR systems are currently being designed and developed for use on ocean-going vessels worldwide, and we project that SCR will continue to be a viable technology for control of Category 3 NO_X emissions. A more detailed discussion of SCR technology can be found in our draft RIA.

IV. Fuel Standards

A. Background

EPA is proposing emissions standards for Category 3 (C3) engines that are consistent with those recently adopted as amendments to MARPOL Annex VI. As amended, Annex VI includes revised fuel sulfur standards for use in engines onboard ships, and it also set more stringent fuel sulfur limits for ''any fuel oil used onboard ships * * * operating within an Emission Control Area'' (Annex VI, Regulation 14).

Under the Annex, the process by which an Emission Control Area (ECA) is to be designated is through amendment of the Annex. The U.S. and Canadian governments have submitted a proposal to amend MARPOL Annex VI to designate an ECA to include much of the U.S. and Canadian coastlines. Specifically, the proposed ECA would

[89] Flynn, P., *et al,* ''Minimum Engine Flame Temperature Impacts on Diesel and Spark-Ignition Engine NO_X Production'', SAE 2000–01–1177, 2000.

[90] Heywood, John B., ''Internal Combustion Engine Fundamentals'', McGraw-Hill, 1988.

include the entire coastline for the contiguous 48 states, Southeastern Alaska, and the Main Hawaiian Islands, extending to a distance of 200 nautical miles from the coastline. We anticipate that this amendment will be considered at the next Marine Environment Protection Committee (MEPC 59) which is scheduled for July 2009. We expect that the amendment will be adopted in March 2010, at MEPC 60. This approval date is roughly three months after the intended date for promulgation of the final rule.

EPA is in this notice proposing fuel sulfur limits under section 211(c) of the Clean Air Act that match the limits that apply under Annex VI in ECAs. The adoption of such standards would: (1) Forbid the production and sale of fuel oil above 1,000 ppm sulfur for use in the waters within the proposed ECA (as well as internal U.S. waters);[91] and (2) allow for the production and sale of up to 1,000 ppm sulfur fuel for use in C3 marine vessels.[92]

The majority of vessels with a C3 propulsion engine operate on high-sulfur, heavy fuel oil (HFO) (also known as residual, or bunker, fuel). Due to their use of heavy fuel, these marine diesel engines have very high PM and SO_2 emissions. Sulfur in the fuel is emitted from engines primarily as SO_2; however a small fraction is emitted as sulfur trioxide (SO_3) which immediately forms sulfate and is emitted as PM by the engine. In addition, much of the SO_2 emitted from the engine reacts in the atmosphere to form secondary PM. Reductions in residual fuel sulfur levels would lead to significant sulfate PM and SO_2 emission reductions which would provide dramatic environmental and public health benefits. However, in most cases, fuels that meet the long-term fuel sulfur standards will likely be distillate fuels, rather than HFO. In addition to reductions in sulfate PM, switching from HFO to distillate fuel may reduce black carbon emissions, fine particle counts, organic carbon, and metallic ash particles.

HFO sold for use by these vessels is currently not subject to any EPA sulfur limits (as it is not regulated by our current sulfur program) and generally has very high levels of sulfur. The proposed modifications to our existing diesel fuel program will prohibit the production and sale of this fuel for use in an ECA. Instead, fuel sold for use in an ECA would not be allowed to exceed a sulfur content of 1,000 ppm. In a complementary fashion, the amendment to MARPOL Annex VI designating the U.S. ECA will ensure that fuel used in an ECA, including fuel purchased in another country but used within the U.S. ECA, also meets a 1,000 ppm sulfur limit. Under our proposed regulations, fuel sold for use by C3 vessels in the U.S. ECA will be allowed to have a sulfur content as high as this 1,000 ppm sulfur limit, while fuel sold for use in Category 1 (C1; marine diesel engines up to 7 liters per cylinder displacement) and Category 2 (C2; marine diesel engines from 7 to 30 liters per cylinder) vessels would continue to be subject to the nonroad, locomotive, and marine[93] (NRLM) diesel fuel sulfur requirements. In the event that the U.S. ECA is not approved in a timely manner, we will revisit the standards being proposed here in that context.

B. Current Diesel Fuel Standards

The Nonroad Diesel program (finalized on June 29, 2004 (69 FR 38958)) reduces the sulfur content of NRLM diesel fuel from uncontrolled levels down to a maximum sulfur level of 15 ppm. Refiners and importers are required to produce or import all NRLM diesel fuel at a sulfur level of 15 ppm or less by June 1, 2014. The main compliance mechanism of the diesel sulfur program is the Designate and Track (D&T) provisions, which allows NRLM diesel fuel to be distinguished from similar products (*e.g.*, heating oil) and yet provides a means for diesel fuel to be fungibly transported through the fuel production and distribution system. Under D&T, refiners and importers are required to designate the type and sulfur level of each batch of fuel produced or imported. As this fuel is transferred through the distribution system, product transfer documents (PTDs) must be exchanged each time the batch changes custody. Along with PTDs, other required elements of D&T include quarterly and annual reporting, fuel pump labeling, and recordkeeping.

The Nonroad Diesel program also contains certain provisions to ease refiners' transition to the lower sulfur standards and to enable the efficient distribution of all diesel fuels. These provisions, as discussed more below in Section IV.B.2, include special provisions for qualified small refiners, transmix processors, and entities in the fuel distribution system.

(1) Scope of the Nonroad Diesel Fuel Program

The sulfur standards finalized by the Nonroad Diesel rule apply to all the diesel fuel that is produced and sold for use in NRLM diesel applications (all fuel used in NRLM diesel engines, except for fuels heavier than a No. 2 distillate used in Category 2 and 3 marine engines[94] and any fuel that is exempted for national security or other reasons). While the Nonroad Diesel rule did not set sulfur standards for other distillate fuels (such as jet fuel, heating oil, kerosene, and No. 4 fuel oil), it did implement provisions to prevent the inappropriate use of heating oil and other higher sulfur distillate fuels in NRLM and locomotive and marine (LM) diesel applications. Sale of distillate fuels for use in nonroad, locomotive, or marine diesel engines will generally be prohibited unless the fuel meets the diesel fuel sulfur standards of 40 CFR Part 80.[95] The regulated fuels under our diesel fuel sulfur program include those fuels listed in the regulations at 40 CFR 80.2(qqq).

The current sulfur standards do not apply to: (1) No. 1 distillate fuel used to power aircraft; (2) Number 4, 5, and 6 fuels (*e.g.,* residual fuels or residual fuel blends, intermediate fuel oil (IFO) Heavy Fuel Oil Grades 30 and higher), used for stationary source purposes; (3) any distillate fuel with a T–90 distillation point greater than 700 °F, when used in Category 2 or 3 marine diesel engines (this includes Number 4, 5, and 6 fuels (*e.g.,* IFO Heavy Fuel Oil Grades 30 and higher), including fuels meeting the American Society for Testing and Materials (ASTM) specifications DMB, DMC, and RMA–10 and heavier); and (4) any fuel for which a national security or research and development exemption has been approved or fuel that is exported from

[91] For the purposes of this proposal, the term ''ECA'' as it is used in this Section IV refers to both the area of the proposed ECA and internal U.S. waters. Though the outer limits of the proposed sulfur limitation are the same as for the proposed ECA, the sulfur limitation in this proposal is not dependent on MEPC approval of the ECA.

[92] For the purpose of the discussion in this section, ''Category 3 vessel'' refers to a commercial vessel with a Category 3 propulsion engine; ''Category 2 vessel'' refers to a commercial or recreational vessel with a Category 2 propulsion engine; and ''Category 1 vessel'' refers to a commercial or recreational vessel with only Category 1 or smaller engines. The proposed fuel provisions here apply to all of the engines on a given vessel.

[93] For the purposes of this proposal (and the proposed 40 CFR Part 80 regulations), the term ''marine'' as it is used here refers to Category 1 and 2 marine diesel engines unless otherwise stated.

[94] Category 3 marine engines frequently are designed to use residual fuels and include special fuel handling equipment to use the residual fuel.

[95] For the purposes of the diesel sulfur program, the term heating oil basically refers to any No. 1 or No. 2 distillate other than jet fuel, kerosene, and diesel fuel used in highway or NRLM applications. For example, heating oil includes fuel which is suitable for use in furnaces and similar applications and is commonly or commercially known or sold as heating oil, fuel oil, or other similar trade names.

the U.S. The criterion that any distillate fuel with a T–90 greater than 700 °F will not be subject to the sulfur standards when used in Category 2 or 3 marine engines was intended to exclude fuels heavier than No. 2 distillate, including blends containing residual fuel. In addition, residual fuel is not subject to the sulfur standards.

While many marine diesel engines use No. 2 distillate, ASTM specifications for marine fuels identify four kinds of marine distillate fuels: DMX, DMA, DMB, and DMC. DMX is a special light distillate intended mainly for use in emergency engines. DMA (also called marine gas oil, or ''MGO'') is a general purpose marine distillate that contains no trace of residual fuel. These fuels can be used in all marine diesel engines but are primarily used by Category 1 engines. DMX and DMA fuels intended for use in any marine diesel engine are subject to EPA's fuel sulfur standards.

DMB, also called marine diesel oil, is not typically used with Category 1 engines, but is used for Category 2 and 3 engines. DMB is allowed to have a trace of residual fuel, which can be high in sulfur. This contamination with residual fuel usually occurs due to the distribution process, when distillate is brought on board a vessel via a barge that has previously contained residual fuel, or using the same supply lines as are used for residual fuel. DMB is produced when fuels such as DMA are brought on board the vessel in this manner. EPA's sulfur standards do apply to the distillate that is used to produce the DMB, for example the DMA distillate, up to the point that it becomes DMB. However, DMB itself is not subject to the EPA sulfur standards when it is used in Category 2 or 3 engines.

DMC is a grade of marine fuel that may contain some residual fuel and is often a residual fuel blend. This fuel is similar to No. 4 diesel, and can be used in Category 2 and Category 3 marine diesel engines. DMC is produced by blending a distillate fuel with residual fuel, for example at a location downstream in the distribution system. EPA's sulfur standards apply to the distillate that is used to produce the DMC, up to the point that it is blended with the residual fuel to produce DMC. However, DMC itself is not subject to the EPA sulfur standards when it is used in Category 2 or 3 marine engines.

Residual fuel is not covered by the sulfur content standards as it is not a distillate fuel. Residual fuel is typically designated by the prefix RM (*e.g.,* RMA, RMB, *etc.*). These fuels are also identified by their nominal viscosity (*e.g.,* RMA10, RMG35, *etc.*). Most residual fuels require treatment by an onboard purifier-clarifier centrifuge system, although RMA and RMB do not require this.

The distillation criterion adopted by EPA, T–90 greater than 700 °F, was designed to identify those fuels that are not subject to the sulfur standards when used in Category 2 or 3 marine diesel engines. It is intended to exclude DMB, DMC, and other heavy distillates or blends, when used in Category 2 or 3 marine diesel engines. We are not proposing to amend this provision in this action. However, under this proposal, all of these fuels, and any other diesel fuels or fuel oils, would be subject to a 1,000 ppm sulfur limit if they are produced or sold for use in an ECA.

(2) Flexibilities

Compliance flexibilities were provided in the nonroad diesel sulfur regulations for qualified small refiners (69 FR 39047; Section IV.B.1) and for transmix processors (69 FR 39045; Section IV.A.3.d). Small refiners were provided, among other flexibility options, additional time for compliance with the 15 ppm NRLM standard, until June 1, 2014. Transmix processors, who distill off-specification interface mixtures of petroleum products from pipeline systems into gasoline and distillate fuel, have a simple refinery configuration that does not make it cost-effective for them to install and operate a hydrotreater to reduce distillate fuel sulfur content. As a result, transmix processors were provided with the flexibility to continue to produce all of their NRLM diesel fuel to meet the 500 ppm sulfur standard until June 1, 2014, and all of their LM diesel fuel to meet a 500 ppm sulfur limit indefinitely. The latter flexibility also allows for an outlet for off-spec fuel that may be produced in the distribution system.

The D&T provisions, first established to distinguish highway from nonroad 500 ppm fuel, were thus continued beyond 2014 to ensure that 500 ppm NRLM could be distinguished from similar fuel (*e.g.,* heating oil that has a sulfur level of 500 ppm). In 2014 and beyond, D&T is essential to ensure that heating oil is not being inappropriately shifted downstream of the refiner into the NRLM and LM diesel fuel markets, circumventing the NRLM standards (as mentioned above in Section IV.B.1). Provisions in the Nonroad Diesel rule to ensure that heating oil is not used in NRLM applications include the use of a fuel marker to distinguish heating oil from NRLM and LM diesel fuel, dye solvent yellow 124, which is added to heating oil at the terminal level. The D&T provisions also provided parties in the diesel fuel industry with inherent flexibility. D&T maximizes the efficiency of the distribution system by allowing for fungible distribution of physically similar products, and minimizing the need for product segregation. Under D&T, diesel fuel with similar sulfur levels can be fungibly shipped up to the point of distribution from a terminal (where off-highway diesel fuels must be dyed red, pursuant to Internal Revenue Service (IRS) requirements, to indicate its tax exempt status).

(3) Northeast/Mid-Atlantic Area

In the Northeast, heating oil is distributed in significant quantities. Discussions with terminal operators in the Northeast (and other representatives of heating oil users and distributors) during the development of the Nonroad Diesel rule revealed concerns that the heating oil marker requirement would represent a significant burden on terminal operators and users of heating oil given the large volume of heating oil used in the Northeast. These parties suggested that if EPA prohibited the sale and use of diesel fuel produced by those utilizing the flexibilities described above, this area could be exempted from the marker requirement.

Thus, the Northeast/Mid-Atlantic (NE/MA) area was developed (69 FR 39063, Section IV.D.1.b.ii; see also 40 CFR 80.510(g) for the specific states and counties that comprise the NE/MA area). As there would be no way to distinguish heating oil from 500 ppm NRLM and 500 ppm LM diesel fuel in 2014 and beyond without the fuel marker, these fuel types are not allowed to be produced/imported, distributed and/or sold in the NE/MA area during this time period (500 ppm NRLM diesel fuel may not be produced/imported, distributed and/or sold in the NE/MA area after 2012).

Similarly, high sulfur NRLM (HSNRLM) produced through the use of credits is not allowed in Alaska. However, EPA-approved small refiners in Alaska may produce HSNRLM diesel fuel. To receive this approval, a small refiner must provide EPA with a compliance plan showing how their HSNRLM diesel fuel will be segregated from all other distillate fuels through its distribution to end-users.

(4) Nonroad Diesel Program Transition Schedule

The transition to lower sulfur diesel fuel for NRLM equipment is depicted in Figure VI–1 below. The transition for urban (areas served by the Federal Aid

Highway System) and rural Alaska are shown below in Figure VI–2.

HIGHWAY AND NONROAD DIESEL FUEL STANDARDS

Who	Covered fuel	2006	2007	2008	2009	2010	2011	2012	2013	2014
	Highway diesel fuel	80% 15 ppm/20% 500 ppm				100% 15 ppm (including small refiner fuel)				
Large Refiners/ Importers.	*NR*		500	500	500	15	15	15	15	15
Large Refiners/ Importers.	*LM*		500	500	500	500	500	15	15	15
	NRLM w/credits (not in NE/MA or AK)		HS	HS	HS	500	500	500	500	15
Small Refiners	*NRLM (not in NE/MA, w/approval in AK)*		HS	HS	HS	500	500	500	500	15
Transmix Processor & In-use.	*NR (not in NE/MA or AK)*		HS	HS	HS	500	500	500	500	15
Transmix Processor & In-use.	*LM (not in NE/MA or AK)*		HS	HS	HS	500	500	500	500	500

2006 dates for HW diesel fuel: *June 1 for refiners/importers, September 1 for downstream parties, and October 15 for retailers and wholesale purchaser-consumers.*

2010 dates for HW diesel fuel: *As of the following dates, all HW diesel fuel must meet the 15 ppm standard—June 1 for refiners/importers, October 1 for downstream parties, and December 1 for retailers and wholesale purchaser-consumers (WPCs).*

2007 dates for NRLM diesel fuel: *June 1 for refiners, downstream requirements for NE/MA area* only (August 1 for terminals, October 1 for retailers/WPCs, and December 1 for in-use).*

2010+ dates for NRLM diesel fuel: *June 1 for refiners, August 1 for terminals, October 1 for retailers/WPCs, and December 1 for in-use.*

**** Anti-downgrading provisions begin October 15, 2006 ****

***NOTE**—*No small refiner or credit NRLM can be used in the NE/MA area. Thus, the large refiner NRLM standard is also the in-use standard in the NE/MA area.*

Figure IV–1 Highway, Nonroad, Locomotive, and Marine Diesel Fuel Sulfur Standards

Urban AK (areas served by the FAHS)

HW—

- pre-2006: HS/uncontrolled.
- 2006: 6/1/06—refiners to 15; 9/1/06—pipelines & terminals to 15; 10/15/06—retail & WPC to 15.

NRLM—

- pre-2007: HS/uncontrolled.
- 2007: 6/1/07—refiners to 500; 8/1/07—pipelines & terminals to 500; 10/1/07—retail & WPC to 500; 12/1/07—in-use, farm & construction tanks to 500 (*note—urban AK is on same downstream schedule as NE/MA*).
- 2010: 6/1/10—refiners to 15 NR; 8/1/10—pipelines & terminals to 15 NR; 10/1/10—retail & WPC to 15 NR; 12/1/10—in-use, farm & construction tanks to 15 NR.
- 2012: 6/1/12—refiners to 15 LM; 8/1/12—pipelines & terminals to 15 LM; 10/1/12—retail & WPC to 15 LM; 12/1/12—in-use, farm & construction tanks to 15 LM.

***Urban AK is on the same schedule as the main HW & NR diesel programs (except they're on the same downstream schedule as the NE/MA for NRLM in 2007); permanently exempt from dye & marker requirements* **.

Rural AK

HW—

- pre-2010: HS/uncontrolled.
- 2010: 6/1/10—refiners to 15 HW; 8/1/10—pipelines & terminals to 15 HW; 10/1/10—retail & WPC to 15 HW; 12/1/10—in-use, farm & construction tanks to 15 HW.

NRLM—

- pre-2010: HS/uncontrolled.
- 2010: 6/1/10—refiners to 15 NRLM; 8/1/10—pipelines & terminals to 15 NRLM; 10/1/10—retail & WPC to 15 NRLM; 12/1/10—in-use, farm & construction tanks to 15 NRLM.

** Downstream transition dates are same for HW & NRLM in rural AK; permanent exemption from dye & marker requirements **.

General Note—credit & transmix fuel cannot be used in any area of AK; small refiner fuel can be used with approval (and only if properly labeled and segregated).

Figure IV–2 Highway, Nonroad, Locomotive, and Marine Diesel Fuel Sulfur Standards for Alaska

C. Applicability

Assuming adoption of an amendment to MARPOL Annex VI establishing a U.S. ECA, the fuel used in that ECA cannot exceed 1,000 ppm sulfur beginning January 1, 2015.[96] As mentioned above, we are proposing to incorporate a similar 1,000 ppm sulfur limit into our CAA regulations at 40 CFR Part 80 through both a prohibition on the production and sale of fuel oil above 1,000 ppm sulfur for use in any marine vessels (C1, C2, and C3) in the area of the U.S. ECA, and an allowance for the production and use of 1,000 ppm sulfur fuel to be used in any engine on C3 marine vessels. We are proposing that fuel produced and sold for use in any engine on C1 and C2 marine vessels would continue to be subject to the existing diesel sulfur requirements which are more stringent than those being proposed in this action for C3 marine vessels; however, we request comment on whether engines on C2 marine vessels should also be allowed to use 1,000 ppm ECA fuel similar to those on C3 marine vessels.

Discussions with stakeholders in the diesel fuel production and distribution industry have indicated that they anticipate that most (if not all) fuel oil that could meet a 1,000 ppm sulfur standard would be considered a distillate or diesel fuel, because at a

[96] Annex VI, Regulation 14 (located in the rulemaking docket, EPA–HQ–OAR–2007–0121–0107).

1,000 ppm sulfur level it is nearly impossible for fuel to have a T–90 distillation point at or above 700 °F (*i.e.,* be considered residual fuel). As discussed in Section IV.B.1, fuel with a T–90 less than 700 °F would be required to meet the standards of our existing diesel sulfur program which, in 2014 and beyond, is 15 ppm. We believe that because of the limits on the sulfur content of fuel used in ECAs, the existing diesel fuel sulfur program should be revised to allow for the production, distribution, purchase, and use of 1,000 ppm sulfur fuel oil for use in engines on C3 marine vessels. Therefore, we are proposing a new 1,000 ppm sulfur category for fuel oil produced and purchased for use in any engine on a C3 marine vessels (called ''ECA marine fuel''). This proposed fuel sulfur requirement would largely supplement the existing diesel fuel sulfur requirements and would harmonize EPA's diesel sulfur program with the requirements of Annex VI. Under this proposed action, owners of Category 3 marine vessels would be able to purchase and use 1,000 ppm sulfur fuel, which will allow those vessels to comply with the sulfur limits in the U.S. ECA (and any other ECA worldwide) and in U.S. internal waters.

D. Fuel Sulfur Standards

As discussed above in Section IV.C, in addition to the prohibition on the sale of fuel greater than 1,000 ppm sulfur for use in any marine vessel operating within the U.S. ECA, we are also proposing the allowance of the production, distribution, and sale of 1,000 ppm sulfur ECA marine fuel, which we discuss more in this section.

Prior to this action and, pending the establishment of the North American ECA, the kind of fuel produced and sold for use by C3 marine vessels had uncontrolled sulfur levels as it was not subject to the NRLM sulfur limits. This was reflected in the regulations by exempting these kinds of fuel from the definition of NRLM diesel fuel and the NRLM sulfur limits (40 CFR 80.2(nnn)). The combined effect of Annex VI and these regulations is to require that any fuel sold for use in any engine on a C3 marine vessel operating in an ECA be 1,000 ppm sulfur or lower. Fuel oil used or sold for use in C3 marine vessels in an ECA will therefore go from uncontrolled, high sulfur levels to no higher than 1,000 ppm sulfur. Under Annex VI, fuel with sulfur levels greater than 1,000 ppm cannot be used in a marine vessel operating in an ECA, no matter where the fuel is purchased. Consistent with this, the proposed section 211(c) controls would prohibit the production and sale of any fuel for use in the U.S. ECA that is above 1,000 ppm sulfur.

The requirements for 1,000 ppm sulfur fuel oil apply to the North Sea, the Baltic Sea, and any other ECAs established around the world, so this fuel will be produced by refiners in other countries. Under EPA's current NRLM program, this 1,000 ppm sulfur fuel would be subject to the 15 ppm NRLM sulfur limit in 2014 and later. If EPA were to require that fuel produced, distributed, and sold for use for C3 vessels in the U.S. ECA meet the 15 ppm sulfur standard after 2014, we believe that C3 vessel owners would simply purchase 1,000 ppm sulfur fuel elsewhere to be used here in the U.S. ECA. This could be an extremely inefficient process for ship owners. It would also mean a loss of sales for U.S. refiners of fuel that these C3 vessel owners purchase. These impacts would add to the costs and burdens of the program with no corresponding environmental benefit. Therefore, we believe that it is reasonable to allow U.S. refiners and importers to produce 1,000 ppm sulfur fuel for use by C3 vessels. Thus, we are proposing and requesting comment on a new fuel sulfur standard of 1,000 ppm for fuel produced, distributed, and sold for use in C3 marine vessels. While we would expect use of this fuel to be concentrated in the area of the U.S. ECA (and any other ECA) and U.S. internal waters, we are allowing its use by C3 marine vessels in all locations, to encourage its general use. We are proposing that after 2014, no fuel above 15 ppm could be used in C1 or C2 vessels; however, we request comment on whether or not C2 vessels should be treated similarly to C3 vessels.

We note that the combination of the Annex VI ECA provisions and the modifications proposed in this action for the diesel sulfur program will achieve very significant benefits compared to the existing program. The production and use of 1,000 ppm ECA marine fuel, as well as 15 ppm NRLM diesel fuel, will replace much higher sulfur fuel usage, and there is no additional benefit to be gained by requiring the sale of 15 ppm sulfur diesel fuel for use by C3 vessels as a practical matter because we believe C3 vessels will simply purchase 1,000 ppm sulfur fuel elsewhere. In order to incorporate these modifications into our existing program under the Clean Air Act, we need to create a new fuel designation for allowable fuel under our program.

(1) Proposed Amendments to the Existing Diesel Fuel Sulfur Program

We are proposing to prohibit the production, distribution, and sale or offer for sale of any fuel for use in any marine diesel vessels (C1, C2, and C3) operating in the U.S. ECA that is greater than 1,000 ppm sulfur. We are also proposing and requesting comment on allowing a sulfur limitation of 1,000 ppm for fuel produced, distributed, and sold or offered for sale for use in C3 marine vessels. To simplify the existing diesel fuel sulfur program, we are also proposing to eliminate the 500 ppm LM diesel fuel standard once the 1,000 ppm standard becomes effective. Under the existing diesel sulfur program, 500 ppm LM diesel fuel can be produced by transmix processors indefinitely, and can only be used by locomotives and marine vessels that do not require 15 ppm. The original intent of allowing for this fuel was to serve as an outlet for interface and downgraded diesel fuel post-2014 that would otherwise not meet the 15 ppm sulfur standard. However, we believe that the 1,000 ppm sulfur ECA marine fuel could now serve as this outlet. We believe that transmix generated near the coasts would have ready access to marine applications, and transmix generated in the mid-continent could be shipped via rail to markets on the coasts, and we request comment on this.

Elimination of the 500 ppm LM diesel fuel standard would simplify the diesel sulfur program such that sulfur could serve as the distinguishing factor for fuels available for use after 2014 (the designated products under the diesel fuel program would thus be: 15 ppm motor vehicle, nonroad, locomotive, and marine (MVNRLM) diesel fuel, heating oil, and 1,000 ppm ECA marine fuel). With this proposed approach, beginning in 2014, only 15 ppm NRLM diesel fuel could be used in locomotive and C1/C2 marine diesel applications (and 1,000 ppm ECA marine fuel could be used in any engine on C3 marine vessels). Further, this would help to streamline the D&T program as there would no longer be a need for a fuel marker to distinguish 500 ppm LM diesel fuel from heating oil. Below, we discuss the aspects of D&T that we are proposing to change, which we believe will greatly simplify the diesel sulfur program.

(a) Compliance and Implementation

(i) Northeast/Mid-Atlantic Area and the Fuel Marker

With the proposed elimination of the 500 ppm LM designation in 2014, parties in the fuel production and distribution industry would still be

required to register and designate their products and adhere to PTD, fuel pump labeling, and recordkeeping requirements. But we believe that the tracking portion of D&T can be simplified. Currently, annual reporting is required under § 80.601 for D&T through June 30, 2015 (the final annual report is due August 31, 2015). This final reporting period is to ensure that heating oil is not being inappropriately shifted into the 500 ppm LM diesel fuel pool. However, with the proposed elimination of this fuel designation, we request comment on ending D&T annual reporting in 2014, rather than 2015. Under such a scenario, the final annual reporting period would instead be July 1, 2013 through May 31, 2014, with the report due to EPA on August 31, 2014.

We believe that the proposed elimination of the 500 ppm LM diesel fuel designation would also, beginning June 1, 2014, negate the need for the heating oil marker and the NE/MA area. After 2014, the heating oil marker requirement in the existing diesel sulfur program is for the sole purpose of distinguishing heating oil from 500 ppm LM diesel fuel, to prevent heating oil from swelling the 500 ppm LM diesel fuel pool. Also, as there is no marker requirement for heating oil in the NE/MA area, the diesel sulfur program currently does not allow for 500 ppm LM diesel fuel to be produced, distributed, or purchased for use in the NE/MA area after 2012. However, if 500 ppm LM diesel fuel did not exist, there would no longer be a need for the heating oil marker; fuel designations and sulfur level could serve as the distinguishing factor between the available fuels (15 ppm MVNRLM diesel fuel, 1,000 ppm ECA marine fuel, and heating oil). Further, there would not be a need for the NE/MA area if there were no heating oil marker.

(ii) PTDs and Labeling

We are proposing new PTD language for the 1,000 ppm ECA marine fuel designation at draft regulation § 80.590. As stated in draft regulation § 80.590(a)(7)(vii), we are proposing that the following statement be added to PTDs accompanying 1,000 ppm sulfur ECA marine fuel: ''1,000 ppm sulfur (maximum) ECA Marine Fuel. For use in Category 3 marine vessels only. Not for use in engines not installed on C3 marine vessels.''

Appendix V of Annex VI also includes language that is required on bunker delivery notes. Compliance requirements of this action, such as PTDs, are not intended to supplant or replace requirements of Annex VI (and we encourage regulated entities to consult Annex VI to ensure that they are fully aware of all requirements that must be met in addition to EPA's requirements). However, if a party's bunker delivery note also contains the information required under our regulations for PTDs, we would consider the bunker delivery note to also suffice as a PTD.

We are also proposing new pump labeling language for the 1,000 ppm sulfur ECA marine fuel designation at regulation § 80.574. Diesel fuel pump labels required under the existing diesel sulfur regulations must be prominently displayed in the immediate area of each pump stand from which diesel fuel is offered for sale or dispensing. However, we understand that there may be cases where it is not feasible to affix a label to a fuel pump stand due to space constraints (such as diesel fuel pumps at marinas) or where there is no pump stand, thus the current regulations allow for alternative pump labels with EPA approval. Previously approved alternative fuel pump labels have included the use of permanent placards in the immediate vicinity of the fuel pump; we request comment on other possible alternative labeling schemes for situations where pump labeling may not be feasible. As stated in draft regulation § 80.574, we are proposing to replace the 500 ppm LM diesel fuel pump label language with the following fuel pump label language for 1,000 ppm sulfur ECA marine fuel: ''1,000 ppm SULFUR ECA MARINE FUEL (1,000 ppm Sulfur Maximum). For use in Category 3 marine vessels only. WARNING—Federal law prohibits use in any engine that is not installed on a C3 marine vessel; use of fuel oil with a sulfur content greater than 1,000 ppm in the U.S. Emission Control Area and all U.S. internal waters is illegal.'' We also request comment on whether or not fuel pumps are (or can be) used to fuel C3 marine vessels; and if they are not used, if PTDs or some other documentation is a more appropriate mechanism to convey the fuel sulfur level to a C3 marine vessel operator.

Under this program, we are also proposing to eliminate MVNRLM diesel fuel labeling requirements from EPA's regulations. In 2014 and beyond, EPA will not require ''visible evidence'' of red dye in off-road fuels; however this requirement still exists in IRS's taxation regulations to denote that off-road fuels are untaxed. EPA's required label for 15 ppm NRLM diesel fuel (instead of one 15 ppm MVNRLM diesel fuel label) is mainly to denote that 15 ppm NRLM will be dyed red, while 15 ppm MV diesel fuel will not. Further, after October 1, 2014, all MVNRLM diesel fuel available for purchase and/or distribution will be 15 ppm. We believe that it is not appropriate for EPA to retain a labeling requirement for MVNRLM diesel fuel given the fact that the red dye provision is no longer EPA's requirement. Please note, however, that if MVNRLM labeling requirements were removed from EPA's regulations, marketers and wholesale purchaser-consumers would still be free to continue to label their pump stands to help with consumer awareness. Labeling will continue to be required for heating oil and, as proposed above, for ECA marine fuel.

Additionally, if labeling requirements for MVNRLM diesel fuel were to be removed from EPA's regulations, EPA would consult with IRS regarding handling labels in IRS's regulations at Title 26 of the Code of Federal Regulations.

(b) Timing of the Standard

Currently, all refiners and importers are required to produce all of their NRLM diesel fuel to meet the 15 ppm standard beginning June 1, 2014. To allow transition time for the distribution system, terminals are allowed until August 1, 2014 to begin dispensing 15 ppm NRLM diesel fuel, retailers and wholesale purchaser-consumers are allowed until October 1, 2014, and end-users are allowed until December 1, 2014. To be consistent with the existing diesel program, we are proposing to allow refiners to begin producing 1,000 ppm sulfur ECA marine fuel beginning June 1, 2014, and downstream parties would follow the current NRLM transition schedule (August, October, and December). We believe that following the same transition schedule as the existing diesel sulfur program would best facilitate the availability of 1,000 ppm ECA marine fuel for purchase and use by the Annex VI January 1, 2015 date. We request comment on the concept of a transition period of June 1–December 1, 2014 for the 1,000 ppm sulfur standard.

(2) Alternative Options

We have identified two potential alternatives to the proposed changes to the existing diesel fuel sulfur program, above. We request comment on any related aspects of these alternative options, as well as any additional alternative options.

(a) Creation of Expanded NE/MA Area

While the proposal of a 1,000 ppm sulfur standard is to incorporate the benefits of this more stringent standard for fuel used in engines on C3 marine vessels into our current diesel program

and harmonize the current program with Annex VI, our intent is to do so with the least amount of impact on the existing diesel sulfur program, so we believe that this rulemaking also presents us with an opportunity to simplify the designate and track requirements.

We request comment on an alternative to the proposed general program: to expand the NE/MA area to cover all coastlines that border the proposed U.S. ECA. This alternative would keep the requirements of the diesel sulfur program largely the same as the existing program. Further, this option would allow for 500 ppm LM diesel fuel to continue to be utilized by the locomotive industry (and the marine industry) in the mid-continent (outside the expanded NE/MA area) and to serve as an outlet for off-spec and transmix diesel fuel. As discussed above in Section IV.B.3, under our current diesel fuel sulfur program, 500 ppm LM diesel fuel cannot be used in the NE/MA area (or Alaska) after 2012. Under the ''expanded NE/MA'' area option, designate and track would be simplified in the expanded NE/MA area as the only distillate fuels available would be 15 ppm MVNRLM diesel fuel, heating oil, and 1,000 ppm ECA marine fuel. The reduction in types of fuel available for use in this area would also allow for sulfur level to serve as the distinguishing factor, and no additional markers or dyes would be necessary to differentiate fuels in this area.

The creation of an expanded NE/MA area, however, would mean that an additional mechanism to distinguish 500 ppm LM diesel fuel from 1,000 ppm ECA marine fuel would still be needed in non-NE/MA areas.

We request comment on the creation of an expanded NE/MA area.

(b) Retention of 500 ppm LM Diesel Fuel Standard

Another alternative to the option of replacing the 500 ppm LM diesel fuel standard with the 1,000 ppm sulfur standard would be to retain the 500 ppm LM diesel fuel standard such that both 500 ppm LM diesel fuel and 1,000 ppm ECA marine fuel would be available. Under such an option, sulfur would not be able to serve as the distinguishing factor to maintain segregation of 1,000 ppm fuel from other EPA distillate categories. The fuel marker would still be needed to distinguish 500 ppm LM from heating oil.

This option would allow for 500 ppm LM diesel fuel to still be utilized by the locomotive and marine industries (for those engines not requiring 15 ppm sulfur diesel fuel) and also serve as an outlet for off-spec and transmix diesel fuel. However, this option would not serve to streamline D&T, and 500 ppm LM diesel fuel would not necessarily be needed along the coastlines (as 1,000 ppm sulfur fuel would be available for use by C3 marine vessels). We request comment on the option of retaining the 500 ppm LM diesel fuel standard nationwide along with the proposed 1,000 ppm ECA marine fuel sulfur standard.

We request comment on the proposed program and alternative options, the proposed prohibition on the sale of fuel above 1,000 ppm sulfur for use in all marine vessels operating in the U.S. ECA and U.S. internal waters, and any related compliance aspects.

E. Technical Amendments to the Current Diesel Fuel Sulfur Program Regulations

Following publication of the technical amendments to the Highway and Nonroad Diesel Regulations (71 FR 25706, May 1, 2006), we discovered additional errors and clarifications within the diesel regulations at 40 CFR part 80, Subpart I that we are addressing in this action. These items are merely typographical/printing errors and grammar corrections. A list of the changes that we propose making to Subpart I is below in Table IV–1. We welcome comments on any of these proposed amendments to the regulations.

TABLE IV–1—PROPOSED TECHNICAL AMENDMENTS TO THE DIESEL FUEL SULFUR REGULATIONS

Section	Description of change
80.525(a)–(d)	Removal of the term ''motor vehicle'' from this section.
80.551(f)	Correction of printing error.
80.561	Correction of typographical error in title.
80.593	Correction of typographical error in introductory text.
80.599(e)(4)	Correction of printing error in definition of terms ''#1MV15$_I$'' and ''NPMV15$_I$''.
80.600(a)(12)	Amended to correct date (''May 31, 2014'' instead of ''June 1, 2014'').
80.600(i)	Amended to remove duplicate sentence.
80.601(b)(3)(x)	Amending to correct dates (''August 31'' instead of ''August 1'').
80.612(b)	Amended to fix typographical error in paragraph.

V. Emission Control Areas for U.S. Coasts

The proposed Clean Air Act standards described above are part of a coordinated strategy for ensuring that all ships that affect U.S. air quality will be required to meet stringent NO_X and fuel sulfur requirements. Another component of this strategy consists of pursuing ECA designation for U.S. and Canadian coasts in accordance with Annex VI of MARPOL. ECA designation will ensure that all ships, foreign-flagged and domestic, are required to meet stringent NO_X and fuel sulfur requirements while operating within 200 nautical miles of most U.S. coasts. This section describes what an ECA is, the process for obtaining ECA designation at the International Maritime Organization, and summarizes the U.S. and Canadian proposal for an amendment to MARPOL Annex VI designating most U.S. and Canadian coasts as an ECA (referred to as the ''U.S./Canada ECA'' or the ''North American ECA''), submitted to IMO on March 27, 2009.[97] We also discuss how emissions from foreign OGV may be covered should approval of the U.S. ECA be delayed.

A. What is an ECA?

(1) What Emissions Standards Apply in an ECA?

MARPOL Annex VI contains international standards to control air emissions from ships. The NO_X and SO_X/PM programs each contain two sets of standards. The global standards for the sulfur content of fuel and NO_X emissions from engines apply to ships at all times. In recognition that some areas may require further control, Annex VI also contains more stringent NO_X and SO_X/PM geographic-based standards that apply to ships operating in designated Emission Control Areas.

[97] *Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulphur Oxides and Particulate Matter,* Submitted by the United States and Canada. IMO Document MEPC59/6/5, 27 March, 2009. A copy of this document can be found at *http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc-59-eca-proposal.pdf*

The current global fuel sulfur (S) limit is 45,000 ppm[98] S and will tighten to 35,000 ppm S in 2012. Depending on a 2018 fuel availability review, the MARPOL Annex VI global fuel sulfur limit will be further reduced to 5,000 ppm S as early as 2020. In contrast, ships operating in designated ECAs are subject to a fuel sulfur limit of 15,000 ppm S. The ECA limit is reduced to 10,000 ppm S in March 2010 and 1,000 ppm S in 2015. In addition, Tier 3 NO_X standards will apply to new engines operating in ECAs beginning in 2016. These Tier 3 NO_X standards represent an 80% reduction in NO_X beyond current Tier 1 standards and are anticipated to require the use of aftertreatment technology such as SCR. We are proposing to adopt similar Tier 3 standards as part of our Clean Air Act program (see Section III).

There are currently two ECAs in effect today, exclusively controlling SO_X; thus they are called Sulfur Emission Control Areas, or SECAs. The first SECA was designated to control the emissions of SO_X in the Baltic Sea area and entered into force in May 2005. The second SECA was designated to control the emissions of SO_X in the North Sea area and entered into force in November 2006.

(2) What is the Process for Obtaining ECA Designation?

A proposal to amend Annex VI to designate an ECA can be submitted by a party to Annex VI. A party is a country that ratified Annex VI. The proposal for amendment must be approved by the Parties to MARPOL Annex VI; this would take place at a meeting of the Marine Environment Protection Committee (MEPC). The U.S. deposited its Instrument of Ratification with the IMO on October 8, 2008. Annex VI entered into force for the U.S. on January 8, 2009, making the U.S. eligible to apply for an ECA.

The criteria and procedures for ECA designation are set out in Appendix III to MARPOL Annex VI. A proposal to designate an ECA must demonstrate a need to prevent, reduce, and control emissions of SO_X, PM, and/or NO_X from ships operating in that area. The specific criteria are summarized below:

- A delineation of the proposed area of application;
- A description of the areas at risk on land and at sea, from the impacts of ship emissions;
- An assessment of the contribution of ships to ambient concentrations of air pollution or to
- Adverse environmental impacts;
- Relevant information pertaining to the meteorological conditions in the proposed area of
- Application to the human populations and environmental areas at risk;
- Description of ship traffic in the proposed ECA;
- Description of the control measures taken by the proposing Party or Parties;
- Relative costs of reducing emissions from ships compared with land-based controls; and
- An assessment of the economic impacts on shipping engaged in international trade.

An amendment to designate an ECA must be adopted by the Parties to Annex VI, as an amendment to Annex VI. Assuming the USG proposal to amend Annex VI is considered at MEPC 59, the earliest possible adoption date is the following MEPC meeting, MEPC 60, which is anticipated to take place in March 2010. Given the MARPOL amendment acceptance process and the lead time specified in the regulations, an ECA adopted on this timeline could be expected to enter into force as early as August 2012.

B. U.S. Emission Control Area Designation

EPA worked with the U.S. Coast Guard, State Department, the National Oceanic and Atmospheric Administration and other agencies to develop the analysis supporting ECA designation for U.S. coasts contained in the U.S. and Canadian submittal to IMO. In addition, we collaborated with Environment Canada. As a result, the proposal for ECA designation that was submitted to IMO was for a combined U.S./Canada ECA submission. This approach has several advantages. First, the emission reductions within a Canadian ECA will lead to air quality improvements in the U.S. Second, a joint ECA helps minimize any competitive issues between U.S. and Canadian ports, such as in the Puget Sound area, that could arise from ECA standards. Third, IMO encourages a joint submittal where there is a common interest in emission reductions on neighboring waters.

(1) What Areas Would Be Covered in a U.S./Canada ECA?

The area included in the U.S. and Canadian submittal to IMO for ECA designation generally extends 200 nautical miles from the coastal baseline, except where this distance goes beyond the Exclusive Economic Zones (EEZ) of the U.S. and Canada, in which case the ECA would be limited by the boundary of the applicable EEZ. This area would include the Pacific Coast, the Atlantic/Gulf Coast and the Southeastern Hawaiian Islands. On the Pacific Coast, the ECA would be bounded in the north such that it includes the approaches into Anchorage, Alaska, but not the Aleutian Islands or points north. It would continue contiguously to the south including the Pacific coasts of Canada and the U.S., with its southernmost boundary at the point where California meets the border with Mexico. In the Atlantic/Gulf Coast, the ECA would be bounded in the west by the border of Texas with Mexico and continue contiguously to the east around the peninsula of Florida and north up the Atlantic coasts of the U.S. and Canada and would be bounded in the north by the 60th North parallel. The Southeastern Hawaiian Islands that were included in the ECA submittal are Hawaii, Maui, Oahu, Molokai, Niihau, Kauai, Lanai, and Kahoolawe.

[98] Note that MARPOL Annex VI expresses these standards in units of % (m/m) sulfur. 10,000 ppm S equals 1 percent S.

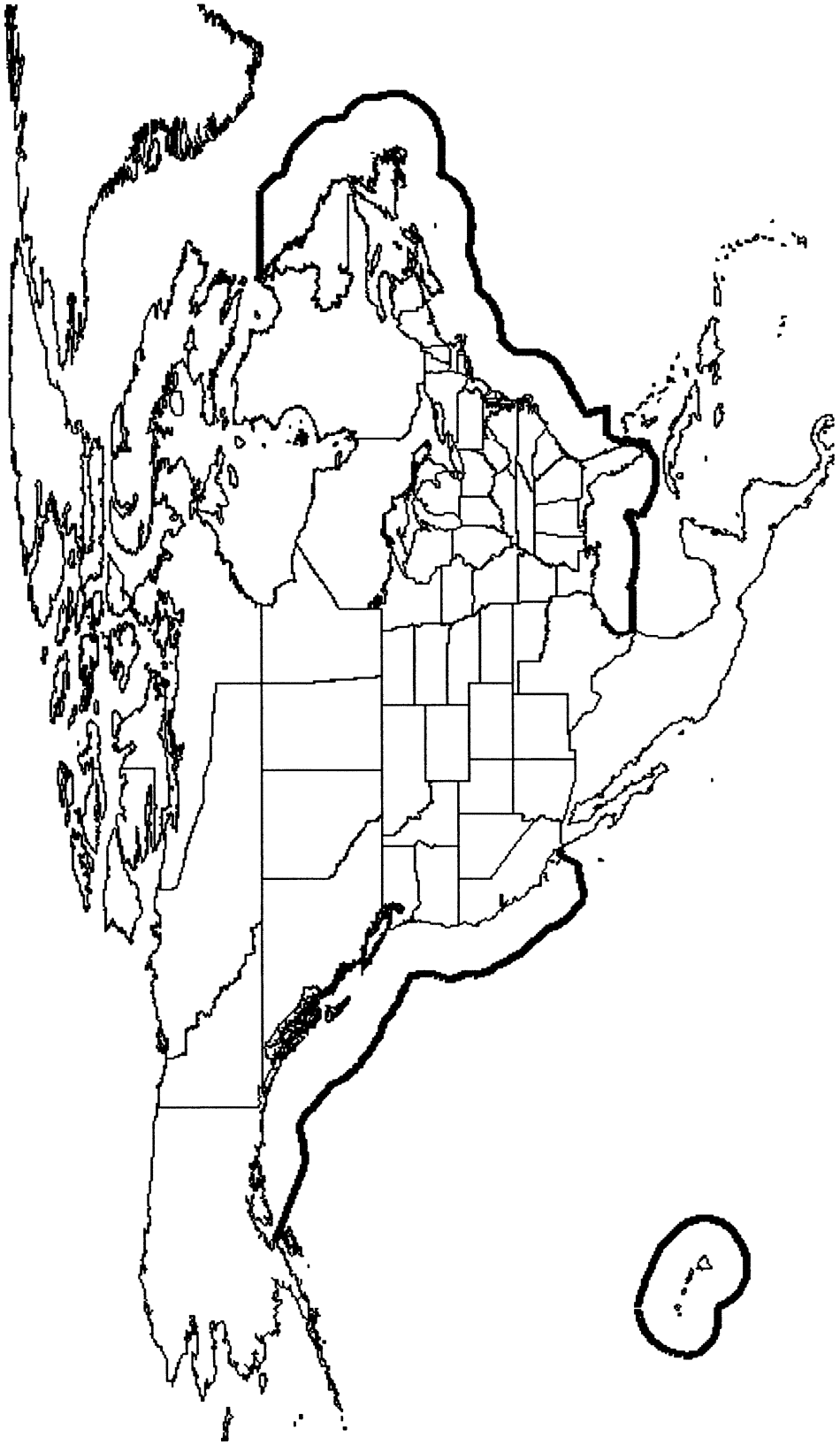

Figure V-1 Proposed U.S./Canada Emission Control Area

Not included in the ECA submittal were the Pacific U.S. territories, smaller Hawaiian Islands, the U.S. territories of Puerto Rico and the U.S. Virgin Islands, Western Alaska including the Aleutian Islands, and the U.S. and Canadian Arctic. The U.S. and Canada did not make a determination or imply that these areas suffer no adverse impact from shipping. Further information must be gathered to properly assess these areas. If further information supports the need for expansion of the ECA to other U.S. or Canada areas, we would submit a future, supplemental

proposal for ECA designation of these areas.

(2) What Analyses Were Performed in Support of a U.S./Canada ECA?

We performed a comprehensive analysis to estimate the degree of human health risk and environmental degradation that is posed by air emissions from ships operating in their ports and along our coasts. To evaluate the risk to human populations, state-of-the-art assessment tools were used to apply widely accepted methods with advanced computer modeling techniques. The analyses incorporated detailed ship traffic data, the most recent emissions estimates, detailed observed meteorological data, current scientific understanding of exhaust plume behavior (both physical dispersion and photochemical reaction) and the latest epidemiologic databases of health effects attributable to pollutant exposure levels to estimate the current impacts of shipping on human health and the environment. In addition, sulfate and nitrate deposition modeling was performed to assess the impacts of nitrogen nutrient loading and acidification on U.S. ecosystems.

Two contrasting future scenarios were evaluated: one in which ships continue to operate with current emissions performance while operating in the specified area, and one in which ships comply with ECA standards. The analysis demonstrated that ECA designation for U.S. coasts could save thousands of lives each year, relieve millions of acute respiratory symptoms, and benefit many of the most sensitive ecosystems. This analysis is consistent with, and incorporated in, the benefits estimates presented in Section VIII.

C. Technological Approaches To Comply With ECA Standards

When operating within the ECA, all ships would have to comply with the 0.1% fuel sulfur limit and vessels built after December 31, 2015 would have to comply with the Tier 3 NO_X limits described above. This section describes how ships would comply with these requirements.

(1) How Will Ships Comply With the ECA NO_X Standards?

Ships constructed beginning in 2016 will have to comply with the MARPOL Annex VI Tier III NO_X limits. These are equivalent to the Tier 3 NO_X limits we are proposing in this action under our Clean Air Act authority. These standards are geographic in nature, in that they apply to any vessel built beginning in 2016 while it is operating in an ECA. Once a U.S./Canada ECA is designated through amendment to MARPOL Annex VI, the requirements will be enforceable for most vessels through the Act to Prevent Pollution from Ships (see Section VI.B).

As explained in Section III, we anticipate that SCR would be the most likely approach to meet these NO_X limits. When operating in the ECA, SCR units would be active, meaning that urea would be injected into the exhaust to facilitate catalytic reduction of NO_X emissions. When outside of the ECA, the unit would likely be inactive, meaning that urea would not be injected into the exhaust. When the SCR unit is inactive, the exhaust flow could either continue to pass through the SCR unit or be diverted around the catalyst.

Under the MARPOL NO_X Technical Code, a means for monitoring the use of urea must be provided which must include ''sufficient information to allow a ready means of demonstrating that the consumption of such additional substances is consistent with achieving compliance with the applicable NO_X limit.'' In addition, where an NO_X reducing device, such as SCR, is used, one of the options for providing verification of compliance with the NO_X standard is through direct measurement and monitoring of NO_X emissions.

When operating in an ECA, as discussed below, it is anticipated that vessels will operate on lower sulfur fuel than outside the ECA. Therefore, lower sulfur fuel will primarily be used when the SCR unit is active. However, ship operators may use an exhaust gas scrubber as an alternative to lower sulfur fuel to meet the SO_X/PM ECA requirement. In this case, the SCR unit would likely be optimized for operation on higher sulfur fuel, with the SO_X scrubber situated downstream of the SCR unit.

(2) How Will Ships Comply With the ECA Fuel Sulfur Standards?

As discussed above, the MARPOL Annex VI fuel sulfur limit for ships operating in an ECA is 15,000 ppm today and reduces to 10,000 ppm in March 2010 and further to 1,000 ppm in 2015. We anticipate that the 1,000 ppm fuel sulfur limit, beginning in 2015, will likely result in the use of distillate fuel for operation in ECAs. This would require the vessel to switch from a higher sulfur fuel to 1,000 ppm S fuel before entering the ECA. The practical implications of fuel switching are discussed below. As an alternative to operating on lower sulfur fuel, an exhaust gas cleaning device may be used to remove sulfur from the exhaust. These devices, which are colloquially known as SO_X scrubbers, are also discussed below.

(a) Fuel Switching

Currently, the majority of ocean-going vessels use residual fuel (also called HFO or IFO) in their main propulsion engines, as this fuel is relatively inexpensive and has a good energy density. This fuel is relatively dense ('heavy') and is created as a refining by-product from typical petroleum distillation. Residual fuels typically are composed of heavy, residuum hydrocarbons and can contain various contaminants such as heavy metals, water and sulfur compounds. It is these sulfur compounds that cause the SO_X emissions when the fuel is combusted. If the vessel does not employ the use of a sulfur scrubber or other technology, it will most likely operate on a marine distillate fuel while in an ECA in order to meet the sulfur emission requirements.

The sulfur in marine fuel is primarily emitted as SO_2; however, a small fraction (about 2 percent) is converted to SO_3. SO_3 almost immediately forms sulfate and is emitted as direct PM by the engine. Consequently, emissions of SO_2 and sulfate PM are very high for engines operating on residual fuel. Switching from high sulfur residual fuel to lower sulfur distillate fuel results in large reductions in SO_2 and sulfate PM emissions. In addition to high sulfur levels, residual fuel contains relatively high concentrations of low volatility, high molecular weight organic compounds and metals. Organic compounds that contribute to PM can be present either as a nucleation aerosol or as a material adsorbed on the surfaces of agglomerated elemental carbon soot particles and metallic ash particles. The sulfuric acid aerosol in the exhaust provides a nucleus for agglomeration of organic compounds. Operation on higher volatility distillate fuel reduces both nucleation and adsorption of organic compounds into particulate matter. Therefore, in addition to direct sulfate PM reductions, switching from residual fuel to distillate fuel reduces organic PM and metallic ash particles in the exhaust.

In the majority of vessels which operate on residual fuel, marine distillate fuel is still used for operation during routine maintenance, prior to and immediately after engine shut-down, or in emergencies. Standard procedures today have been established to ensure that this operational fuel switchover is performed safely and efficiently. Mainly, in order for the vessel to completely switch between residual and distillate fuel, the fuel

pumps and wetted lines will need to be completely purged by the new fuel to ensure that the ship is burning the correct fuel for the area. This purging will vary from ship to ship due to engine capacity, design, operation, and efficiency. Provided the ship has separate service tanks for distillate and residual fuel (most, if not all, vessels do), fuel switching time should be limited only by maximum allowable rate of fuel temperature change. Additionally, for a longer operation period such as would occur while in an ECA, we investigated several other fuel switching topics to ensure that vessels would not have long-term issues from operating on the marine distillate fuels.

Marine distillate fuels are similar in composition and structure to other petroleum-based middle distillate fuels such as diesel and No. 2 heating oil, but they have a much lower allowable sulfur content than residual fuels. This lower sulfur content means that by combusting marine distillate fuel in their propulsion engines, vessels operating within the ECA would meet the stricter SO_X requirements. However, sulfur content is not the only difference between the marine residual and distillate fuels; they also have different densities, viscosities, and other specification limits.

The maritime industry has analyzed the differences between residual and distillate fuel compositions to address any potential issues that could arise from switching operation of a C3 engine from residual fuel to distillate fuel. The results from this research has evolved into routine operational switching procedures that ensure a safe and efficient way for the C3 engines to switch operation between the residual and distillate fuels. A brief summary of the fuel differences, as well as any potential issues and their usual solutions, is presented below.

(i) Fuel Density

Due to its chemical composition, residual fuel has a slightly higher density than marine distillates. Using a less dense fuel could affect the ballast of a ship at sea and would have to require compensation. Therefore, when beginning to operate on the distillate fuel, the vessel operator would have to pay attention to the vessel's ballast and may have to compensate for any changes that may occur. We anticipate that these procedures would be similar to operating the vessel with partially-full fuel tanks.

Another consideration when switching to a lower density fuel is the change in volumetric energy content. Distillate fuel has a lower energy density content on a per gallon basis when compared to the residual fuel; however, per ton, distillate fuel's energy density is larger than the residual fuel. This means that when switching from residual fuel to distillate fuel, if the vessel's tanks are volumetrically limited (*i.e.,* the tanks can only hold a set quantity of fuel gallons), the distance a vessel can travel on the distillate fuel may be slightly shorter than the distance the vessel could travel on the residual fuel due to the lower volumetric energy content of distillate fuel, which could require compensation. This distance reduction would be approximately 5% and would only be of concern while the vessel was operating on the distillate fuel (*i.e.,* while in the U.S. ECA) as the majority of the time the vessel will be operating on the residual fuel. However, if the vessel is limited by weight, the higher energy content per ton of fuel would provide an operational advantage.

(ii) Kinematic Viscosity

Residual fuel's kinematic viscosity is much higher than marine distillate fuel's viscosity. Viscosity is the 'thickness' of the fuel. If this parameter is lowered from the typical value used within a pump, some issues could arise. If a distillate fuel is used in a system that typically operates on residual fuel, the decrease in viscosity could cause problems with high-pressure fuel injection pumps due to the increased potential for internal leakage of the thinner fuel through the clearances in the pumping elements. Internal leakage is part of the design of a fuel pump and is used in part to lubricate the pumping elements. However, if this leakage rate is too high, the fuel pump could produce less than optimal fuel injection pressures. If the distillate fuel's lower viscosity becomes an issue, it is possible to cool the fuel and increase the viscosity above 2 centistokes, which is how most vessels operate today during routine fuel switchovers.

(iii) Flash Point

Flash point is the temperature at which the vapors off the fuel ignite with an outside ignition source. This can be a safety concern if the owner/operator uses an onroad diesel fuel rather than a designated 'marine distillate' fuel for operation because marine fuels have a specified minimum flash point of 60 °F (15.6 °C) to ensure onboard safety, whereas onroad diesel has a minimum specified flash point of 52 °F (11.1 °C). However, since most distillate fuels are created in the same fashion, typical flash points of onroad diesel are above 60 °F (15.6 °C), and would meet the marine fuel specification for this property. If the flash point of the fuel being used on-board the vessel becomes a concern, the operator/bunker supplier would have to ensure that the vessel is obtaining fuel with a minimum flash point of 60 °F (15.6 °C) via the bunker delivery note or through fuel testing.

(iv) Lubricity

Lubricity is the ability of the fuel to lubricate the engine/pump during operation. Fuels with higher viscosity and high sulfur content tend to have very good lubricity without the use of specific lubricity-improving additives. Refining processes that lower fuel sulfur levels and their viscosities can also remove some of the naturally-occurring lubricating compounds. Severe hydrotreating of fuel to obtain ultra-low sulfur levels can result in poor fuel lubricity. Therefore, refineries commonly add lubricity improvers to ultra-low sulfur diesel. This will most likely become a concern when very low levels of sulfur are present in the fuel and/or the fuel has been hydrotreated to reduce sulfur, *e.g.,* if ultra-low sulfur highway diesel (ULSD) is used in the engine. Several groups have conducted studies on this subject, and for some systems where fuel lubricity has become an issue, lubricity additives can be utilized or the owner/operator can install a lubricating system for the fuel pump.

(v) Lube Oil

Lube oils are used to neutralize acids formed in combustion, most commonly sulfuric acids created from sulfur in the fuel. The quantity of acid-neutralizing additives in lube oil should match the total sulfur content of the fuel. If excessive amounts of these additives are used, they may create deposits on engine components. Marine engine manufacturers have recommended that lube oil only needs to be adjusted if the fuel is switched for more than one week, but the oil feed rate may need to be reduced as well as engine operating power. Additional research has been conducted in this area and several oil companies have been working to create a lubricating oil that would be compatible with several different types of fuel.

(vi) Asphaltenes

Asphaltenes are heavy, non-volatile, aromatic compounds which are contained naturally in some types of crude oil. Asphaltenes may precipitate out of the fuel solution when a fuel rich in carbon disulfide, such as residual fuel, is mixed with a lighter hydrocarbon fuel, such as *n*-pentane or

n-heptane found in some distillate fuels. When these heavy aromatic compounds fall out of the fuel solution, they can clog filters, create deposition along the fuel lines/combustion chamber, seize the fuel injection pump, or cause other system troubles. This risk can be minimized through onboard test kits and by purchasing distillate and residual fuel from the same refiner. However, according to the California Air Resources Board, the formation of asphaltenes is not seen as an issue based on data from previous maritime rules.

As can be seen, if vessel operators choose to operate on marine distillate fuel while in the ECA, some prudence is required. However, as described above, any issues that could arise with switching between residual and distillate fuel are minimal and can be addressed through changes to operating procedures. To conduct a successful switchover between the residual and marine distillate fuels, vessel operators will need to keep the above issues in mind and follow the engine manufacturer's standard fuel switching procedure.

(b) SO_X Scrubber

Annex VI allows for alternative compliance strategies in including the use of exhaust gas cleaning systems (EGCS). EGCS systems used today for sulfur control are commonly known as SO_X scrubbers. This section describes the technological feasibility of scrubbers and how scrubbers may be used to achieve equivalent emission reductions as fuel switching.

SO_X scrubbers are capable of removing up to 95 percent of SO_X from ship exhaust using the ability of seawater to absorb SO_X. SO_X scrubbers have been widely used in stationary source applications, where they are a well-established SO_X reduction technology. In these applications, lime or caustic soda are typically used to neutralize the sulfuric acid in the washwater. While SO_X scrubbers are not widely used on ocean-going vessels, there have been prototype installations to demonstrate their viability in this application such as the Krystallon systems installed on the P&O ferry Pride of Kent and the Holland America Line cruise ship the ms Zaandam. These demonstrations have shown scrubbers can replace and fit into the space occupied by the exhaust silencer units and can work well in marine applications.

There are two main scrubber technologies. The first is an open-loop design which uses seawater as exhaust washwater and discharges the treated washwater back to the sea. Such open-loop designs are also referred to as seawater scrubbers. In a seawater scrubber, the exhaust gases are brought into contact with seawater, either through spraying seawater into the exhaust stream or routing the exhaust gases through a water bath. The SO_2 in the exhaust reacts with oxygen to produce sulfur trioxide which then reacts with water to form sulfuric acid. The sulfuric acid in the water then reacts with carbonate and other salts in the seawater to form sulfates which may be removed from the exhaust. The washwater is then treated to remove solids and raise the pH prior to discharge back to the sea. The solids are collected as sludge and held for proper disposal ashore.

A second type of SO_X scrubber which uses a closed-loop design is also feasible for use on marine vessels. In a closed loop system, fresh water is used as washwater, and caustic soda is injected into the washwater to neutralize the sulfur in the exhaust. A small portion of the washwater is bled off and treated to remove sludge, which is held and disposed of at port, as with the open-loop design. The treated effluent is held onboard or discharged at open sea. Additional fresh water is added to the system as needed. While this design is not completely closed-loop, it can be operated in zero discharge mode for periods of time.

Exhaust gas scrubbers can achieve reductions in particulate matter as well. By removing sulfur from the exhaust, the scrubber removes most of the direct sulfate PM. Sulfates are a large portion of the PM from ships operating on high sulfur fuels. By reducing the SO_X emissions, the scrubber will also control much of the secondary PM formed in the atmosphere from SO_X emissions. However, simply mixing alkaline water in the exhaust does not necessarily remove much of the carbonaceous PM, ash, or metals in the exhaust. While SO_2 associates with the washwater, particles can only be washed out of the exhaust through direct contact with the water. In simple scrubber designs, much of the mass of particles can reside in gas bubbles and escape out the exhaust.

Manufacturers have been improving their scrubber designs to address carbonaceous soot and other fine particles. Finer water sprays, longer mixing times, and turbulent action would be expected to directionally reduce PM emissions through contact impactions. One scrubber design uses an electric charge on the water to attract particles in the exhaust to the water. In another design, demisters are used that help effectively wash out PM from the exhaust stream. In either of these designs, however, the systems would be effective at removing SO_2 from the exhaust even if the additional hardware needed for non-sulfate PM reduction were not used.

Annex VI does not present specific exhaust gas limits that are deemed to be equivalent to the primary standard of operating on lower sulfur fuel. Prior to the recent amendments to Annex VI, Regulation 13 included a limit of 6 g/kW-hr SO_2 as an alternative to the 15,000 ppm sulfur limit for sulfur emission control areas. Under the amended requirements, the specific SO_2 limit was removed and more general language on alternative approaches was included. Specifically, Regulation 4 of MARPOL Annex VI now states ''The Administration of a Party may allow any fitting, material, appliance or apparatus to be fitted in a ship or other procedures, alternative fuel oils, or compliance methods used as a alternative to that required by this Annex if such fitting, material, appliance or apparatus or other procedures, alternative fuel oils, or compliance methods are at least as effective in terms of emissions reductions as that required by this Annex, including any of the standards set forth in regulations 13 and 14.''

IMO is developing guidelines for the use of exhaust gas cleaning devices such as SO_X scrubbers as an alternative to operating on lower sulfur fuel.[99] These draft guidelines include a table of SO_2 limits intended to correspond with various fuel sulfur levels. Based on the methodology that was used to determine the SO_2 limit of 6.0 g/kW-hr for existing ECAs, the corresponding limit is 0.4 g/kW-hr SO_2 for a 1,000 ppm fuel sulfur limit. This limit is based on an assumed fuel consumption rate of 200 g/kW-hr and the assumption that all sulfur in the fuel is converted to SO_2 in the exhaust. The draft IMO guidelines also allow for an alternative approach of basing the limit on a ratio of SO_2 to CO_2. This has the advantage of being easier to measure during in-use monitoring. In addition, this ratio holds more constant at lower loads than a brake-specific limit, which would approach infinity as power approaches zero. For the existing 15,000 ppm fuel sulfur limit in ECAs, a SO_2 (ppm)/CO_2(%) limit of 65 was developed. The equivalent limit for a

[99] ''Proposed amendments for resolution MEPC.170(57)—Guidelines for Exhaust Gas Cleaning Systems,'' Submitted by the Institute of Marine Engineering, Science and Technology, to the 59th session of the Marine Environment Protection Committee, International Maritime Organization, MEPC 59/10/5, April 10, 2009.

1,000 ppm fuel sulfur level is 4.0 SO_2 (ppm)/CO_2(%).

Scrubbers are effective at reducing SO_2 emissions and sulfate PM emissions from the exhaust. However, as discussed above, the effectiveness of the scrubber at removing PM emissions other than sulfates is dependent on the scrubber design. In addition to sulfate PM reductions, switching from residual fuel to distillate fuel results in reductions in organic PM and metallic ash particles in the exhaust. As such, consideration should be given to non-sulfate PM when making the determination that using a given ECGS design is ''at least as effective'' as operating on lower sulfur fuel to control PM emissions.

We would not consider an exhaust gas scrubber to be an acceptable control strategy for reducing NO_X emissions. In a typical diesel exhaust gas mixture, NO_X is composed of roughly 5–10% NO_2, with the majority of the remainder in the form of NO. NO_2 is soluble in water, and therefore may be removed by the water in the scrubber. It is possible to treat the exhaust upstream of the scrubber to convert more of the NO_X to NO_2, thereby facilitating the use of a scrubber to remove NO_2. However, we are concerned that this would add to nitrogen loading of the water in which the ship is operating. As discussed in Section II.B.1, nitrogen loading can lead to serious water quality impacts. The issue of NO_X scrubbing is addressed in the draft IMO EGCS guidelines by limiting the amount of NO_X that may be removed by the scrubber.

Water-soluble components of the exhaust gas such as SO_2, SO_3, and NO_2 form sulfates and nitrates that are dissolved into the discharge water. Scrubber washwater also includes suspended solids, heavy metals, hydrocarbons and polycyclic aromatic hydrocarbons (PAH). Before the scrubber water is discharged, there are several approaches that may be used to process the scrubber water to remove solid particles. Heavier particles may be trapped in a settling or sludge tank for disposal. The removal process may include cyclone technology similar to that used to separate water from residual fuel prior to delivery to the engine. However, depending on particle size distribution and particle density, settling tanks and hydrodynamic separation may not effectively remove all suspended solids. Other approaches include filtration and flocculation techniques. Flocculation, which is used in many waste water treatment plants, refers to adding a chemical agent to the water that will cause the fine particles to aggregate so that they may be filtered out. Sludge separated from the scrubber water would be stored on board until it is disposed of at proper facilities.

The draft IMO guidelines for the use of exhaust gas cleaning devices such as SO_X scrubbers include recommended monitoring and water discharge practices. The washwater should be continuously monitored for pH, PAHs and turbidity. Further, the IMO guidance include specifications for these same items, as well as nitrate content when washwater is discharged in ports, harbors or estuaries. Finally, the IMO guidance recommends that washwater residue (sludge) be delivered ashore to adequate reception facilities and not discharged to the sea or burned on board. Also note that any discharges directly into waters of the United States may be subject to the Clean Water Act or other U.S. regulation.

D. ECA Designation and Foreign-Flagged Vessels

In our previous marine diesel engine rulemakings, EPA did not extend our Clean Air Act standards to engines on vessels flagged by other countries. In our 2003 rule, many states and localities expressed concern about the high levels of emissions from ocean-going vessels. We examined our position and concluded that no change was necessary at that time because the Tier 1 standards we adopted for Category 3 engines on U.S. vessels were the same as those contained in MARPOL Annex VI. We indicated we would re-examine this issue in our current rulemaking and would also review the progress made by the international community toward the adoption of new more stringent international standards that reflect the application of advanced emission control technologies.

We received comments from a broad range of interested parties on the Advance Notice of Proposed Rulemaking (ANPRM) for this rulemaking. Generally, these commenters remain concerned about the contribution of ocean-going vessels to their air quality. Many took the position that EPA should cover engines on foreign-flagged OGV under Clean Air Act section 213 since they account for the vast majority of OGV emissions in the United States and because of their perception, at the time these comments were submitted, that the international process to set stringent standards was stalled.

In this section, we provide background on EPA's past statements with regard to the application of our Clean Air Act section 213 standards to engines on foreign-flagged vessels, and summarize comments we received on this issue in response to our ANPRM. Because the NO_X standards adopted in the amendments to Annex VI are comparable in stringency and timing to our proposed CAA NO_X standards, we do not believe it is necessary to extend our Clean Air Act Tier 2 and 3 standards to engines on foreign-flagged vessels at this time. Therefore, this proposal does not seek to resolve the issue of whether section 213 of the Act allows us to set standards for engines on foreign-flagged vessels. However, as further explained below, our decision rests on the timely adoption of an amendment to Annex VI designating the U.S. coastal waters as an ECA, since the most stringent of the NO_X standards will be applicable in such areas. If the amendment designating a U.S. ECA is not timely adopted by the Parties to IMO, we will revisit this issue.

We request comments on all aspects of this discussion.

(1) What Is EPA's Current Approach for Engines on Foreign-Flagged Vessels?

Section 213 of the Clean Air Act (42 U.S.C. 7547) authorizes regulation of ''new nonroad engine[s]'' and ''new nonroad vehicle[s].'' Because Title II of the Clean Air Act does not define either ''new nonroad engine'' or ''new nonroad vehicle,'' our early interpretations of these terms with regard to our other nonroad programs were reasonably modeled after the statutory definitions of ''new motor vehicle engine'' and ''new motor vehicle'' found in section 216(3) of the CAA.[100] Those early interpretations focused on engines and vehicles freshly built or imported.

Similarly, in our first phase of marine diesel emission standards (our 1999 rule), we modeled our definitions of ''new'' marine engine and vessel after the existing ''new nonroad engine'' and ''new nonroad vehicle'' regulatory definitions.[101] We also referred to Department of the Treasury rulings on the meaning of ''import'' for customs purposes.[102] Specifically, Treasury rulings for marine engines and vessels include as imports only those marine engines and vessels intended to remain in the United States permanently. Because engines on foreign-flagged

[100] Proposed Rule, 56 FR 45,866 at 45867 (1991); Final Rule 59 FR 86969, 86971 (1994); see *Engine Manufacturers Assoc.* v. *EPA,* 88 F.3d 1075, 1087 (D.C.Cir. 1996).

[101] Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW; Final Rule, 64 FR 73300 (December 29, 1999).

[102] Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW; Final Rule, 64 FR 73300 (December 29, 1999) at 73302, discussing *American Customs Brokerage Co., Inc., a/c Astral Corp.* v. *United States,* 375 F.Supp. 1360, 1366 (Cust.Ct. 1974).

vessels were only entering U.S. ports temporarily, with no intention to remain permanently, we declined to treat those engines and vessels as imported and, thus, we determined that these engines are not ''new'' marine engines or vessels for purposes of section 213 of the CAA. Therefore, in that first rulemaking for diesel marine engines, we did not apply the CAA program to engines on foreign-flagged vessels.

In our subsequent rulemaking to establish Clean Air Act emission standards for Category 3 engines,[103] we re-examined this background to re-consider the issue of whether engines on foreign-flagged vessels should be included within the scope of our Clean Air Act standards. Because the NO_X standards we adopted in that rule were near-term standards that were equivalent to the then-MARPOL Annex I NO_X standards, and because we adopted a regulatory deadline to consider an additional tier of NO_X standards (which are the subject of the current rulemaking), we deferred making a decision on whether we have the discretion to set standards for such engines until the present rulemaking. We decided that even if we have the discretion to interpret ''new marine engine'' to include engines on foreign-flagged vessels, it would be appropriate not to exercise such discretion at that time since the near-term standards that we would be adopting in that rule already applied to foreign-flagged vessels through Annex VI. We explained that foreign-flagged vessels were expected to comply with the current MARPOL standards whether or not they were also subject to the equivalent Clean Air Act standards and, consequently, no significant emission reductions would be achieved by treating foreign-flagged vessels as ''new'' for purposes of the near-term standards in that final rule. However, we also indicated that we would consider, in the subsequent rulemaking, whether we need to resolve under what circumstances we may or should define new nonroad engine and vessel to include foreign-flagged engines and vessels. As part of that determination, we indicated we would also assess the progress made by the international community toward adopting new more stringent international consensus standards that reflect advanced emission-control technologies.

[103] Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 30 Liters/Cylinder; Final Rule, 68 FR 9746 at 9759 (February 28, 2003).

Accordingly, we raised this issue in our 2007 ANPRM,[104] indicating that we would evaluate whether we should re-define new nonroad engines and vessels to include foreign-flagged engines and vessels. Likewise, we indicated that as part of that evaluation, we would also assess the progress made by the international community toward the adoption of new more stringent international standards that reflect advanced emission-control technologies.

(2) Is EPA Proposing To Change the Current Approach to Engines on Foreign-Flagged Vessels?

Since the ANPRM was published, the International Maritime Organization adopted amendments to MARPOL Annex VI. These amendments, adopted in October 2008, contain stringent new tiers of NO_X emission limits for marine diesel engines as well as new fuel sulfur limits.[105] These requirements are applicable in the United States to both domestic and foreign-flagged vessels through operation of the Act to Prevent Pollution from Ships (APPS), as amended in 2008.[106] Amendments to the Act to Prevent Pollution from Ships were adopted in 2008 specifically to provide the statutory mechanism to enforce the Annex VI requirements on domestic and foreign-flagged vessels and to enforce the ECA requirements once a U.S. ECA is designated under Annex VI.

The most stringent of the new Annex VI standards requires engines to meet Tier III NO_X standards. Under the Annex, these requirements would apply in designated ECAs. At the time the amendments were adopted, countries were invited to propose areas for ECA designation so that the full benefit of these technology-forcing standards could be realized by areas that demonstrate a need for them. As explained above, the United States and Canada recently submitted a proposal to amend MARPOL Annex VI to designate U.S. and Canadian coastal areas as an ECA. Due to the human health and welfare needs for these controls as documented in the ECA application, we expect that the Parties to Annex VI will adopt this amendment at the 60th Session of the Marine Environment Protection Committee (MEPC), to be held in March 2010. Once the ECA is adopted by the Parties and enters into force, U.S.- and foreign-flagged ships will be subject to the stringent provisions of MARPOL Annex VI within the ECA. Since the ECA was developed to protect air quality in port and inland areas, these requirements will also apply in U.S. internal waters. The U.S. will enforce these requirements pursuant to APPS.

More specifically, under the recently-adopted NO_X amendments to Annex VI, in 2016, the engines on new ships operating in ECAs must meet Tier III NO_X standards requiring advanced-technology engines designed to cut emissions of ozone-forming NO_X by roughly 80%. These MARPOL Annex VI Tier III NO_X standards are comparable to the CAA Tier III NO_X standards we are proposing in this **Federal Register** notice and are more fully described in Section III. When operating outside a designated ECA, the engines must meet the global Tier II NO_X standard, which otherwise applies to engines on ships beginning in 2011 and will require a 20% reduction from the current Tier I levels. Thus, assuming the U.S. ECA is adopted, NO_X standards comparable to those we are proposing in this NPRM under section 213(a)(3) of the CAA will be applicable to engines on foreign-flagged vessels operating in all U.S. waters and will be enforced under the authority of APPS.

Because we expect the proposed amendment to Annex VI designating a North American ECA will be adopted in a timely manner, the result of the combined CAA program and the ECA designation will be the application of comparable NO_X standards to domestic- and foreign-flagged vessels which will be enforceable under a combination of the Act and APPS. As a result, it would not be necessary to resolve the issue of whether we have the authority to impose section 213 CAA standards on foreign-flagged vessels. For this reason, we are not proposing to change our current approach with regard to the application of the Clean Air Act marine diesel engine standards to engines on foreign-flagged vessels. The conditions that led us to this conclusion in 2003 are the same today, assuming approval of the North American ECA. Because this decision not to address our authority to regulate foreign-flagged vessels at this time is predicated upon timely approval of the U.S.-Canada proposal to amend Annex VI to designate the North American ECA, we will revisit this approach if the ECA is not adopted as expected.

[104] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder: Advanced Notice of Proposed Rulemaking, 72 FR 69522 at 69545 (December 7, 2007).

[105] Resolution MEPC.176(58), ''Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, As Modified by the Protocol of 1978 Relating Thereto,'' MEPC 58/23/Add.1 Annex 13, October 10, 2008.

[106] 33 U.S.C. 1901–1912.

(3) What Comments Did EPA Receive on This Issue?

EPA received a number of comments in response to the ANPRM on the issue of whether EPA should or could address emissions from engines on foreign-flagged vessels. Most commenters express a need to include engines on foreign-flagged vessels given the significant contribution of such vessels' emissions to the air pollution problem we are addressing.[107] Most of these same commenters also express the position that EPA has the authority to include engines on foreign-flagged vessels as part of its section 213 emission reduction program.[108] Other comments take the position that EPA not only has the authority to cover such engines and their emissions, but EPA has an obligation to do so.[109] In contrast, EPA also received comments opposing the view that EPA has such authority and encouraging EPA to work with international bodies to resolve concerns about such emissions.[110] A brief summary of these positions follows.

Generally, environmental non-governmental organizations and state air quality control authorities commenting on the ANPRM support the view that EPA should include engines on foreign-flagged vessels in its Clean Air Act emission reduction program. They state that ''there is no legal impediment to regulating the emissions of foreign-flagged ships operating in U.S. waters. U.S. courts have long held that U.S. laws apply only within the territorial jurisdiction of the U.S., at least in the absence of evidence of contrary Congressional intent.'' [111]

South Coast Air Quality Management District (SCAQMD) takes the position that a U.S. statute is presumed to apply to a foreign-flagged vessel in United States waters unless the statute sought to regulate ''matters that involve only the internal order and discipline of the vessel'' or ''only the internal operations of the ship.'' [112] Because the United States has a vital interest in reducing pollutants from all visiting ships and because ''the 'physical structure' of a ship is not a matter that 'concerns only the internal operations of the ship,' '' SCAQMD believes that section 213 of the CAA should be presumed to apply to engines on foreign-flagged vessels. Moreover, SCAQMD comments that, even if a clear statement of intent to cover engines on foreign-flagged vessels were required, sections 213(a)(3) and (4) unequivocally apply ''to *all* such nonroad engines, without qualifications.'' [113]

Similarly, the Environmental Law & Policy Clinic at Harvard Law School (HLS) identifies examples of agencies applying statutory requirements to foreign-flagged vessels, even if significant modifications to the vessel may be required and ''when the governing statute does not explicitly direct or otherwise authorize the agency to exempt [such vessels].'' [114]

On interpretation of the term ''new nonroad engine,'' commenters supporting regulation of emissions from foreign-flagged vessels believe that section 213 provides broad authority to regulate any emissions from new nonroad engines and vehicles, and although the statute does not define what a ''new nonroad engine'' is, neither does the statute distinguish ''between U.S.-flagged and foreign-flagged ships for purposes of emission standards.'' [115] Thus, the ambiguity, if any, should be resolved in favor of regulating such engines.

In that vein, SCAQMD would identify any engine or vessel constructed after the effective date of an EPA rule as ''new'' and subject to the applicable standard ''regardless of whether those vessels are foreign-flagged'' and regardless of whether the engine or vessel is imported. Further, SCAQMD stated that: ''While it might not be known with certainty for some ships at the time they are built whether they are going to travel to U.S. ports, in most cases it is likely that this would be known, and the shipbuilder could always preserve the ship's ability to do so by meeting EPA's standards.'' [116]

SCAQMD also addresses an EPA position in an earlier rulemaking regarding EPA's interpretation of ''new'' to include ''import'' as that term is interpreted under U.S. customs laws, and whether engines on foreign-flagged vessels visiting the U.S. are therefore imported. In that context, SCAQMD states: ''the fact that a vessel is not imported does not mean it is not 'new' within the ordinary meaning of the term. * * * The inclusion of the term 'imported' was to cover vessels that otherwise would not be considered 'new,' in order to prevent circumvention. Thus, the definition of 'imported' does not limit EPA's ability to apply its rules to vessels that are in fact 'new,' even though foreign-flagged. We believe the ordinary meaning of 'new' is sufficient to cover this concept.'' [117] HLS similarly comments that: ''Section 213 can reasonably be interpreted to exclude cars and trucks that have neither been manufactured in nor imported into the United States because those excluded cars and trucks do not pollute air in the U.S. Neither Section 213 nor Section 216, however, authorizes EPA to exclude marine vessels that *do* use and pollute U.S. ports, whether those vessels can somehow be deemed 'imported' or 'not imported.' '' [118]

In contrast, Clean Air Task Force (CATF) believes it would be ''reasonable for the Agency to continue to interpret 'new nonroad engine' as including 'imported' nonroad engines,'' but that EPA is not obligated to ''defer to interpretations of that term under U.S. customs laws, in view of the dramatically different purposes of such laws.'' [119] CATF explains that ''[w]hile the purpose of application of the customs laws to 'imports' is to impose a duty on merchandise that is brought into the country on a permanent basis, the purpose of the application of the Clean Air Act to 'imports' is far different: that is, to reduce pollution

[107] *See, e.g.,* South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008); Clean Air Task Force (CATF), EPA–HQ–2007–0121, Document No. 0086.1 (March 6, 2008); Environmental Defense Fund (EDF), EPA–HQ–2007–0121, Document No. 0097.1 (March 6, 2008); Earthjustice, EPA–HQ–OAR–2007–0121, Document No. 0093.1 (March 6, 2008); Environmental Law & Policy Clinic at Harvard Law School (HLS), EPA–HQ–OAR–2007–0121, Document No. 0082.1 (March 6, 2008).

[108] *See, e.g.,* South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008); Clean Air Task Force (CATF), EPA–HQ–2007–0121, Document No. 0086.1 (March 6, 2008).

[109] *See, e.g.,* Environmental Law & Policy Clinic at Harvard Law School (HLS), EPA–HQ–OAR–2007–0121, Document No. 0082.1 (March 6, 2008).

[110] See, e.g., American Petroleum Institute (API), EPA–HQ–OAR–2007–0121, Document No. 0098.2 (March 6, 2008) and American Petroleum Institute (API), EPA–HQ–OAR–2007–0121, Document No. 0098.6 (March 6, 2008).

[111] Clean Air Task Force (CATF), EPA–HQ–2007–0121, Document No. 0086.1 (March 6, 2008) at 25.

[112] South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008) at 6 and 7, quoting *Spector* v. *Norwegian Cruise Line Ltd.,* 545 U.S. 119, 131 (2005) (emphasis added by commenter).

[113] South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008) at 8.

[114] See, Environmental Law & Policy Clinic at Harvard Law School (HLS), EPA–HQ–OAR–2007–0121, Document No. 0082.1 (March 6, 2008) at 3 and 4.

[115] Clean Air Task Force (CATF), EPA–HQ–2007–0121.1, Document No. 0086.1 (March 6, 2008) at 25.

[116] South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008) at 5.

[117] South Coast Air Quality Management District (SCAQMD), EPA–HQ–OAR–2007–0121, Document No. 0084.1 (March 6, 2008) at 6.

[118] Environmental Law & Policy Clinic at Harvard Law School (HLS), EPA–HQ–OAR–2007–0121, Document No. 0082.1 (March 6, 2008) at 5 (emphasis included with comment).

[119] Clean Air Task Force (CATF), EPA–HQ–2007–0121, Document No. 0086.1 (March 6, 2008) at 25.

from sources operating within the United States, including its territorial waters and ports. Therefore, it is reasonable to conclude that under the Act, whether a vessel is operating in U.S. waters permanently, or whether it is flying a U.S. flag of registry, should not be conditions for regulating its emissions.'' [120]

Some commenters, however, take the opposite position. API comments that ''EPA's authority to regulate non-U.S. vessels/engines that are temporarily in U.S waters turns on whether such vessels/engines are 'imported' under the CAA,'' that EPA appropriately relied in the past on the customs law's interpretation of ''import,'' and that ''Congress did not intend to grant authority to EPA to regulate non-U.S. flagged vessels that are only in U.S. waters temporarily.'' [121]

EPA appreciates all of the comments we received on this. Although we continue to believe it is reasonable not to amend our current definition of new engine, we intend to revisit that issue without delay if the U.S. ECA is not timely considered and adopted.

VI. Certification and Compliance Program

This section describes the regulatory changes proposed for the CAA Category 3 engine compliance program. In general, these changes are being proposed to ensure that the benefits of the standards are realized in-use and throughout the useful life of these engines, and to incorporate lessons learned over the last few years from the existing test and compliance program.

The most obvious change is that we are proposing to apply the plain language regulations of 40 CFR 1042 to Category 3 engines. These part 1042 regulations were adopted in 2008 for Category 1 and Category 2 engines (73 FR 25098, May 6, 2008). They were structured to contain the provisions that are specific to marine engines and vessels in part 1042, and apply the parts 1065 and 1068 for other provisions not specific to marine engines. This approach is not intended to significantly change the compliance program from the program currently applicable to Category 3 engines under 40 CFR part 94, except as specifically noted in this notice (and we are not reopening for comment the substance of any part of the program that remains unchanged substantively). As proposed, these plain language regulations would supersede the regulations in part 94 for Category 3 engines beginning with the 2011 model year.

The changes from the existing programs are described below along with other notable aspects of the compliance program. These changes are necessary to implement the new standards as well as to implement the Annex VI program as required under the amendments to the Act to Prevent Pollution from Ships.

Finally, we are also including several proposed changes and clarifications to the compliance program that are not specific to Category 3 engines. Some of these would apply only for marine diesel engines below 30 liters per cylinder displacement.

A. Compliance Provisions for Category 3 Engines

In general, we are proposing to retain the certification and compliance provisions finalized with the Tier 1 standards for Category 3 engines. These include testing, durability, labeling, maintenance, prohibited acts, *etc.* However, we believe additional testing and compliance provisions will be necessary for new standards requiring more advanced technology and more sophisticated emission control systems. These changes, as well as other modifications to our certification and compliance provisions for Category 3 engines, are discussed below.

Our certification process is similar to the process specified in the Annex VI NO_X Technical Code (NTC) for pre-certification. However, the Clean Air Act specifies certain requirements for our certification program that are different from the NTC requirements. The EPA approach differs most significantly from the NTC in three areas. First, the NTC allows but does not require certification of engines before installation (known as pre-certification under the NTC), while EPA does require it. Second, we include various provisions to hold the engine manufacturer responsible for the durability of emission controls, while the NTC holds the engine manufacturer liable only before the engine is placed into service. Finally, we specify broader temperature ranges and allow manufacturers less discretion in setting engine parameters for testing, with the goal of adopting test procedures that represent a wide range of normal in-use operation. We believe the regulations in this final rule are sufficiently consistent with NTC that manufacturers can continue to use a single harmonized compliance strategy to certify under both systems.

(1) Testing

We are proposing to largely continue the testing requirements that currently apply for Category 3 engines with a few exceptions.

(a) General Test Procedures

We are proposing to apply the general engine testing procedures of 40 CFR part 1065 to Category 3 engines. This is part of our ongoing initiative to update the content, organization and writing style of our regulations. For each engine sector for which we have recently promulgated standards (such as smaller marine diesel engines), we refer to one common set of test procedures in part 1065. This is because we recognized that a single set of test procedures would allow for improvements to occur simultaneously across engine sectors. A single set of test procedures is easier to understand than trying to understand many different sets of procedures, and it is easier to move toward international test procedure harmonization if we only have one set of test procedures.

These procedures replace those currently published in parts 92 and 94 and are fundamentally similar to those procedures. The primary differences are related to tighter tolerances to reduce test-to-test variability. In most cases, a manufacturer should be able to comply with 1065 using its current test equipment. Nevertheless, full compliance with part 1065 would take some effort on the part of manufacturers. As such, we are proposing some flexibility to make a gradual transition from the part 92 and 94 procedures. For several years, manufacturers would be able to optionally use the part 1065 procedures. Part 1065 procedures would generally be required for any new testing by 2016 (except as noted below). This is very similar to the allowance already provided with respect to Category 1 and Category 2 engines.

We are also proposing to allow Category 3 manufacturers to submit data collected using the test equipment and procedures specified in the NO_X Technical Code, even after 2016. The procedures in 1065 would still be the official test procedures, however, and manufacturers would be liable with respect to any test results from 1065 testing. Thus, we do not believe this allowance would have any effect on the stringency of the standards, or how manufacturers design and produce their engines.

(b) Test Fuel

Appropriate test procedures need to represent in-use operating conditions as

[120] Clean Air Task Force (CATF), EPA–HQ–2007–0121, Document No. 0086.1 (March 6, 2008) at 25–26.

[121] American Petroleum Institute (API), EPA–HQ–OAR–2007–0121, Document No. 0098.6 (March 6, 2008) at 2–3.

much as possible, including specification of test fuels consistent with the fuels that compliant engines will use over their lifetimes. Our current regulations allow Category 3 engine testing using distillate fuel, even though many vessels with these engines currently use less expensive residual fuel. This provision is consistent with the specifications of the NO_X Technical Code. We are proposing to continue this approach for Tier 2 and Tier 3. Our primary reason for continuing this approach is that we expect these Category 3 engines will generally be required to use distillate fuels in areas that will affect U.S. air quality for most of their operational lives. (We expect this because we expect IMO to approve our proposal to amend Annex VI to designate the U.S. coastal waters as an ECA.) However, since these engines will not be required to use low-sulfur or ultra low-sulfur fuel, we are also proposing to add an explicit requirement that a high-sulfur distillate test fuel be used for both Tier 2 and Tier 3 testing. Our testing regulations (40 CFR 1065.703) are being revised to specify that high-sulfur diesel test fuels contain 800 to 2500 ppm sulfur. This would be lower than the current specification of 2000 to 4000 ppm. This will allow manufacturers to test with fuels near the ultimate in-use limit of 1000 ppm. We request comment on applying this approach to Category 1 and/or Category 2 engines on Category 3 vessels. Commenters supporting this approach should address how such engines could meet the applicable PM requirements. For example, should EPA allow these engines to show compliance using emission credits? Would this require us to set a higher Family Emission Limit cap for engines using this allowance? See also Section VI.C.1 for further discussion of these engines.

(c) Testing Catalyst-Equipped Engines

In our existing programs that require compliance with catalyst-based engines (such as the Category 1 & 2 engine program), we require manufacturers to test prototype engines equipped with prototype catalyst systems. However, it is not clear that this approach would be practical for Category 3 engines. These are problematic because of their size and because they tend to be a least partially custom built. Requiring a manufacturer to construct a full-scale catalyst system for each certification test would be extremely expensive.

We are proposing an optional special certification procedure to address this concern. The provisions are in § 1042.655 of the proposed regulations. The emission-data engine must be tested in the specified manner to verify that the engine-out emissions comply with the Tier 2 standards. The catalyst material must be tested under conditions that accurately represent actual engine conditions for the test points. This catalyst testing may be performed on a benchscale. Manufacturers must include a detailed engineering analysis describing how the test data collected for the engine and catalyst material demonstrate that all engines in the family will meet all applicable emission standards. Manufacturers must verify their design by testing a complete production engine and catalysts in its final assembled configuration.

(d) Testing Production Engines

Under the current regulations, manufacturers must test a sample of their Category 1 and Category 2 engines during production. We are now proposing similar provisions for Category 3 engines. While in the past we did not believe that such testing was necessary, circumstances have changed in two important ways. First, relatively inexpensive portable test systems have recently become available. This greatly reduces the cost of testing an engine in a ship. Second, the need to verify that production engines actually comply with the emission standards increases as standards become more stringent and emission control technologies become more complicated.

Specifically, we are proposing that every new Tier 2 or later Category 3 engine be tested during the vessel's sea trial to show compliance with the applicable NO_X standard. Any engine that fails to comply with the standard would need to be repaired and retested. Since we are not proposing PM standards for Category 3 engines, and because PM measurement is more difficult than measuring only gaseous emission, we would not require PM measurement during testing after installation, provided PM emissions were measured during certification.

One concern that manufacturers have raised in the past is that it can be difficult to achieve the exact test points in use. Therefore, we are proposing to allow manufacturers flexibility with respect to test points when testing production engines, consistent with the equivalent allowance under the NO_X Technical Code. Where manufacturers are unable to duplicate the certification test points during production testing, we are proposing to allow them to comply with an alternate ''at-sea standard'' that is 10 percent higher than the otherwise applicable standard. This is specified in § 1042.104(g).

Since we are proposing to require testing of every production engine, we are also proposing to exclude Category 3 engines from selective enforcement audits under 40 CFR part 1068.

(e) PM Measurement

We are proposing to require manufacturers to measure PM emissions along with NO_X, HC, and CO during certification testing to report these results along with the other test data. This is similar to our recently proposed requirement for manufacturers to measure and report certain greenhouse gas emissions for a variety of nonroad engine sectors.[122] Manufacturers should be able to collect these data using stand-alone partial flow PM measurement systems. In recent years, several vendors have developed such systems to be compliant with the requirements of 1065.

It is worth noting that in the past, there has been some concern regarding the use of older PM measurement procedures with high sulfur fuels. The primary issue of concern was variability of the PM measurement, which was strongly influenced by the amount of water bound to sulfur. However, we believe improvements in PM measurement procedures, such as those specified in 40 CFR 1065, have addressed these issues of measurement variability. The U.S. Government recently submitted proposed procedures for PM measurement to IMO.[123]

(2) Low Power Operation and Mode Caps

Emission control performance can vary with the power at which the engine operates. This is potentially important because Category 3 engines can operate at relatively low power levels when they are operating in port areas. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. The International Organization for Standardization (ISO) E3 and E2 test cycles, which are used for emission testing of propulsion marine engines, are heavily weighted towards high power. In the absence of other requirements, it would be possible for manufacturers to meet the cycle-weighted average emission standards without significantly reducing emissions at low-power modes. This could be especially problematic for Tier

[122] 74 FR 16448, April 10, 2009.

[123] ''Measurement Method For Particulate Matter Emitted From Marine Engines,'' Submitted by the United States to the International Maritime Organization Intersessional [sic] Meeting Of the BLG Working Group On Air Pollution, 5 October 2007.

3 engines relying on urea-SCR for NO_X control, since the effectiveness of the control is directly affected by the amount of urea that is injected and there would be an obvious economic incentive for manufacturers and operators to minimize the amount of urea injected.

We are addressing these concerns in two ways. First, we are applying mode caps for NO_X emissions that will ensure that manufacturers design their emission controls to be fully effective at 25 percent power. This would require that manufacturers meet the applicable NO_X standard at each individual test point, and not merely as a weighted average of the test points. The caps would only apply for NO_X emissions, and manufacturers would not be required to meet the HC and CO standards at each test point. For HC and CO, manufacturers would only be required to meet the applicable standards as a weighted average of the test points

The other concern is related to power levels other than the test points. To address this, we will continue to rely on our prohibition of defeat devices to ensure effective control for lower powers. Most significantly, this would prohibit manufacturers from turning off the urea supply to SCR systems at these points, unless the exhaust gas temperature was too cool for the SCR catalyst to function properly. (Urea at these low temperatures does not react with NO_X molecules and can lead to high emissions of ammonia.)

(3) On-Off Technologies

One of the features of the SCR technologies that are projected to be used to meet the Tier 3 NO_X standards is that they are not integral to the engine and the engine can be operated without them. They will also require the operator to supply the proper reductant. Thus, these technologies are potentially ''on-off'' technologies. Switching to distillate fuel instead of residual fuel to reduce SO_X and PM emissions can be thought of in the same way.

The increased operating costs of such controls associated with urea (or other reductants) or with distillate usage suggest that it may be reasonable to allow these systems to be turned off while a ship is operated on the open ocean, far away from sensitive areas that are affected by ship emissions. This is the basis of the MARPOL Annex VI ECA approach, with one set of limits that would apply when ships are operated in sensitive areas and another that would apply when ships are operated outside those limits.

We are proposing a new regulatory provision in § 1042.115(g) to address the use of on-off technologies on Category 3 engines subject to the Tier 3 standards. This provision would require the manufacturer to obtain EPA approval to design the engines to have on-off features. It would also require the engine's onboard computer to record the on-off operation (including geographic position and time) and require that the engine comply fully with the Tier 2 standards when the Tier 3 controls are turned off. We request comment on applying this approach to Category 1 and/or Category 2 engines on Category 3 vessels.

At this time, our goal is to require manufacturers to comply with the Tier 3 standards in all areas that will ultimately be included in any Emission Control Area, which should include all areas for which EPA has determined that Category 3 engines significantly affect U.S. air quality. As discussed in Section V.A, we have not yet determined the extent to which Category 3 engines affect air quality in the U.S. territories, areas of Alaska west of Kodiak, or the smallest Hawaiian islands. Therefore, we are proposing to include an interim provision to exclude those areas with respect to the Tier 3 standards at this time. We will revisit this should our review of available modeling results or other information indicate that compliance with the Tier 3 standards should be required for some or all of these areas.

(4) NO_X Monitoring

We are proposing that Category 3 engines equipped with on-off controls must be equipped to continuously monitor NO_X concentrations in the exhaust. Engine manufacturers would be required to include systems to automatically alert operators of any operation with the emission controls on where NO_X concentrations indicate malfunctioning emission controls. We would also require the engine to record in nonvolatile computer memory any such operation. However, we would not require monitoring NO_X concentrations during operation for which the emission controls are allowed to be turned off, provided the record indicated that the controls were turned off. Where the NO_X monitor system indicates a malfunction, operators would be required to investigate the cause and make any necessary adjustments or repairs.

We are proposing to define as a malfunction of the emission controls any condition that would cause an engine to fail to comply with the applicable NO_X standard (See Section VI.A.1.d for a discussion of standards that would apply for installed engines at sea). Such malfunctions could include maladjustment of the engine or controls, inadequate reductant, or emission controls turned off completely. We recognize that it is not possible to perfectly correlate a measured NO_X concentration with an equivalent cycle-weighted emission result. Therefore, the proposed requirement would allow engine manufacturers to exercise good engineering judgment in using measured NO_X concentrations to monitor the emission performance of the engine. We request comment on the need for less subjective approaches. For example, should we establish caps for concentrations based on the concentrations measured during certification?

(5) Parameter Adjustment

Given the broad range of ignition properties for in-use residual fuels, we expect that our current in-use adjustment allowance for Category 3 engines would result in a broad range of adjustment. We are therefore considering a requirement for operators to perform a simple field measurement test to confirm emissions after parameter adjustments or maintenance operations, using onboard emission measurement systems with electronic-logging equipment. We expect this issue will be equally important for more advanced engines that rely on water injection or aftertreatment for emission reductions. Onboard verification systems could add significant assurance that engines have properly operating emission controls.

We envision a simpler measurement system than the type specified in Chapter 6 of the NO_X Technical Code. As we described in the 2003 final rule, we believe that onboard emission equipment that is relatively inexpensive and easy-to-use could verify that an engine is properly adjusted and is operating within the engine manufacturer's specifications. Note that Annex VI includes specifications allowing operators to choose to verify emissions through onboard testing, which suggests that Annex VI also envisioned that onboard measurement systems could be of value to operators. We request comment on requiring onboard verification systems on ships with Category 3 marine engines and on a description of such a system. In particular, we request comment on whether the continuous NO_X monitoring system described in the previous subsection would be sufficient to address these concerns.

(6) In-Use Liability

Under the existing Tier 1 program for Category 3 engines, owners and operators are required to maintain, adjust, and operate the engines in such a way as to ensure proper function of the emission controls. These requirements, which are described in 40 CFR 94.1004, are being continued in the regulations in part 1042 (See § 1042.660 of the proposed regulations for these requirements). Specifically, these provisions require that all maintenance, repair, adjustment, and alteration of the engine be performed using good engineering judgment so that the engine continues to meet the emission standards. Each two-hour period of operation of an engine in a condition not complying with this requirement would be considered a separate violation. Owners will also continue to be required to keep certain records onboard the vessel and report annually to EPA whether or not the vessel has complied with these and other requirements.

(7) Replacement Engines

The existing provisions of § 1042.615 provide an exemption that allows manufacturers to produce new uncertified engines when they are needed to replace equivalent existing engines that fail prematurely. For many engine sectors, this practice is common, but represents a very small faction of a manufacturer's total engine production. However, since we do not believe this practice is either common or necessary for Category 3 engines, we are proposing to not allow this exemption for Category 3 engines.

B. Compliance Provisions To Implement Annex VI NO_X Regulation and the NO_X Technical Code

In addition to the Clean Air Act provisions being proposed in this action, we are also proposing new regulations to implement certain provisions of the Act to Prevent Pollution from Ships. These regulations are proposed as a new part 1043 of title 40.

The Act to Prevent Pollution from Ships establishes a general requirement for vessels operating in the exclusive economic zone and navigable waters of the United States to comply with MARPOL Annex VI. It also gives EPA and the Administrator the authority to further implement MARPOL Annex VI. Many of the requirements relating to NO_X emissions and fuel sulfur limits can be implemented without the need for further elaboration in that the Annex, along with the NO_X Technical Code, provides instructions on how to demonstrate compliance with those requirements. However, APPS authorizes the Administrator to prescribe any necessary or desired additional regulations to assist in carrying out the provisions of Regulations 12 through 19 of Annex VI (see 33 USC 1903(c)(2)). Specifically, the regulations being proposed in this NPRM in part 1043 of title 40 are intended to assist in the implementation of the engine and fuel requirements contained in Regulation 13, 14, and 18 of MARPOL Annex VI.. They address such issues as how to obtain an Engine International Air Pollution Prevention (EIAPP) certificate (which is equivalent in many ways to a Clean Air Act certificate of conformity), exemptions for vessels used exclusively in domestic service, and requirements for vessels not registered by a country that is a Party to Annex VI.

In contrast to the compliance program for Category 3 engines described in Section VI.A, the 1043 regulations described in this section would apply to all marine diesel engines above 130 kW. Similarly, the MARPOL Annex VI fuel requirements apply to all fuel oil used onboard a vessel, defined as any fuel delivered to and intended for combustion purpose for propulsion or operation on board a ship, including distillate and residual fuels.

(1) EIAPP Certificates

In general, an engine can be dual-certified under EPA's Clean Air Act marine diesel engine program and the MARPOL Annex VI/APPS program. However, we propose to require that engine manufacturers submit separate applications for the 1042 and EIAPP certificates. The proposed regulations in part 1043 specify the process that would apply. The process for obtaining the EIAPP is very similar to the process for obtaining a certificate of conformity under part 1042, and although there are differences between the programs, manufacturers should be able to comply with both programs with very little additional work. The primary differences are that, to certify to the MARPOL Annex VI standards, the manufacturer must include a copy of the Technical File and onboard NO_X verification procedures (as specified in Section 2.4 of the NO_X Technical Code) and is not required to provide information about useful life, emission labels, deterioration factors, or PM emissions.[124] Currently engine manufacturers will be able to apply for both certifications using the certification templates and test data.

Consistent with our 1042 program, our proposed 1043 program would require that each engine installed or intended to be installed on a U.S.-flagged vessel have an EIAPP before it is introduced into U.S. commerce. The proposed regulations would create a presumption that all marine engines manufactured, sold, or distributed in U.S. commerce would be considered to be intended to be installed on a U.S.-flagged vessel, although this presumption could be rebutted by clear and convincing evidence to the contrary (evidence that the engine is intended for export, for example).

(2) Approved Methods

The 2008 amendments to MARPOL Annex VI added a new provision to the engine standards in Regulation 13 that extends the Tier I NO_X limits to certain engines installed on ships constructed on or after January 1, 1990 through December 31, 1999. Specifically, engines with power output greater than 5,000 kW and with per cylinder displacement at or above 90 liters installed on such ships would be required to meet the Tier I NO_X limits if a certified Approved Method is available. An Approved Method may be certified by the Administration of any flag state, but once one is registered with the IMO the owner of such an engine must either install the Approved Method or demonstrate compliance with the Annex VI Tier I limits through some other method. We are proposing to include a regulatory section codifying this requirement. These regulations are contained in § 1043.50.

(3) Other Annex VI Compliance Requirements

Engine manufacturers, vessel manufacturers, vessel owners, and fuel providers, fuel distributors, and other directly regulated stakeholders are required to comply with all aspects of Regulations 13, 14, and 18 of Annex VI as well as the NO_X Technical Code. These include requirements for engine operation, fuel use, fuel oil quality, and various recordkeeping requirements (*e.g.,* record book of engine parameters, engine technical file, fuel switching procedures, bunker delivery notes and associated fuel samples, and fuel sampling procedures). While certification, compliance, and verification procedures are set out in the Annex and related documents, we nonetheless seek comment on whether additional regulatory provision under APPS would be necessary or helpful.

[124] See 68 FR 9746, February 28, 2003, at 9774–5 for a discussion of these differences as they relate to Category 3 marine diesel engines.

For example, the contents of a bunker delivery note are set out in Appendix V to MARPOL Annex VI and § 1043.80. Are there aspects of these criteria that should be further clarified, or are there parameters required in Regulation 18 that should also be included on the bunker delivery note? Similarly, the process for verifying the sulfur content of fuel oil samples is set out in Appendix VI to the amended Annex VI. Is there any aspect of this procedure that requires further clarification? Commenters supporting the inclusion of additional language related to these or other requirements are encouraged to include specific recommendations.

(4) Non-Party Vessels

The proposed regulations specify that vessels flagged by a country that is not a party to MARPOL (known as non-Party vessels) must comply with Regulations 13, 14, and 18 of Annex VI when operating in U.S. waters. This requirement would fulfill the requirement of 33 U.S.C. 1902(e), which requires the adoption of regulations for non-Party vessels such that they are not treated more favorably than vessels of countries that are party to the MARPOL Protocol. However, since such vessels cannot get EIAPP certificates, this proposed provision requires non-party vessels to obtain equivalent documentation of compliance with the NO_X standards of Annex VI. We request comment on this provision.

(5) Internal Waters

APPS applies Annex VI requirements, including amendments to Annex VI (such as ECA designations) that are binding on the United States, to all persons in navigable waters of the U.S., including internal waters. However, our recent proposal for ECA designation that was submitted to IMO, although intended to protect air quality in U.S. ports and internal areas, does not explicitly state that it applies to internal waters. Therefore, we are proposing regulatory text under the authority of APPS, in order to avoid confusion on whether vessels must meet ECA requirements in internal waters. The text clarifies that the ECA requirements generally apply to internal waters, such as the Mississippi River and the Great Lakes, that can be accessed by ocean-going vessels. Vessel emissions in these waters affect U.S. air quality to an equal, if not greater extent that emissions taking place in coastal waters. Specifically, the proposed rule would require compliance with the fuel sulfur requirements and the NO_X emission standards of Regulations 13, 14, and 18 in internal waters. However, the ECA requirements do not apply in internal waters, such as those in northwestern Alaska, that are not shoreward of an ECA designated under Annex VI; rather the non-ECA requirements of Annex VI apply for these waters.

(6) Exemptions and Exclusions

Under MARPOL Annex VI and APPS, certain vessels are excluded from some or all of the requirements. Consistent with Annex VI and APPS, the regulations in 1043 would exclude public vessels and engines intended to be used solely for emergencies. For the purpose of this provision, the term ''public vessels'' includes all warships and naval auxiliary vessels, as well as any other vessels owned or operated by a sovereign country engaged in noncommercial service. Consistent with the provisions in APPS, we are not proposing to apply the Annex VI requirements to U.S.-flagged public vessels. It should be noted, however, that not all public vessels are exempt from our Clean Air Act engine and fuel requirements. Only public vessels covered by a national security exemption under § 94.908 or § 1042.635 are exempt from the Clean Air Act program.

The category of emergency engines includes engines that power equipment such as pumps that are intended to be used solely for emergencies and engines installed in lifeboats intended to be used solely in emergencies. It should be noted that the emergency engine provisions in the Annex and part 1043 are similar but not identical to the emergency engine provisions in our Clean Air Act program or the process of obtaining our CAA exemptions. In particular, the emergency engine exemption from the CAA requirements applies only with respect to the catalyst-based Tier 4 standards.

We are exempting from the MARPOL Annex VI NO_X standards engines installed on vessels registered or flagged in the United States provided the vessel remains within the EEZ of the United States. These engines would still be required to meet stringent emission standards since they are covered by our Clean Air Act program. In addition, the fuels used by these vessels are also covered by our Clean Air Act program, which has more stringent fuel requirements than Annex VI. Therefore, we are also proposing that as long as the operators of these domestic vessels comply with these more stringent Clean Air Act fuel requirements, they will be deemed to be in compliance with the Annex VI requirements. The combination of these proposed provisions would mean that a fishing vessel that operates out of a U.S. port and that never leaves U.S. waters would not be required to have an EIAPP for all engines above 130 kW, a record book of engine parameters and a technical file for each engines, and vessels over 400 gross tons would not be required to maintain bunker delivery notes (vessels under 400 gross tons are not required by Regulation 18 of MARPOL Annex VI to have bunker delivery notes). Instead, the engines on that vessel would be required to be in compliance with our marine diesel engine standards and be required to comply with manufacture requirements with regard to the fueling of those engines. We are also proposing to explicitly preclude these engines from being certified to use residual fuel if they are exempt from the part 1043 requirements. Thus, these engines would be required to always use cleaner fuels than are required by Annex VI. U.S. vessels that operate or may operate in waters that are under the jurisdiction of another country are not exempt from these provisions, and the owner of any such vessel may be required by that country to show compliance with Annex VI. Therefore, the owner should be sure to maintain the appropriate paperwork for that engine and have the appropriate engine certification. It should be noted that engines that must show compliance with the Annex VI standards are not exempt from EPA's standards for Category 1 or Category 2 engines. We are requesting comment on this overall approach for domestic vessels. In particular, we are requesting comment on whether we should extend this exemption to U.S. vessels that sometimes leave the EEZ of the United States, but that never enter waters under the jurisdiction of another country.

Finally, spark-ignition, non-reciprocating engines, and engines that do not use liquid fuel are not included in Regulation 13 of the Annex VI program and therefore we are not proposing that they be covered by the proposed APPS regulations with respect to NO_X emissions. However, the MARPOL Annex VI fuel requirements do apply for these vessels. These engines are generally subject to separate Clean Air Act requirements and therefore will generally be in compliance with the fuel sulfur limits.

C. Changes to the Requirements Specific to Engines Below 30 Liters per Cylinder

The amendments to MARPOL Annex VI were adopted in October of 2008, after we finalized our Clean Air Act Tier 3 and Tier 4 standards for Category 1 and Category 2 engines (May 6, 2008, 73 FR 25097). While these two programs are very similar, there are a few

differences between them with regard to their engine requirements. We continue to believe that our Tier 3 and Tier 4 standards will yield the greatest degree of emission reduction that is technologically feasible, taking into account costs, safety, and other factors for those engines. However, we are considering changes to our CAA program to facilitate compliance with both programs. We seek comment on these potential changes, described below.

In addition, some of the provisions described in Section VI.D may also apply to Category 1 and Category 2 marine diesel engines, regarding non-diesel engines and technical amendments to our current program.

(1) MARPOL Annex VI and EPA's Standards for Category 1 and Category 2 Engines

As discussed throughout this notice, we are proposing to adopt the new Annex VI NO_X limits under our CAA program for Category 3 engines. Specifically, we are proposing to adopt the Tier II and Tier III standards as our Tier 2 and Tier 3 standards for engines above 30 liters per cylinder. The new Annex VI NO_X limits are shown in Table III–1 in Section III.B.1 above.

With regard to Category 1 and Category 2 marine diesel engines, the Annex VI standards are different from our Clean Air Act program in several ways. First, with regard to the NO_X limits, EPA's Tier 2 NO_X limits, which are similar in stringency to the Annex VI Tier II limits, have been in effect since 2004–2007, depending on engine size. EPA has intermediary Tier 3 NO_X limits, which begin in 2012–2014, depending on engine size, and are more stringent than the Annex VI Tier II standards that apply beginning in 2011. Also, while EPA's Tier 4 NO_X limits for Category 1 and Category 2 engines are similar in stringency to the Annex VI Tier III NO_X limit, they apply only to engines above 600 kW.[125]

Second, in addition to NO_X, EPA's marine diesel engine program includes limits for PM, HC, and CO emissions. Annex VI, in contrast, addresses marine diesel PM emissions through fuel standards (see Section III.B.2 above for an explanation for why this is appropriate for Category 3 engines). EPA's Tier 4 PM standards for Category 1 and Category 2 engines are expected to be met through PM aftertreatment technology, which will require the use of ultra-low sulfur diesel fuel. Owners of vessels that operate internationally, including ocean-going vessels, were concerned with the availability of this ultra-low sulfur fuel, *i.e.,* 15 ppm sulfur fuel, outside of the United States. In response to concerns with fuel availability, we created a provision that would exempt Category 1 and Category 2 engines installed on certain OGV from the Tier 4 standards. This permanent exemption from the Tier 4 standards is available to owners that can demonstrate their vessel will operate primarily outside the United States, as evidenced by obtaining and maintaining certification for the International Convention for the Safety of Life at Sea (SOLAS) for the vessel. The exempted engines are required to meet EPA's Tier 3 standards, which consist of interim NO_X and PM standards. Note that we indicated we do not expect to issue any permanent exemptions until 2021; prior to that time, it is our expectation that fleets would use their existing pre-Tier 4 vessels for operations where ULSD may not be available.

Third, and finally, EPA's marine diesel engine compliance requirements are slightly different from the MARPOL Annex VI program, regarding engine durability, test fuels (in EPA's program, an engine must be certified on the fuel type it will use in operation; see 40 CFR 1042.104 and 501), and some testing parameters. However, the programs are sufficiently consistent that engine manufacturers can use a single harmonized compliance strategy to certify under both systems.

(2) Tier 4 Compliance Option for Category 1 and 2 Engines on U.S. Vessels That Operate Internationally

Engines on U.S. vessels that comply with EPA's Tier 2 or Tier 3 standards will be in compliance with the Annex VI Tier I and Tier II NO_X limits, since EPA's limits are similar in stringency or are slightly more stringent.

Beginning in 2016, however, some engines in U.S. vessels that operate internationally could be out of compliance with the MARPOL NO_X limits, even though they comply with EPA's CAA program. This would occur in two situations. If an owner obtained a permanent exemption from the EPA's Tier 4 standards for engines above 600 kW, as described above, those engines would not meet the Annex VI Tier III NO_X limits. If the vessel has engines below 600 kW, which are only subject to EPA's Tier 3 standards for NO_X and PM, then those engines would also not meet the Annex VI Tier III NO_X limits. If a vessel is found to be in non-compliance with Annex VI, it can be detained in a foreign port until the deficiency is corrected.

Therefore, as a result of the new situation brought about by the Annex VI amendments, we are considering revising our program for Category 1 and 2 engines. To avoid U.S. vessels being found in non-compliance with the Annex VI NO_X limits in foreign ports, we are considering rescinding the permanent exemption for EPA's Tier 4 standards for Category 1 and 2 engines and, instead, adopting a compliance flexibility that would give owners the choice between complying with EPA's Tier 4 NO_X and PM standards or the MARPOL Annex VI Tier III NO_X standards for all engines installed on a vessel. This flexibility would ensure that owners of OGV that will operate in any ECA are in compliance with MARPOL Annex VI, while allowing owners of vessels that never operate in waters under the jurisdiction of another country to comply with the U.S. program instead.

This compliance option would be available beginning in 2016. The flexibility would be limited to vessels that are operated primarily outside of the United States, as evidenced by the vessel obtaining and maintaining SOLAS certification and appropriate EIAPP certification demonstrating compliance with Annex VI. U.S. vessels that are Jones Act vessels and/or that are used primarily between U.S. ports would not be eligible for this compliance flexibility given they do not have the concerns causing the need for an exemption from our CAA Tier 4 standards (*i.e.,* availability of 15 ppm sulfur fuel). The exercise of the compliance flexibility would take the form of a formal election to comply with the Annex VI Tier III NO_X limits in lieu of EPA's Tier 4 marine diesel engine emission limits. This formal election would be deposited with EPA and would be necessary so the engine manufacturer can provide an Annex VI-compliant engine to the vessel builder in lieu of a CAA Tier 4 engine.

This compliance option could yield additional NO_X emission benefits to U.S. air quality over the current permanent exemption approach. Under the current program, exempted engines would meet only the Tier 3 standards. For engines up to 3,300 kW, this is about a 20 percent reduction from Tier 1 (for larger engines, the Tier 3 NO_X limit is the same as the Tier 2 limit because the Tier 4 standards begin earlier, in 2014). Under the revised

[125] We continue to believe it is not appropriate to adopt SCR-forcing Tier 4 standards for engines below 600 kW in our national program, for the reasons described in our 2008 Final Rule (May 6, 2008, 73 FR 25097) . Specifically, there are significant challenges regarding the ability of manufacturers of the small vessels that use these engines for propulsion to incorporate SCR systems into their vessel designs. These concerns are not as significant for auxiliary engines used on OGV.

approach, all vessels would need to meet aftertreatment-forcing NO_X limits when operating in ECAs. The choice of either the EPA Tier 4 limits or the Annex VI Tier III limits is expected to yield similar NO_X benefits. While the Annex VI Tier III NO_X limits are slightly less stringent (an 80 percent reduction from Tier 1 compared to an 85 percent reduction from EPA's Tier 4 standard), the Annex VI program covers more engines (those 130–600 kW). Applying either of these programs could represent a significant NO_X reduction over the Tier 3 limits that would otherwise apply.

The main difference between the two programs is that the Annex VI program does not include PM standards. This means that instead of meeting EPA's Tier 3 PM standards (which are about a 45 percent reduction from the Tier 2 PM limit), the engines that exercise the Annex VI Tier III option would be unconstrained for PM. However, this will be offset by the greater reductions in NO_X (and associated indirect PM) emissions that would be achieved through the application of SCR-forcing standards to all engines above 130 kW installed on the vessel.

Owners of qualified vessels that operate in ECAs would be expected to choose the Annex VI Tier III option to ensure that their engines below 600 kW are in compliance in those areas. Owners of vessels that never operate in any ECA, including the North American ECA, may also choose that option if they are concerned with availability of ultra-low sulfur diesel fuel that would be required for EPA's Tier 4 PM controls.

Annex VI Tier III engines that are used in this program would be required to be certified by EPA, although we would accept test data obtained for compliance with the IMO program for this program.

We are also seeking comment on whether we should consider such a compliance option to replace our temporary exemption program for Category 1 and 2 engines. The temporary exemption was designed to address the case in which a U.S. vessel is contracted to operate overseas for an extended period of time in an area in which 15 ppm fuel is not available. Owners of vessels that obtain this exemption can disable the Tier 4 controls on Category 1 and Category 2 engines. The exemption is temporary in that the controls must be re-enabled before the vessel is returned to service in the United States. It should be noted that while the compliance flexibility described above would ensure that the vessel achieves the Annex VI Tier III standards while operating in another country, it also means that the vessel would not achieve EPA's Tier 4 PM requirements when it is returned to service in the United States.

(3) On/Off Technology for Category 1 and 2 Engines

As described in Section VI.A.3 above, we are proposing to allow the use of auxiliary emission control devices (AECDs) that would allow modulation of emission control equipment on Category 3 engines outside of specific geographic areas. These AECDs would be subject to certain restrictions: (1) The AECD would be available for the Tier 3 standards only; (2) the AECD would modulate emission controls only while operating in areas where emissions could reasonably be expected to not adversely affect U.S. air quality; and (3) and an engine equipped with an AECD must also be equipped with a NO_X emission monitoring device.

Ocean-going vessels with Category 3 propulsion engines have several smaller Category 1 and Category 2 engines to provide auxiliary power. In addition, while most U.S. vessels with Category 1 or Category 2 propulsion engines operate primarily or exclusively on our inland waterways, in our commercial ports, or in areas close to our coastlines, there are Category 1 and 2 vessels that operate more like ocean-going vessels.

Our current program for Category 1 and Category 2 engines does not allow the use of AECDs on these engines. Instead, it requires the NO_X and PM aftertreatment devices on these engines to be functional at all times unless the owner of the vessel has obtained from EPA either a temporary or permanent exemption from the Tier 4 standards.

Most U.S. vessels with Category 1 or Category 2 propulsion engines do not operate outside of our inland and coastal water systems, and therefore would not benefit from a provision that would allow AECDs. Additionally, we are concerned that use of this technology/strategy could have detrimental air quality impacts if operated inappropriately in or around U.S. waters. However, we are seeking comment as to whether we should consider allowing such an AECD provision to apply to other categories of marine diesel engines.

First, we seek comment on whether the application of this provision should be limited to Category 1 and Category 2 engines used as auxiliary engines on ocean-going vessels with Category 3 propulsion engines, to Category 1 and Category 2 engines installed on vessels that operate primarily outside the United States, or to some other group of vessels.

Second, if we allowed AECDs on engine categories with a PM emission standard, we seek comment on whether they should be limited to NO_X emissions only.

Third, we request comment on the NO_X (and potentially PM) levels that would need to be achieved while then AECD is in operation: the Annex VI Tier II NO_X limits or EPA's Tier 3 NO_X and PM limits.

Finally, we seek comment on whether an AECD provision should be used instead of the temporary exemption program for Category 1 and 2 engines. In this case, instead of extending the compliance flexibility to these vessels as described in Section VI.C.1, owners of a vessel that is contracted to operate outside the United States for an extended period of time could purchase and use engines equipped with on/off features, provided the emission control devices were operational when the vessel is operating in areas that affect U.S. air quality. We seek comment on whether the AECD approach is more useful for these vessels or the compliance flexibility described above.

D. Other Proposed Regulatory Issues

In addition to the changes described in Sections VI.A and VI.C, we are also proposing changes that would apply to Category 1 marine engines in general, and/or to other types of engines.

(1) Non-Diesel Engines

Most of the preceding discussions have focused on conventional diesel engines using either diesel fuel or residual fuels. It is important to highlight two other types of engines being affected by this proposal: engines using other fuels and gas turbine engines.

(a) Engines Not Using Diesel Fuel

For all categories of marine engines, our existing standards apply to all engines meeting the definition of compression-ignition, regardless of the fuel type. For example, compression-ignition Category 3 engines that burn natural gas are currently subject to our Tier 1 standards and would be subject to our proposed Tier 2 and Tier 3 standards. We are proposing to continue to apply this approach for all marine engines subject to our standards.

The testing regulations in part 1065 include test fuel specifications for diesel fuel, residual fuel, and natural gas (as well as for gasoline and liquefied petroleum gas, which would not typically be used in a compression-ignition engine). To certify an engine for a different fuel type, a manufacturer would need to obtain EPA approval to

use an alternate fuel which it recommends for testing. All other aspects of certification would be the same.

(b) Gas Turbine Engines

Gas turbine engines are internal combustion engines that can operate using a variety of fuels (such as diesel fuel or natural gas) but do not operate on a compression-ignition or other reciprocating engine cycle. Power is extracted from the combustion gas using a rotating turbine rather than reciprocating pistons. The primary type of U.S.-flagged vessels that use gas turbine engines are naval combat ships. While a small number have been used in commercial ships, we are not aware of any current sales for commercial applications. They can range in size from those equivalent in power to mid-size Category 1 engines to those that produce the same power as Category 3 engines. None of these engines are currently subject to our standards because they do not meet the definition of compression-ignition engines in our existing regulations.

To date, this omission has not been a concern because only a small number of turbine-powered vessels have been produced and nearly all of them would have been eligible for a national security exemption. However, we are concerned that this exclusion may become a loophole in the future for operators hoping to avoid using engines with advanced catalytic emission controls. To a lesser degree, we also have concerns about the possibility of other non-reciprocating engines being excluded. We are proposing to close this potential loophole by revising the regulations to treat new gas turbine engines (as well as other non-reciprocating engines) as compression-ignition engines and applying our standards for new Category 1 and Category 2 engines (including NO_X, HC, CO, and PM standards) to gas turbine engines.

To incorporate this approach in our marine emission control program, we are proposing a change to our definitions of Category 1 and Category 2 to include gas turbine engines. Since turbine engines have no cylinders, we need to address how to apply any regulatory provisions that depend on a specified value for per-cylinder displacement. A reasonable approach would be to apply the standards based on equivalent power ratings, to the extent possible. Specifically, we are proposing to redefine ''Category 1'' to include gas turbines with rated power up to 2250 kW and to redefine ''Category 2'' to include all gas turbines with higher power ratings. This would mean we would not consider any gas turbines as ''Category 3'' engines. The largest gas turbine engines would be considered to be Category 2 engines, even those that had rated power more typical of Category 3 diesel engines.

We are aware that some companies are manufacturing new high-performance recreational vessels using gas turbine engines. In at least some cases, the engines are modified from surplus military aircraft engines. We have not yet determined whether such recreational engines should be held to the same standards as conventional diesel engines. It is also important to note that under our current regulations, diesel engines meeting the definition of ''recreational marine engine'' in § 1042.901 are not subject to catalyst forcing standards. This approach was applied because of factors such as the usage patterns for recreational diesel engines. We would expect these same factors to apply for recreational gas turbine engines. Thus, we are not as concerned about a potential gas turbine loophole for recreational engines as for commercial engines. We also do not have enough information at this time to know how feasible it would be for gas turbine engine manufacturers to comply with the standards for recreational diesel engines, or to accurately assess the environmental impact of these vessels. Nevertheless, it is clear that the environmental impact of such small numbers of these engines cannot be large. Thus, at this time, we are not proposing to apply this regulatory change to recreational gas turbine engines (*i.e.,* that is gas turbine engines installed on recreational vessels). Nevertheless, we will continue to investigate these engines and may subject them to standards in the near future.

Our diesel engine program contains a national security exemption that automatically exempt vessels ''used or owned by an agency of the Federal government responsible for national defense, where the vessel has armor, permanently attached weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements.'' Since it is not our intent to prohibit naval vessels from using turbine engines, we are proposing to revise this provision to automatically exempt military vessels owned by an agency of the Federal government responsible for national defense powered by gas turbine engines.

We are confident that gas turbine engines could use the same type of aftertreatment as is projected for diesel engines. The basic reactions through which SCR reduces NO_X emissions can occur under a wide range of conditions, and exhaust from gas turbine engines is fundamentally similar to exhaust from diesel engines. Moreover, since gas turbines operate at lower air/fuel ratios and have lower exhaust volumes, they can actually use smaller less expensive catalysts than diesel engines of the same rated power. Viewed another way, however, this requirement can be considered to be feasible based on the fact that the only circumstance in which a vessel would actually need a gas turbine engine would be for military purposes where our national security exemption provisions would apply. For all other vessels, it is entirely feasible for the vessel to be powered by a diesel engine. In fact, that is what is being done today.

This program for gas turbine engines would apply to freshly manufactured engines only. We are not proposing to apply our marine remanufacture program to gas turbine engines. Because there are so few engines in the fleet, it is not possible to know what common rebuilding process are or whether and how those practices would return an existing engine to as-new condition. We may review this approach in the future if there is an increase in the number of gas turbines in the fleet.

(2) Technical Amendments

The proposed regulations include technical amendments to our motor vehicle and nonroad engine regulations. These changes are generally corrections and clarifications. A large number of these changes are the removal of obsolete highway engine text that applied only for past model years. Many others are changes to the text of part 1042 to make it more consistent with the language of our other recently corrected nonroad parts. The last large category of changes includes those related to the test procedures in part 1065. See the memorandum in the docket entitled ''Technical Amendments to EPA Regulations'' for a full description of these changes.[126]

(3) Locomotives Operating Outside of the United States

Locomotive manufacturers have raised an issue similar to the issue of on-off technologies discussed in Section VI.A.3. They have objected in the past to EPA's refusal to certify engine designs that increase NO_X emissions when the locomotive is operating in

[126] See ''Proposed Technical Amendments to EPA Regulations,'' EPA memorandum from Alan Stout, in the docket for this proposed rule, Docket No.: EPA–HQ–OAR–2007–0121.

Mexico, even though the engine design would reverse the adjustment to allow the locomotive to conform to NO_X emissions standards when it returns to the United States. Engine manufacturers have wanted to use such engine designs to improve fuel consumption by readjusting injection timing while the locomotive is operating in Mexico.

In our recent locomotive rulemaking, we responded to these manufacturer concerns by noting that we have ''prohibited such AECDs because of concerns over their potential adverse impacts on U.S. air quality,'' recognizing that ''emissions that occur outside the territorial boundaries of the U.S. can impact air quality within the U.S.'' Since we also committed to reconsider the issue more broadly in this current rulemaking, we are requesting comment on whether we should allow manufacturers to certify such engine designs.

In particular, we are requesting comment on what conditions we should set if we allow such designs. For example, should we approve the design only if it was calibrated to remain in the low-NO_X mode until it was at least 200 miles away from the U.S. border? Should we allow such designs if they would conflict with Mexican law? Should we also consider operation in Canada or Central American countries? Commenters should also address the degree to which such designs would be tamper-proof and whether special recordkeeping or reporting requirements should be included. Finally, commenters should also address how EPA should respond if such a locomotive was found to be operating in the U.S. in the high-NO_X configuration and such high-NO_X operation was not caused by tampering. Should it be treated merely as a defect that must be reported, or should it be treated as different violation, *e.g.,* introduction into commerce of an engine not in substantial conformance to its certificate?

(4) Stockpiling of Model Year 2009 Highway Engines

EPA is also proposing to add language in part 85, applicable to heavy-duty motor vehicles and heavy-duty engines used in motor vehicles, which codifies that the ''stockpiling'' of engines to avoid compliance with later, more stringent emission standards is considered a circumvention of the Clean Air Act and is prohibited. The proposed provisions are consistent with existing stockpiling provisions for nonroad engines and equipment in part 1068 and are intended to codify the prohibition for heavy-duty motor vehicles and heavy-duty engines. Stockpiling of engines is the practice of keeping in inventory more engines than a manufacturer normally keeps in inventory, in particular when those engines do not meet the more stringent standards. EPA believes this prohibition is necessary to ensure that engine and vehicle manufacturers comply with the same compliance ''clock'' while allowing for minimum but necessary flexibility during the transition of model years. We recognize there will be the need for some market transition when standards change but believe this regulatory clarification will help provide guidance to the vehicle and engine manufacturers.

EPA is proposing to add this language to clarify EPA's longstanding policy that considers stockpiling to be a circumvention of the Act, including the terms of section 203(a)(1). During and after the transition to the 2007 heavy-duty diesel emission standards EPA met with several manufacturers to understand their production plans and their concerns regarding all manufacturers' timely compliance with the new emission standards. EPA has begun to have similar discussions with and inquiries from manufacturers for the transition to the 2010 model year.[127] The Agency has also been conducting some analysis of market practices. Given this experience EPA believes it appropriate to clearly set forth the stockpiling prohibition.

Therefore, for example, an engine manufacturer who sells engines to a vehicle manufacturer cannot sell engines in a current model year for the purpose of having them installed in a future model year's vehicles when the engine sale is beyond that required to meet normal production lead time requirements. Likewise, a vehicle manufacturer cannot order or install engines from a prior model year when the number of such engines exceeds that needed to meet normal inventory requirements. This will prevent vehicle manufacturers from avoiding compliance with emission requirements which would otherwise apply during the model year of the vehicle. Other indicators that illegal stockpiling may have occurred include build up of excessive inventory or volume of engines prior to a future model year that is inconsistent with historic production volumes, actions to create a market for the sale of engines meeting earlier standards in a future year, and the sale of previous model year engines representing a disproportionate amount of total sales in the subsequent model year. If emissions standards for the engine do not change in a given model year, a manufacturer may continue to install engines from a previous model year without restriction.

EPA will also consider many factors in assessing whether an engine manufacturer has caused or aided in the prohibited act of stockpiling. For example, contractual (or otherwise established) business relationships of those persons involved in producing and/or selling new engines and vehicles could be evidence of the ability of the person to cause a violation. In addition, we would consider the particular efforts or influence of the alleged violator contributing to, leading to, or resulting in the prohibited act. On the other hand, we would also consider a person's efforts to prevent such a violation as evidence that they did not cause the violation.

E. Coast Guard's Marine Vessel Certification Program

The U.S. Department of Transportation Maritime Administration (MARAD) oversees the Maritime Security Program (MSP) established by the Maritime Security Act of 1996 and reauthorized by the Maritime Security Act of 2003 (MSA). The MSA requires that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable and militarily useful vessels to meet national defense and other security requirements and maintain a U.S. presence in international commercial shipping. The fleet consists of privately-owned, U.S.-flagged vessels known as the Maritime Security Fleet (MSF). 46 U.S.C. 53102 outlines that vessels complying with applicable international agreements and associated guidelines are eligible for a certificate of inspection from Coast Guard, and thus inclusion in the MSF.

The requirements of the MSP may have created confusion for owners of non-U.S.-flagged vessels regarding their obligation to also comply with EPA's domestic marine diesel engine emission standards at the time they re-flag for inclusion in the MSF. We want to remind vessel owners that the MSA does not preempt the Clean Air Act or alleviate their obligation to comply with EPA's marine diesel engine program, or any other EPA requirements that apply to marine vessels. Each U.S.-flagged vessel must comply with all of EPA's domestic standards, regardless of whether the vessel was flagged in the

[127] For example, EPA received a request for guidance from Volvo on April 13, 2009 seeking clarification on the transition to the 2010 model year standards for both vehicle and engine manufacturers. Docket No.: EPA–HQ–OAR–2007–0121.

U.S. upon original delivery into service. Specifically, model year 2004 and later marine diesel engines installed on these vessels must be covered by a certificate of conformity issued under 40 CFR Part 94 or 40 CFR Part 1042, unless covered by a specific exemption or exclusion in those regulations.

Owners that wish to re-flag a vessel for U.S. service in the MSF should contact EPA to determine the specific compliance requirements that must be met.

VII. Costs and Economic Impacts

In this section, we present the projected cost impacts and cost effectiveness of the coordinated emission control strategy for ocean-going vessels. We also present our analysis of the economic impacts of the coordinated strategy, which consists of the estimated social costs of the program and how those costs will likely be shared across stakeholders. The projected benefits and benefit-cost analysis of the coordinated strategy are presented in Section VIII.

We estimate the costs of the coordinated strategy to be about $1.85 billion in 2020, increasing to $3.11 billion in 2030.[128] Of the 2020 costs, nearly 89 percent or $1.64 billion are attributable to the ECA fuel sulfur provisions. The total operational costs are estimated to be $1.82 billion in 2020. The costs to apply engine controls to U.S.-flagged vessels are expected to be $31.9 million in 2020, increasing to $47.4 million in 2030 as more ships are built to comply with Clean Air Act (CAA) Tier 3 NO_X limits. All costs are presented in 2006 U.S. dollars.

When attributed by pollutant, at a net present value of 3 percent from 2010 through 2040, the NO_X controls are expected to cost about $510 per ton of NO_X reduced, SO_X controls are expected to cost about $930 per ton of SO_X reduced, and the PM controls are expected to cost about $7,950 per ton of PM reduced ($500, $920, and $7,850 per ton of NO_X, SO_X, and PM respectively, at a net present value of 7 percent over the same period.) These costs are comparable to our other recently-adopted mobile source programs, and are one of the most cost-effective programs in terms of NO_X and PM when compared to recent mobile and stationary programs. The coordinated strategy also provides very cost-effective SO_X reductions comparable to the Heavy-Duty Nonroad diesel rulemaking.

The social costs of the proposed program are estimated to be approximately $3.1 billion in 2030. The impact of these costs on society is estimated to be minimal. For example, we estimate the cost of shipping a 20-foot container on the Pacific route, with 1,700 nm of operation in the ECA, would increase by about $18, or less than 3 percent. Similarly, the price of a seven-day Alaska cruise that operates mainly in the ECA is expected to increase by about $7 per day.

The estimated costs presented in this section are for the entire coordinated strategy, including those requirements that are the subject of this proposal and those that are associated with the proposed ECA designation. Table VII–1 sets out the different components of the coordinated strategy and our ECA designation package, for 2020. The costs of the coordinated strategy consists of the costs associated with the MARPOL Annex VI global standards that we are implementing through APPS, some of which we are also adding to our CAA emission control program for U.S. vessels (Tier 2 and Tier 3 NO_X emission control hardware for U.S. vessels; operating costs for the Tier 2 NO_X requirements; controls for existing vessels; certain compliance requirements). Also included are the costs associated with the U.S. portion of the ECA package (Tier 3 hardware and operating costs; fuel sulfur hardware and operating costs). The costs associated with the Canadian portion of the ECA package are not included in the costs of the coordinated strategy.

Note that, with regard to hardware costs, the coordinated strategy includes the entire cost for new U.S. vessels to comply with the Tier 3 NO_X standards and ECA fuel limits, even though some of the benefits from using these emission control systems will occur outside the United States. Conversely, we do not include any new vessel Tier 3 or fuel hardware costs for foreign vessels that operate in U.S. waters even though a significant share of the benefits of the coordinated strategy will arise from foreign vessels that comply with the ECA engine and fuel sulfur limits while operating within the U.S. ECA. An alternative approach would be to allocate a portion of hardware costs of complying with the Tier 3 NO_X standards and the fuel sulfur limits to the coordinated strategy. For example, analysis of MARAD port entrance data shows that about 30 percent of the vessels that enter U.S. ports account for about 75 percent of the vessel entrances. This suggests it may be reasonable to allocate the hardware costs for 30 percent of the new foreign vessels to the coordinated strategy. Similarly, it may be reasonable to discount the share of estimated hardware costs included in the coordinated strategy costs for those U.S. vessels that do not operate primarily between two U.S. ports. We request comment on the allocation of hardware costs and on whether the U.S. should adopt the alternative approach described above or some other method to allocate these costs.

The regulatory changes proposed for Category 1 and 2 engines are not included in this cost analysis as they are intended to be compliance flexibilities and not result in increased compliance costs. Similarly, the technical amendments proposed for other engines, would not have significant economic impacts and are therefore not addressed here. Finally, compliance costs for gas turbine engines are not addressed separately because they would be similar to those for diesel marine engines.

[128] These total estimated costs are slightly different than those reported in the ECA proposal, because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

Table VII-2 Costs Associated with the Coordinated Strategy and ECA (Estimated Costs for 2020, $2006)

Program Element		Coordinated Strategy and U.S. ECA	Canadian ECA
Hardware – T2	US vessels	$3,310,000	NA – not part of ECA
(variable costs; fixed costs applied in 2010)	Foreign Vessels	N/A – global std	NA – not part of ECA
Hardware – T3	US vessels	$28,700,000	$100,000,000
(variable costs; fixed costs recovered in the year in which they occur: 2011-15)	(variable costs; fixed costs recovered in the year in which they occur: 2011-15)		
	Foreign vessels: 30% of vessels making 75% of entrances to US ports[a]	$296,700,000	
	Foreign vessels: 70% of vessels making 25% of entrances to US ports[a]	$692,200,000	
Hardware – Fuel	US vessels	$804,000	$10,000,000
	(new vessel costs)		
	Foreign vessels	$23,600,000	
	(new vessel costs)		
Operating – T2 (inside full inventory modeling domain)	US vessels	$5,630,000	NA – not part of ECA
	Foreign vessels	$32,900,000	NA – not part of ECA
Operating – T3 (inside relevant part of ECA)	US vessels	$15,800,000	$30,000,000
	Foreign vessels	$127,000,000	
Operating – Fuel (inside relevant part of ECA)	US vessels	$210,000,000	$260,000,000
	Foreign vessels	$1,430,000,000	
Existing vessels – engine costs	US vessels	$0	NA – not part of ECA
(all US vessels 1990-99 retrofit during first 5 years of program, 2011-15)	Foreign vessels	N/A – global std	NA – not part of ECA
Existing vessels – vessel fuel switching costs	US vessels	$0	Canada did not provide
(all US vessels 1999-90 retrofit during first 5 years of program, 2011-15)	Foreign vessels	$0	Canada did not provide

[a]The RIA reports $1,010,000,000 in engine costs for foreign vessels; this includes the costs of production line testing which is not applicable to foreign vessels under our CAA program. This element is not included in the estimated costs for the Coordinated Strategy; we will revise the RIA.

This cost analysis relies on a number of assumptions about the prices of various engine and fuel hardware components, as well as fuel consumption, the number of affected vessels, and their operation. We seek comment on all aspects of this analysis, including all of these assumptions and the methodology we used to estimate the costs of the program.

A. Estimated Fuel Costs

Although the ECA fuel sulfur limits are not part of this proposal, they are part of the coordinated strategy and we are including them in this cost analysis. However, we consider the costs and benefits of ECA designation in this proposal, as they are part of our coordinated strategy for ocean-going vessels.

Current regulations impose a sulfur limitation of 15 ppm for distillate fuels produced at refineries in the U.S. The coordinated strategy would impose no additional costs for refiners in the U.S. and would actually allow additional flexibility. Specifically, we are proposing to allow distillate fuel to have up to 1,000 ppm sulfur for use in OGVs. The ECA fuel requirements will impose a cost to the ship owners. This section presents estimates of the cost of compliance with the 1,000 ppm sulfur limit in the U.S. ECA.

Distillate fuel will likely be used to meet the 1,000 ppm fuel sulfur limit, beginning in 2015. As such, the primary cost of the fuel sulfur limit for ship owners will be that associated with switching from heavy fuel oil to higher-cost distillate fuel. Some engines already operate on distillate fuel and would not be affected by fuel switching costs. However, distillate fuel costs may be affected by the need to further refine the distillate fuel to meet the 1,000 ppm sulfur limit.

To investigate these effects, studies were performed on the impact of a North American ECA on global fuel production and costs, to inform the application for such ECA.[129] These studies were performed prior to the ECA being defined; thus, we picked a maximum distance boundary to ensure a conservative cost analysis. Specifically, we used the total fuel consumption in the U.S. and Canada exclusive economic zones.[130] As a result, the modeled fuel volumes are higher than would be affected by the proposed ECA. The studies are relevant to this regulation as well, since they estimate the cost of 1,000 ppm sulfur fuel for ships operating in such ECA zones.

To assess the effect on the refining industry of the imposition of a 1,000 ppm sulfur limit on fuels operating in the ECA, we needed to first understand and characterize the fuels market. Research Triangle Institute (RTI) was contracted to conduct a fuels study using an activity-based economic approach. The study established baseline bunker fuel demand, projected a growth rate for bunker fuel demand, and established future bunker fuel demand volumes.[131] These volumes then became the input to the World Oil Refining Logistics and Demand (WORLD) model to evaluate the effect of an ECA on fuel cost.

The WORLD model was run by Ensys Energy & Systems, the owner and developer of the refinery model. The WORLD model is the only such model currently developed for this purpose and was developed by a team of international petroleum consultants. It has been widely used by industries, government agencies, and Organization of the Petroleum Exporting Countries (OPEC) over the past 13 years, including the Cross Government/Industry Scientific Group of Experts, established to evaluate the effects of the different fuel options proposed under the revision of MARPOL Annex VI. The model incorporates crude sources, global regions, refinery operations, and world economics. The results of the WORLD model have been comparable to other independent predictions of global fuel, air pollutant emissions and economic predictions.

The WORLD model was run for 2020, in which the control case included a fuel sulfur level of 1,000 ppm in the U.S. The baseline case was modeled as ''business as usual'' in which ships continue to use the same fuel as today. Because of the recent increases and fluctuations in oil prices, we had additional WORLD model runs conducted. For these runs, we used new reference case and high oil price estimates that were recently released by the U.S. Energy Information Administration (EIA). In addition to increased oil price estimates, the updated model accounts for increases in natural gas costs, capital costs for refinery upgrades, and product distribution costs.

Because only a small portion of global marine fuel is consumed in the ECA, the overall impact on global fuel production is small. Global fuel use in 2020 by ships is projected to be 500 million metric tonnes/yr. Of this amount, 90 million metric tonnes of fuel is used for U.S./Canadian trade, or about 18 percent of total global fuel use. In the proposed ECA, less than 20 million metric tonnes of fuel will be consumed in 2020, which is less than 4 percent of total global marine fuel use. Of the amount of fuel to be consumed in the proposed ECA in 2020, about 4 million metric tonnes of distillate will be consumed in the Business as Usual (BAU) case, which is about 20 percent of the amount of total fuel to be consumed in the proposed ECA.

There are two main components to projected increased marine fuel cost associated with the ECA. The first component results from shifting from operation on residual fuel to operation on higher cost distillate fuel. This is the dominant cost component. However, there is also a small cost associated with desulfurizing the distillate to meet the 1,000 ppm sulfur standard in the ECA. Based on the WORLD modeling, the average increase in costs associated with switching from marine residual to distillate will be $145 per metric tonne.[132] This is the cost increase that will be borne by the shipping companies purchasing the fuel. Of this amount, $6 per metric tonne is the increase in costs associated with distillate desulfurization.

Table IV– summarizes the fuel cost estimates with and without an ECA. In the baseline case, fuel volumes for operation are 18% marine gas oil (MGO), 7% marine diesel oil (MDO), and 75% IFO. Weighted average baseline distillate fuel cost is $462/tonne. In the ECA, all fuel volumes are modeled as MGO, at $468/tonne.

[129] Research Triangle Institute, 2009. ''Global Trade and Fuels Assessment— Future Trends and Effects of Designating Requiring Clean Fuels in the Marine Sector''. Prepared for U.S. Environmental Protection Agency. Research Triangle Park, NC.

[130] In this analysis, the U.S. included the lower 48 contiguous states and southeastern Alaska.

[131] Research Triangle Institute, 2009. ''Global Trade and Fuels Assessment— Future Trends and Effects of Designating Requiring Clean Fuels in the Marine Sector''. Prepared for U.S. Environmental Protection Agency. Research Triangle Park, NC.

[132] Note that distillate fuel has a higher energy content, on a per ton basis, than residual fuel. As such, there is an offsetting cost savings, on a per metric ton basis, for switching to distillate fuel. Based on a 5 percent higher energy content for distillate, the net equivalent cost increase is estimated as $123 for each metric ton of residual fuel that is being replaced by distillate fuel.

TABLE VII–2—ESTIMATE MARINE FUEL COSTS

Fuel	Units	Baseline	ECA
MGO	$/bbl	$61.75	$62.23
	$/tonne	464	468
MDO	$/bbl	61.89	62.95
	$/tonne	458	466
IFO	$/bbl	49.87	49.63
	$/tonne	322	321

The increased cost of distillate desulfurization is due both to additional coking and hydrotreating capacities at refineries. Cokers crack residual blends in IFO bunker fuel into distillates, using heat and residence time to make the conversion. The process also produces useful byproducts such as petroleum coke and off gas. The WORLD model did not use hydrocracking technology to convert residual fuels into distillates for either the reference or high price crude cases. Because of the higher capital and operating costs of hydrocrackers, the WORLD model favored the use of coking units. As such, the WORLD model assumed that cokers would convert the residual blendstocks in Intermediate Fuel Oil grades to distillates. The model added coking processes to refineries located in the U.S. and, to a lesser extent, to refiner regions outside of the U.S. Specifically, the model added one additional coking unit with a capacity of 30 thousand barrels per stream day (KBPSD), and one to two hydrocracking units representing 50 and 80 KBPSD additional capacity.

The WORLD model also added new conventional distillate hydrotreating capacity to lower the sulfur levels for the marine distillate fuel, in addition to the existing slack distillate hydrotreating capacity that existed in refiner regions for these fuels. In addition, the model used lighter crudes and adjusted operating parameters in refineries. This had the effect of increasing the projected production of lower sulfur distillate fuels in lieu of adding distillate hydrotreating capacity. The model elected to use lower sulfur crudes and used operational adjustments. Higher capital and operating costs of new units under the high-priced crude scenario favored use of existing refinery capacity made available from lower global refiner utilizations.

B. Estimated Engine Costs

To quantify the cost impacts associated with the coordinated strategy, we estimated the hardware and operational costs to U.S.-flagged ships, as well as affected foreign-flagged ships. The hardware costs are only applied to U.S.-flagged vessels, and include those associated with the CAA Tier 2 and Tier 3 NO_X standards, the Annex VI existing engine program, and the use of lower sulfur fuel. Tier 2 hardware costs consist of changes to the engine block and the migration from mechanical fuel injection to common rail fuel injection systems. Tier 3 hardware costs include engine modifications, the migration from mechanical fuel injection to common rail fuel injection systems, and the installation of Selective Catalytic Reduction (SCR). Hardware costs associated with the use of lower sulfur fuel are from applying additional tanks and equipment to enable a vessel to switch from residual fuel to lower sulfur fuel. These equipment costs were applied to those new vessels that may need additional hardware, and also include the estimated cost of retrofitting the portion of the fleet that may require additional hardware to accommodate the use of lower sulfur fuel in 2015. The hardware costs also include a per engine cost of $10,000 associated with the proposed requirement to test each production engine (§ 1042.302). These are the sole engine hardware costs specifically attributable to our Clean Air Act rule. The programmatic changes under consideration for Category 1 and 2 engines (see Section VI.C, above), would not impose compliance costs but instead are intended to facilitate compliance with both Annex VI and our Clean Air Act requirements for those engines.

Although we have developed hardware cost estimates for all ships that may enter U.S. ports, we do not believe that it is appropriate to attribute all of these costs to emissions reductions in the U.S. Clearly, this technology will be used globally and will result in emissions reductions in many other countries. At the same time, some amount of the hardware costs should be attributed to the emissions reductions achieved in the U.S. To address these considerations, we include the hardware costs for only U.S.-flagged vessels in our cost estimates, and present the hardware costs for foreign-flagged vessels as a separate analysis. The operational costs, which represent the majority of the costs to ships, are included in our cost totals for both U.S.- and foreign-flagged vessels.

The operational costs were applied to both U.S.- and foreign-flagged vessels and include additional operational costs associated with the applicable NO_X limits and the use of lower sulfur fuel. The operational costs for NO_X controls consist of the additional fuel required due to an estimated two percent fuel penalty associated with the use of technologies to meet CAA Tier 2 and global Tier II NO_X standards, and the use of urea for ships equipped with an SCR unit to meet CAA Tier 3 and global Tier III NO_X standards. The operational costs associated with the use of lower sulfur fuel include both the differential cost of using lower sulfur fuel that meets ECA standards instead of using marine distillate fuel, and the differential cost of using lower sulfur fuel that meets ECA standards instead of using residual fuel.

To assess the potential cost impacts, we must understand (1) the makeup of the fleet of ships expected to visit the U.S. when these requirements go into effect, (2) the emission reduction technologies expected to be used, and (3) the cost of these technologies. Chapter 5 of the draft RIA presents this analysis in greater detail. The total engine and vessel costs associated with the coordinated strategy are based on a cost per unit value applied to the number of affected vessels. Operational costs are based on fuel consumption values determined in the inventory analysis (Section 5.2). This section discusses a brief overview of the methodology used to develop the hardware and operational costs, and the methodology used to develop a fleet of future vessels to which these hardware and engineering costs were applied.

(1) Methodology

To estimate the hardware costs to ships that may be affected by the coordinated strategy, we used an approach similar to that used to estimate the emissions inventory. Specifically, the same inputs were used to develop a fleet of ships by ship type

and engine type that may be expected to visit U.S. ports through the year 2040. In order to determine the cost of applying emission reduction technology on a per vessel basis, ICF International was contracted by the U.S. EPA to conduct a cost study of the various compliance strategies expected to be used to meet the new NO_X standards and fuel sulfur requirements.[133] ICF was instructed to develop cost estimates covering a range of vessel types and sizes, which could be scaled according to engine speed and power to arrive at an estimated cost per vessel.

A series of both slow-speed and medium-speed engine configurations were selected and used to provide an understanding of the costs of applying emission control technologies associated with the coordinated strategy. The engine configurations were selected based on a review of 2005 U.S. Army Corps of Engineers 'Entrances and Clearances' data which was used to determine the characteristics of engines on those vessels that call on U.S. ports most frequently. This data represents a broad range of propulsion power for each engine type (slow and medium speed engines). The costs developed for these engine configurations were used to develop a $/kW value that could be applied to any slow or medium speed engine. Using the average propulsion power by ship type presented in the inventory analysis, the per-vessel hardware costs were then applied to the estimated number of applicable vessels built after the standards take effect.

(a) Hardware Costs

The hardware cost estimates include variable costs (components, assembly, and the associated markup) and fixed costs (tooling, research and development, redesign efforts, and certification). Hardware costs associated with the Annex VI existing engine standards were applied to the portion of existing U.S.-flagged vessels built between 1990 and 1999 expected to be subject to these standards (engines with a per-cylinder displacement of at least 90 liters and a power output of over 5,000 kW) in 2011 when the standards go into effect. These costs were applied over a five year period beginning in 2011 where 20 percent of the total subject fleet was estimated to undergo service each year. The existing engine program fixed costs were phased in over a five year period beginning in 2010 and applied on a per-vessel basis.

Hardware costs associated with the CAA Tier 2 program were applied to all new U.S.-flagged vessels beginning in the year 2011 when the standards take effect. The fixed costs associated with Tier 2 standards are expected to be incurred over a five year period; however, as the Tier 2 standards take effect in 2011, it was assumed that manufacturers are nearing the end of their research and development. In order to capture all of these costs, all fixed costs that would have been incurred during that five year phase-in period were applied in the year 2010.

Hardware costs associated with Tier 3 were estimated for U.S. vessels and were applied as of 2016. Because of the global scope of the Tier III standards, and the fact that other ECAs exist today and more may exist in the future, we do not include hardware costs for Tier III emission controls on foreign-flagged vessels. However, for completeness, Section 5.2 of the draft RIA presents these hardware cost estimates separately. The fixed costs associated with Tier 3 were phased in over a five year period beginning in 2011.

Hardware costs associated with the use of lower sulfur fuel are estimated separately for both new and existing vessels that may require additional hardware to accommodate the use of lower sulfur fuel. The costs expected to be incurred by U.S.-flagged vessels are included in the total cost of the coordinated strategy, while the cost to foreign-flagged vessels is presented as a separate analysis. The fuel sulfur control related hardware costs for new vessels begin to apply in 2015, while all retrofit costs are expected to be incurred by 2015 and as such are applied in this year. The fixed costs for both new and existing vessels that may require additional hardware to accommodate the use of lower sulfur fuel are applied on a per-vessel basis and are phased in over a five year period beginning as of 2010.

(b) Operational Costs

The operational costs estimated here are composed of three parts: (1) The estimated increase in fuel consumption expected to occur with the use of Tier II technologies on U.S.- and foreign-flagged vessels, (2) the differential cost of using lower sulfur fuel applicable for both U.S.- and foreign-flagged vessels, and (3) the use of urea with SCR as a Tier III NO_X emission reduction technology on both U.S.- and foreign-flagged vessels. The fuel consumption values associated with Tier II and Tier III standards were determined in the inventory analysis (see Chapter 3 of the draft RIA), with an estimated Tier II fuel consumption penalty of 2 percent (see Chapter 4 of the draft RIA) The two percent fuel penalty estimate is based on the use of modifications to the fuel delivery system to achieve Tier II NO_X reductions, and does not reflect the possibility that there may be other technologies available to manufacturers that could offset this fuel penalty. Additionally, Tier III will provide the opportunity to re-optimize engines for fuel economy when using aftertreatment, such as SCR, to provide NO_X reductions similar to the compliance strategy for some heavy-duty truck manufacturers using urea SCR to meet our 2010 truck standard. The differential cost of using lower sulfur fuel is discussed above in Section VII.A of this Preamble. The estimated urea cost associated with the use of Tier III SCR is derived from a urea dosage rate that is 7.5 percent of the fuel consumption rate.

Operating costs per vessel vary depending on what year the vessel was built, *e.g.,* vessels built as of 2016 will incur operating costs associated with the use of urea necessary when using SCR as a Tier III NO_X emission control technology, while vessels built prior to 2016 do not use urea but will incur operating costs associated with the differential cost of using lower sulfur fuel. Further, we have assumed vessels built as of 2011 that meet Tier II standards will incur a 2 percent fuel consumption penalty; see Table 5–31 of the draft RIA for further details on fuel costs and fuel volumes. In addition, vessels built as of 2016 that meet Tier III NO_X standards while traveling in an ECA are still required to at least meet Tier II NO_X standards outside of an ECA and will continue to incur the associated fuel penalty. Therefore, an estimated fleet had to be developed over a range of years, and provide a breakout of ships by age in each year.

(2) Fleet Development

There are currently no available estimates of the number of ships that may visit U.S. ports in the future or comprehensive engine sales predictions. Therefore, to develop the costs associated with the coordinated strategy, an approximation of the number of ships by age and engine type that may visit U.S. ports in the future was constructed. To characterize the fleet of ships visiting U.S. ports, we used U.S. port call data collected in 2002 for the inventory port analysis (see Chapter 3 of the draft RIA) which included only vessels with C3 engines where the engine size and type was

[133] ICF International, ''Costs of Emission Reduction Technologies for Category 3 Marine Engines,'' prepared for the U.S. Environmental Protection Agency, December 2008. EPA Report Number: EPA–420–R–09–008.

identified.[134] We used this data with the growth rates developed in the inventory analysis to estimate how many ships, by ship type and engine type, would visit U.S. ports in future years. Due to the long life of these vessels, and the fact that there has been no significant event that would have changed the composition of the world fleet since this baseline data was taken, it is reasonable to use 2002 data as the basis for modeling the future fleet upon which to base hardware cost estimates. An analysis is presented in Section 5.1.2.2 of Chapter 5 of the draft RIA which confirms the reasonableness of this assumption using 2007 MARAD data. The research performed for this cost analysis was based on differentiating between slow-speed diesel (SSD) and medium-speed diesel (MSD) engines, and separate $/kW values were developed for each of these engine types. The separation by engine type was also necessary to allow for the use of the age distribution formula determined by the inventory analysis (see Chapter 3 of the draft RIA) to determine how many vessels the hardware and/or operational costs are applicable to in each year.

The ship type information gathered from this baseline data, for the purposes of both this analysis and the inventory, was categorized into one of the following ship types: Auto Carrier, Bulk Carrier, Container, General Cargo, Miscellaneous, Passenger, Refrigerated Cargo (Reefer), Roll-On Roll-Off (RoRo), and Tankers. Average engine and vessel characteristics were developed from the baseline data, and these values were used to represent the characteristics of new vessels used in this cost analysis (see Chapter 3 of the draft RIA). Estimated future fleets were developed by ship type and engine type through the year 2040 for both new and existing vessels and both U.S.- and foreign-flagged vessels. Hardware costs were applied on a per-vessel basis.

Although most ships primarily operate on residual fuel, they typically carry some amount of distillate fuel as well. Switching to the use of lower sulfur distillate fuel is the compliance strategy assumed here to be used by both new and existing ships in 2015 when the new lower sulfur fuel standards go into effect. To estimate the potential cost of this compliance strategy, we evaluated the distillate storage capacity of the current existing fleet to estimate how many ships may require additional hardware to accommodate the use of lower sulfur fuel. We performed this analysis on the entire global fleet listed in Lloyd's database as of 2008.[135] Of the nearly 43,000 vessels listed, approximately 20,000 vessels had provided Lloyds with fuel tankage information, cruise speed, and propulsion engine power data. Using this information, we were able to estimate how far each vessel could travel on its existing distillate carrying capacity.

In order to determine if the current distillate capacity of a particular ship was sufficient to call on a U.S. ECA without requiring additional hardware, we evaluated whether or not each ship could travel 1,140 nm, or the distance between the Port of Los Angeles and the Port of Tacoma. This distance was selected because it represents one of the longer trips a ship could travel without stopping at another port, and should overestimate the number of vessels that would require such a modification. The resulting percentages of ships estimated to require a retrofit were then applied to the number of existing ships in the 2015 fleet to estimate the total cost of this compliance strategy for existing ships built prior to 2015. The same percentages were also applied to all new ships built as of 2015 to determine the number of ships that may require additional hardware and estimate the cost of this compliance strategy for new vessels.

(3) NO_X Reduction Technologies

(a) Tier 2

Most engine manufacturers are expected to be able to meet Tier 2 NO_X standards using engine modifications. This cost estimate includes the hardware costs associated with the use of retarded fuel injection timing, higher compression ratios, and better fuel distribution. There are no variable costs associated with the engine modifications as the changes are not expected to require any additional hardware. Some engines may also be equipped with common-rail fuel systems instead of mechanical fuel injection to meet Tier 2 NO_X standards. It is expected that approximately 75 percent of SSD and 30 percent of MSD engines will get this modification for Tier 2. The Tier 2 hardware costs developed here include the costs of the migration of some engines to common-rail fuel systems. It was also estimated that these technologies may increase fuel consumption by up to 2 percent; this fuel penalty is included in the Tier 2 operational costs. Tier 2 hardware costs included in the total estimated cost of the coordinated strategy are only associated with U.S.-flagged vessels; operational costs are applied to both U.S.-and foreign-flagged vessels.

(b) Tier 3

Tier 3 NO_X standards are approximately 80 percent below Tier 1 NO_X standards, and are likely to require exhaust aftertreatment such as SCR. ICF performed a detailed cost analysis for the U.S. EPA that included surveying engine and emission control technology manufacturers regarding these advanced technology strategies and their potential costs. Tier 3 NO_X standards are projected to be met through the use of SCR systems. While other technologies such as EGR or those that include introduction of water into the combustion chamber either through fumigation, fuel emulsions, or direct water injection may also enable Tier 3 compliance, we assume they will only be selected if they are less costly than SCR. Therefore, we have based this analysis on the exclusive use of SCR.

(c) Engine Modifications

In addition to SCR, it is expected that manufacturers will also use compound or two-stage turbocharging as well as electronic valving to enhance performance and emission reductions to meet Tier 3 NO_X standards. Engine modifications to meet Tier 3 emission levels will include a higher percentage of common-rail fuel injection coupled with two-stage turbocharging and electronic valving. Engine manufacturers estimate that nearly all SSD and 80 percent of MSD engines will use common-rail fuel injection. Two stage turbocharging will most likely be used on least 70 percent of all engines required to meet Tier 3 emission levels. Electronically- (hydraulically) actuated intake and exhaust valves for MSD and electronically-actuated exhaust valves for SSD are necessary to accommodate two-stage turbocharging. Additionally, the remaining SSD engines still using mechanical injection (approximately 25 percent mechanically-controlled, and 75 percent electronically-controlled) are expected to migrate to common rail for Tier 3, while an additional 40 percent of MSD engines are expected to receive common rail totaling approximately 80 percent of all MSD engines. The engine modification variable costs were applied to all new U.S.-flagged vessels equipped with either SSD or MSD engines. Costs to foreign-flagged vessel expected to visit U.S. ports are presented as a separate analysis in Chapter 5 of the draft RIA, and are not included in the

[134] In order to separate slow speed engines from medium speed engines where that information was not explicitly available, 2-stroke engines were assumed to be slow speed, where 4-stroke engines were assumed to be medium speed.

[135] *http://www.sea-web.com*

total estimated cost of the coordinated strategy.

(4) SO_X/PM Emission Reduction Technology

In addition to Tier 3 NO_X standards, the IMO ECA requirements also include lower fuel sulfur limits that will result in reductions in SO_X and PM. Category 3 marine engines typically operate on heavy fuel oil with a sulfur content of 2.7 percent, therefore significant SO_X and PM reductions will be achieved using distillate fuels with a sulfur content of 0.1 percent. This cost analysis is based on the assumption that vessel operators will operate their engines using lower sulfur fuel in the proposed ECA. We believe fuel switching will be the primary compliance approach; fuel scrubbers would be used in the event that the operator expected to realize a cost savings and are not considered in this analysis. In some cases, additional capacity and equipment to accommodate the use of lower sulfur fuel may need to be installed on a vessel. The potential costs due to these additional modifications applied to new ships as well as retrofits to any existing ships are discussed here, and these hardware costs are included as part of the total cost of this coordinated program.

Although most ships operate on heavy fuel oil, they typically carry small amounts of distillate fuel. Some vessel modifications and new operating practices may be necessary to use lower sulfur distillate fuels on vessels designed to operate primarily on residual fuel. Installation and use of a fuel cooler, associated piping, and viscosity meters to the fuel treatment system may be required to ensure viscosity matches between the fuel and injection system design. While there are many existing ships that already have the capacity to operate on both heavy fuel oil and distillate fuel and have a separate fuel tank systems to support each type of fuel, some ships may not have sufficient onboard storage capacity. If a new or segregated tank is desired, additional equipment for fuel delivery and control of these systems may be required.

(5) NO_X and SO_X Emission Reduction Technology Costs

(a) NO_X Emission Reduction Technology

The costs associated with SCR include variable and fixed costs. SCR hardware costs include the reactor, dosage pump, urea injectors, piping, bypass valve, an acoustic horn or a cleaning probe, the control unit and wiring, and the urea tank (the size of the tank is based on 250 hours of normal operation when the ship is operating in the ECA and the SCR system is activated.) The size of the tank is dependent on the frequency with which the individual ship owner prefers to fill the urea tank. The methodology used here to estimate the capacity of the SCR systems is based on the power rating of the propulsion engines only. Auxiliary engine power represents about 20 percent of total installed power on a vessel; however, it would be unusual to operate both propulsion and auxiliary engines at 100 percent load. Typically, ships operate under full propulsion power only while at sea when the SCR is not operating; when nearing ports, the auxiliary engine is operating at high loads while the propulsion engine is operating at very low loads.

In this analysis, we determined the average number of hours a ship would spend calling on a U.S. port: If the call was straight in and straight out at 200 nm, the average time spent was slightly over 35 hours. If the distance travelled was substantial, such as from the Port of Los Angeles to the Port of Tacoma, or 1140 nm, the average time spent travelling was approximately 75 hours. Therefore, the size of the tanks and corresponding $/kW values estimated here to carry enough urea for 250 hours of continuous operation may be an overestimate. Based on 250 hours of operation, a range of urea tank sizes from 20 m^3 to approximately 256 m^3 was determined for the six different engine configurations used in this analysis.

To understand what impacts this may have on the cargo hauling capacity of the ship, we looked at the ISO standard containers used today. Currently, over two-thirds of the containers in use today are 40 feet long, total slightly over 77 m^3 and are the equivalent of two TEU.[136] The urea tank sizes estimated here reflect a cargo equivalence of 0.5–2 TEUs, based on a capacity sufficient for 250 hours of operation. The TEU capacity of container ships, for example, continues to increase and can be as high as 13,000 TEUs;[137] while not all ports are equipped to handle ships of this size, feeder ships (ships that carry containers to ocean-going vessels in smaller ports) have also increased in size to carry as much as 2,000 TEUs. Based on a rate of approximately $1,300 per TEU to ship a container from Asia to the U.S., a net profit margin of 10%, and an average of 16 trips per year, the estimated cost due to displaced cargo to call on a U.S./Canada ECA may be $2,100.[138] The cost[139] analysis[140] presented here does not include displaced cargo due to the variability of tank sizes owners choose to install.

To estimate the SCR hardware costs associated with newly built ships, we needed to generate an equation in terms of $/kW that could be applied to other engine sizes. Therefore, the $/kW values representing the hardware costs estimated for the six different engine types and sizes used in this analysis was developed using a curve fit for both SSD and MSD engines. The resulting $/kW values range from $40–$80 per kW for MSD, and $40–70 for SSD. These costs were then applied based on the characteristics of the average ship types described in the inventory section of the draft RIA (see Chapter 3) to the representative portion of the future fleet in order to estimate the total costs associated with this program. Table VII–4 presents the estimated costs of this technology as applied to different ship and engine types representing the average ship characteristics discussed in Section VII.A.2.

(b) Lower Sulfur Fuel Hardware Costs

This cost analysis is based on the use of switching to lower sulfur fuel to meet the ECA fuel sulfur standards. The costs presented here may be incurred by some existing and some newly-built ships if additional fuel tank equipment is required to facilitate the use of lower sulfur fuel. Based on existing vessel fleet data, we estimate that approximately one-third of existing vessels may need additional equipment installed to accommodate additional lower sulfur fuel storage capacity beyond that installed on comparable new ships. In order to include any costs that may be incurred on new vessels that choose to add additional lower sulfur fuel capacity, we also estimated that one-third of new vessels may require additional hardware. Separate $/kW values were developed for new and existing vessels as the existing vessel

[136] *http://www.iicl.org,* Institute of International Container Lessors.

[137] Kristensen, Hans Otto Holmegaard, ''Preliminary Ship Design of Container Ships, Bulk Carriers, Tankers, and Ro-Ro Ships. Assessment of Environmental Impact from Sea-Borne Transport Compared with Landbased Transport,'' March, 2008.

[138] *http://people.hofstra.edu/geotrans/eng/ch2en/conc2en/maritimefreightrates.html.*

[139] *http://moneycentral.msn.com/investor/invsub/results/hilite.asp?Symbol=SSW.*

[140] Based on a container ship carrying nearly 9,000 TEUs traveling from Hong Kong to the Port of Los Angeles (approximately 6,400 nm) with a cruise speed of 25 nm/hr, the round trip time is nearly 21 days and this trip could be made roughly 16 times per year.

retrofit would likely require more labor to complete installation.

The size of the tank is dependent on the frequency with which the individual ship owner prefers to fill the lower sulfur fuel tank. The size of the tanks and corresponding $/kW value estimated here will carry capacity sufficient for 250 hours of propulsion and auxiliary engine operation. This is most likely an overestimate of the amount of lower sulfur fuel a ship owner would need to carry, resulting in an overestimate of the total cost to existing and new vessels. The tank sizes based on 250 hours of operation and based on the six different engine configuration used in this analysis range from 240 m^3 to nearly 2,000 m^3. This would be the equivalent of 6–50 TEUs. This cost analysis does not reflect other design options such as partitioning of a residual fuel tank to allow for lower sulfur fuel capacity which would reduce the amount of additional space required, nor does this analysis reflect the possibility that some ships may have already been designed to carry smaller amounts of distillate fuel in separate tanks for purposes other than continuous propulsion. The $/kW value hardware cost values for the six data points corresponding to the six different engine types and sizes used in this analysis are $2–7 for SSD and $3–8 for MSD. A curve fit was determined for the slow-speed engine as well as for the medium speed engines to determine a $/kW value for each engine type. Table VII–3 presents the estimated costs of the technologies used to meet the different standards as applied to different ship and engine types representing the average ship characteristics discussed in Section VII.A.2. The estimated hardware costs of retrofitting existing U.S.-flagged vessels that may require additional hardware to accommodate the use of lower sulfur fuel is estimated to be $10.4 million in 2015.

TABLE VII–3—ESTIMATED VARIABLE COSTS OF EMISSION CONTROL TECHNOLOGY ON A PER-SHIP BASIS—BY SHIP TYPE AND ENGINE TYPE [141]

Ship type	Engine speed	Average propulsion power (kW)	MFI to common rail	EFI to common rail	Tier 3 (SCR and engine modifications)	Lower sulfur fuel hardware—new vessels	Lower Sulfur fuel hardware—existing vessels
Auto Carrier	MSD	9640	$80,500	30,400	$566,000	42,300	$56,400
Bulk Carrier	MSD	6360	67,200	24,600	479,000	36,900	48,500
Container	MSD	13878	92,300	35,400	678,000	49,200	66,600
General Cargo	MSD	5159	60,400	21,700	448,000	34,900	45,600
Passenger	MSD	23762	109,600	42,800	939,000	65,400	90,400
Reefer	MSD	7360	71,900	26,600	506,000	38,500	50,900
RoRo	MSD	8561	76,700	28,700	538,000	40,500	53,800
Tanker	MSD	6697	68,800	25,300	488,000	37,400	49,300
Misc.	MSD	9405	79,800	30,000	560,000	41,900	55,800
Auto Carrier	SSD	11298	152,400	55,500	819,000	48,000	64,800
Bulk Carrier	SSD	8434	132,900	48,400	669,000	42,700	57,700
Container	SSD	27454	211,600	77,200	1,521,000	63,900	86,700
General Cargo	SSD	7718	127,000	46,200	630,000	41,100	55,500
Passenger	SSD	23595	201,500	73,500	1,374,000	61,200	83,000
Reefer	SSD	10449	147,200	53,600	776,000	46,500	62,900
RoRo	SSD	15702	174,300	63,500	1,034,000	53,900	72,900
Tanker	SSD	9755	142,600	51,900	739,000	45,300	61,200
Misc.	SSD	4659	93,300	33,900	50,000	32,000	43,100

(6) Total Costs Associated With the Coordinated Strategy

The total hardware costs associated with the coordinated strategy were estimated using the number of new ships by ship type and engine type entering the fleet each year. Table VII–4 presents the total hardware costs to U.S.-flagged vessels associated with the coordinated strategy. These costs consist of the variable and fixed hardware costs associated with the Annex VI existing engine program, Tier 2 and Tier 3 standards, and additional components that may be required to accommodate the use of lower sulfur fuel on both new and existing vessels. This table also presents the total estimated operational costs associated with the coordinated strategy. These costs consist of the 2 percent fuel consumption penalty associated with Tier 2 (Annex VI Tier II), the use of urea on vessels equipped with SCR systems, and the differential cost of using lower sulfur fuel; these costs are incurred by both U.S.- and foreign-flagged vessels. The total estimated cost of the coordinated strategy is $3.41 billion in 2030. The total costs from 2010 through 2040 are estimated to be $42.9 billion at a 3 percent discount rate or $22.1 at a 7 percent discount rate.

TABLE VII–4—TOTAL HARDWARE AND OPERATIONAL COSTS ASSOCIATED WITH THE COORDINATED STRATEGY

[Thousands of $]

Year	Total hardware costs for existing engines	Total new engine hardware costs	Total vessel hardware costs	Total operating costs		Total costs associated with the coordinated strategy
				U.S. flag	Foreign flag	
2010	$9,400	$319	$166	$0	$0	$485
2011	161,000	3,580	173	173	1,130	5,060

[141] The values presented in Table VII–3 are provided only to show what the estimated costs would be for a range of vessel types given average characteristics (such as DWT, total main, and total auxiliary power) for both SSD and MSD engine types. Not all vessels will require all of these technologies; for example, it is estimated that only 30 percent of MSD will get common-rail fuel injection systems for Tier II.

TABLE VII–4—TOTAL HARDWARE AND OPERATIONAL COSTS ASSOCIATED WITH THE COORDINATED STRATEGY—Continued

[Thousands of $]

Year	Total hardware costs for existing engines	Total new engine hardware costs	Total vessel hardware costs	Total operating costs		Total costs associated with the coordinated strategy
				U.S. flag	Foreign flag	
2012	153,000	3,700	179	841	5,590	10,300
2013	145,000	3,830	186	32,400	213,000	249,000
2014	137,000	3,960	192	34,400	226,000	265,000
2015	131,000	4,100	11,100	180,000	1,190,000	1,390,000
2016	0	27,300	691	189,000	1,250,000	1,470,000
2017	0	28,500	717	199,000	1,330,000	1,560,000
2018	0	29,600	745	210,000	1,410,000	1,650,000
2019	0	30,700	773	221,000	1,500,000	1,750,000
2020	0	31,900	803	233,000	1,590,000	1,860,000
2021	0	33,200	834	246,000	1,680,000	1,960,000
2022	0	34,600	866	258,000	1,770,000	2,060,000
2023	0	35,900	899	272,000	1,880,000	2,190,000
2024	0	37,400	934	286,000	1,980,000	2,300,000
2025	0	38,800	970	300,000	2,090,000	2,430,000
2026	0	40,400	1,010	315,000	2,200,000	2,560,000
2027	0	42,100	1,050	330,000	2,310,000	2,680,000
2028	0	43,700	1,090	345,000	2,430,000	2,820,000
2029	0	45,500	1,130	362,000	2,550,000	2,960,000
2030	0	47,400	1,180	378,000	2,680,000	3,110,000
2031	0	49,300	1,220	395,000	2,810,000	3,260,000
2032	0	51,300	1,270	413,000	2,950,000	3,420,000
2033	0	53,400	1,320	431,000	3,080,000	3,570,000
2034	0	55,500	1,370	451,000	3,240,000	3,750,000
2035	0	57,900	1,430	471,000	3,390,000	3,920,000
2036	0	60,200	1,490	494,000	3,560,000	4,120,000
2037	0	62,800	1,540	517,000	3,740,000	4,320,000
2038	0	65,300	1,610	541,000	3,930,000	4,540,000
2039	0	68,000	1,670	566,000	4,110,000	4,750,000
2040	0	70,800	1,740	591,000	4,310,000	4,970,000
NPV @ 3%	677,000	663,000	26,500	5,260,000	36,900,000	42,900,000
NPV @ 7%	610,000	346,000	16,900	2,730,000	19,000,000	22,100,000

C. Cost Effectiveness

One tool that can be used to assess the value of the coordinated strategy is the engineering costs incurred per ton of emissions reduced. This analysis involves a comparison of our proposed program to other measures that have been or could be implemented. As summarized in this section, the coordinated strategy represents a highly cost effective mobile source control program for reducing NO_X, PM and SO_X emissions.

We have estimated the cost per ton based on the net present value of 3 percent and 7 percent of all hardware costs incurred by U.S.-flagged vessels, all operational costs incurred by both U.S. and foreign-flagged vessels, and all emission reductions generated from the year 2010 through the year 2040. The baseline case for these estimated reductions is the existing set of engine standards for C3 marine diesel engines and fuel sulfur limits. Table VII–5 shows the annual emissions reductions associated with the coordinated strategy; these annual tons are undiscounted. A description of the methodology used to estimate these annual reductions can be found in Section II of this preamble and Chapter 3 of the draft RIA.

TABLE VII–5—ESTIMATED EMISSIONS REDUCTIONS ASSOCIATED WITH THE COORDINATED STRATEGY (SHORT TONS)

Calendar year	Reductions (tons)		
	NO_X	SO_X	PM
2010	47,000	0	0
2011	54,000	0	0
2012	70,000	0	0
2013	88,000	390,000	48,400
2014	105,000	406,000	50,400
2015	123,000	641,000	68,000
2016	150,000	668,000	70,800
2017	209,000	695,000	73,700
2018	279,000	724,000	76,800
2019	349,000	755,000	80,000
2020	409,000	877,000	94,100
2021	488,000	916,000	98,200

TABLE VII–5—ESTIMATED EMISSIONS REDUCTIONS ASSOCIATED WITH THE COORDINATED STRATEGY (SHORT TONS)—Continued

Calendar year	Reductions (tons)		
	NO_X	SO_X	PM
2022	547,000	954,000	102,000
2023	634,000	995,000	107,000
2024	714,000	1,040,000	111,000
2025	790,000	1,080,000	116,000
2026	866,000	1,130,000	121,000
2027	938,000	1,170,000	126,000
2028	1,020,000	1,220,000	131,000
2029	1,100,000	1,280,000	137,000
2030	1,180,000	1,330,000	143,000
2031	1,260,000	1,390,000	149,000
2032	1,330,000	1,450,000	155,000
2033	1,410,000	1,510,000	162,000
2034	1,500,000	1,580,000	169,000
2035	1,590,000	1,650,000	177,000
2036	1,690,000	1,720,000	184,000
2037	1,810,000	1,800,000	193,000
2038	1,920,000	1,880,000	201,000
2039	2,020,000	1,970,000	210,000
2040	2,130,000	2,050,000	220,000
NPV at 3%	14,400,000	19,100,000	2,100,000
NPV at 7%	6,920,000	10,100,000	1,090,000

The net estimated reductions by pollutant, using a net present value of 3 percent from 2010 through 2040 are 14.4 million tons of NO_X, 19.1 million tons of SO_X, and 2.1 million tons of PM (6.9 million, 10.1 million, and 1.1 million tons of NO_X, SO_X, and PM, respectively, at a net present value of 7 percent over the same period.)

Using the above cost and emission reduction estimates, we estimated the lifetime (2010 through 2040) cost per ton of pollutant reduced. For this analysis, all of the hardware costs associated with the Annex VI existing engine program and Tier 2 and Tier 3 NO_X standards as well as the operational costs associated with the global Tier II and Tier III standards were attributed to NO_X reductions. The costs associated with lower sulfur fuel operational costs as applied to all vessels visiting U.S. ports and the hardware costs associated with accommodating the use of lower sulfur fuel on U.S.-flagged vessels were associated with SO_X and PM reductions. In this analysis, half of the costs associated with the use of lower sulfur fuel were allocated to PM reductions and half to SO_X reductions, because the costs incurred to reduce SO_X emissions directly reduce emissions of PM as well. Using this allocation of costs and the emission reductions shown in Table VII–5, we can estimate the lifetime cost per ton reduced associated with each pollutant. These results are shown in Table VII–6. Using a net present value of 3 percent, the discounted lifetime cost per ton of pollutant reduced is $510 for NO_X, $930 for SO_X, and $7,950 for PM ($500, $920, and $7,850 per ton of NO_X, SO_X, and PM, respectively, at a net present value of 7 percent.) As shown in Table VII–6, these estimated discounted lifetime costs are similar to the annual long-term (2030) cost per ton of pollutant reduced.

TABLE VII–6 COORDINATED STRATEGY ESTIMATED AGGREGATE DISCOUNTED LIFETIME COST PER TON (2010–2040) AND LONG-TERM ANNUAL COST PER TON (2030) [142]

Pollutant	2010 thru 2040 discounted lifetime cost per ton at 3%	2010 thru 2040 discounted lifetime cost per ton at 7%	Long-term cost per ton (for 2030)
NO_x	$510	$500	$520
SO_x	930	920	940
PM	7,950	7,850	8,760

Note: These costs are in 2006 U.S. dollars.

These results for the coordinated strategy compare favorably to other air emissions control programs. Table VII–7 compares the coordinated strategy to other air programs. This comparison shows that the coordinated strategy will provide a cost-effective strategy for generating substantial NO_X, SO_X, and PM reductions from ocean-going vessels. The results presented in Table VII–7 are lifetime costs per ton discounted at a net present value of 3 percent, with the exception of the stationary source program and locomotive/marine retrofits, for which annualized costs are presented. While results at a net present value of 7 percent are not presented, the results

[142] The $/ton numbers presented here vary from those presented in the ECA proposal due to the net present value of the annualized reductions being applied from 2015-2020, and the use of metric tonnes rather than of short tons.

would be similar. Specifically, the coordinated strategy falls within the range of values for other recent programs.

TABLE VII–7—ESTIMATED $/TON FOR THE COORDINATED STRATEGY COMPARED TO PREVIOUS MOBILE SOURCE PROGRAMS FOR NO_X, SO_X, AND PM_{10}

Source category [A]	Implementation date	NO_X cost/ton	SO_X cost/ton	PM_{10} cost/ton
Coordinated Strategy NPRM, 2009	2011	510	930	7,950
Nonroad Small Spark-Ignition Engines	2010	[B,C] 330–1,200	.....	.....
73 FR 59034, October 8, 2008				
Stationary Diesel (CI) Engines	2006	580–20,000	.....	3,500–42,000
71 FR 39154, July 11, 2006				
Locomotives and C1/C2 Marine (Both New and Retrofits)	2015	[B] 730	.....	[D] 8,400 (New) [E] 45,000 (Retrofit)
73 FR 25097, May 6, 2008				
Heavy Duty Nonroad Diesel Engines	2015	[B] 1,100	780	13,000
69 FR 38957, June 29, 2004				
Heavy Duty Onroad Diesel Engines	2010	[B] 2,200	5,800	14,000
66 FR 5001, January 18, 2001				

Notes:

[A] Table presents aggregate program-wide cost/ton over 30 years, discounted at a 3 percent NPV, except for Stationary CI Engines and Locomotive/Marine retrofits, for which annualized costs of control for individual sources are presented. All figures are in 2006 U.S. dollars per short ton.

[B] Includes NO_X plus non-methane hydrocarbons (NMHC). NMHC are also ozone precursors, thus some rules set combined NO_X + NMHC emissions standards. NMHC are a small fraction of NO_X so aggregate cost/ton comparisons are still reasonable.

[C] Low end of range represents costs for marine engines with credit for fuel savings, high end of range represents costs for other nonroad SI engines without credit for fuel savings.

D. Economic Impact Analysis

This section contains our analysis of the expected economic impacts of our coordinated strategy on the markets for Category 3 marine diesel engines, ocean-going vessels, and the U.S. marine transportation service sector. We briefly describe our methodology and present our estimated expected economic impacts.

As described below and in more detail in the draft RIA, our economic impact analysis uses a competitive model approach for all affected markets. We request comment on this approach, or whether an alternative modeling approach should be used for these markets.

The total estimated social costs of the coordinated strategy in 2030 are equivalent to the estimated compliance costs of the coordinated strategy, at approximately $3.1 billion.[143] These costs are expected to accrue initially to the owners and operators of affected vessels. These owners and operators are expected to pass their increased costs on to the entities that purchase international marine transportation services, in the form of higher freight rates. Ultimately, these costs will be borne by the final consumers of goods transported by ocean-going vessels in the form of slightly higher prices for those goods.

We estimate that compliance with the coordinated strategy would increase the price of a new vessel by 0.5 to 2 percent. The impact of the coordinated strategy, including the ECA controls, on the price of ocean marine transportation services would vary, depending on the route and the amount of time spent in the proposed U.S. ECA. For example, we estimate that the cost of operating a ship in liner service between Singapore, Seattle, and Los Angeles/Long Beach, which includes about 1,700 nm of operation in the proposed ECA, would increase by about 3 percent. For a container ship, this represents a price increase of about $18 per container, assuming the total increase in operating costs is passed on to the purchaser of the marine transportation services. This would be about a 3 percent price increase. The per passenger price of a seven-day Alaska cruise operating entirely within the ECA is expected to increase by about $7 per day. For ships that spend less time in the ECA, the expected increase in total operating costs, and therefore the impacts on freight prices, would be smaller.

It should be noted that this economic analysis holds all other aspects of the market constant except for the elements of the coordinated strategy. It does not attempt to predict future market equilibrium conditions, particularly with respect to how excess capacity in today's market due to the current economic downturn will be absorbed. This approach is appropriate because the goal of an economic impact analysis is to explore the impacts of a specific program; allowing changes in other market conditions would confuse the impacts due to the proposed regulatory program.

The remainder of this section provides detailed information on the methodology we used to estimate these economic impacts and the results of our analysis.

(1) What Is the Purpose of an Economic Impact Analysis?

In general, the purpose of an Economic Impact Analysis (EIA) is to provide information about the potential economic consequences of a regulatory action, such as the proposed coordinated strategy to reduce emissions from ocean-going vessels. Such an analysis consists of estimating the social costs of a regulatory program and the distribution of these costs across stakeholders.

In an economic impact analysis, social costs are the value of the goods and services lost by society resulting from (a) the use of resources to comply with and implement a regulation and (b) reductions in output. There are two parts to the analysis.

In the market analysis, we estimate how prices and quantities of goods directly affected by the emission control program can be expected to change once

[143] The costs totals reported in this NPRM are slightly different than those reported in the ECA proposal. This is because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

the program goes into effect. In the economic welfare analysis, we look at the total social costs associated with the program and their distribution across key stakeholders.

(2) How Did We Estimate the Economic Impacts of the Coordinated Strategy?

Our analysis of the economic impacts of the coordinated strategy is based on the application of basic microeconomic theory. We use a competitive market model approach in which the interaction between supply and demand determines equilibrium market prices and quantities. For markets in which there are many producers, such as the vessel building and transportation services markets, this approach is reasonable.[144] For the Category 3 engine market, the market structure and therefore the choice of model is more complicated. This market consists of a small number of manufacturers (2 companies comprising about 60 percent of the market, with two others having a notable share), which suggests that an oligopolistic modeling approach may be more appropriate. In markets with a small number of producers, it is not uncommon for manufacturers to exercise market power to obtain prices above the competitive market clearing price, thereby securing greater profits. In such markets, market prices would increase more than the compliance costs of the regulatory program. However, an oligopoly market structure does not necessarily mean that the firms behave non-competitively. According to the Bertrand competition model, price competition among even a few manufacturers achieves socially optimal results similar to a competitive market.[145] The Bertrand competition model relies on price competition between the firms; price competition among the firms may be reduced when the manufacturers face sharply rising marginal costs, when they compete repeatedly, or when their products are differentiated. We request comment on whether Category 3 engine manufacturers behave competitively, competing on price, or whether some other modeling approach should be used for this market.

In a competitive structure model, we use the relationships between supply and demand to simulate how markets can be expected to respond to increases in production costs that occur as a result of the new emission control program. We use the laws of supply and demand to construct a model to estimate the social costs of the program and identify how those costs will be shared across the markets and, thus, across stakeholders. The relevant concepts are summarized below and are presented in greater detail in Chapter 7 of the draft RIA.

Before the implementation of a control program, a market is assumed to be in equilibrium, with producers producing the amount of a good that consumers desire to purchase at the market price. The implementation of a control program results in an increase in production costs by the amount of the compliance costs. This generates a ''shock'' to the initial equilibrium market conditions (a change in supply). Producers of affected products will try to pass some or all of the increased production costs on to the consumers of these goods through price increases, without changing the quantity produced. In response to the price increases, consumers will decrease the quantity they buy of the affected good (a change in the quantity demanded). This creates surplus production at the new price. Producers will react to the decrease in quantity demanded by reducing the quantity they produce, and they will be willing to sell the remaining production at a lower price that does not cover the full amount of the compliance costs. Consumers will then react to this new price. These interactions continue until the surplus is removed and a new market equilibrium price and quantity combination is achieved.

The amount of the compliance costs that will be borne by stakeholders is ultimately limited by the price sensitivity of consumers and producers in the relevant markets, represented by the price elasticities of demand and supply for each market. An ''inelastic'' price elasticity (less than one) means that supply or demand is not very responsive to price changes (a one percent change in price leads to less than one percent change in quantity). An ''elastic'' price elasticity (more than one) means that supply or demand is sensitive to price changes (a one percent change in price leads to more than one percent change in quantity). A price elasticity of one is unit elastic, meaning there is a one-to-one correspondence between a percent change in price and percent change in quantity.

On the production side, price elasticity of supply depends on the time available to adjust production in response to a change in price, how easy it is to store goods, and the cost of increasing (or decreasing) output. In this analysis, we assume the supply for engines, vessels, and marine transportation services is elastic: an increase in the market price of an engine, vessel or freight rates will lead producers to want to produce more, while a decrease will lead them to produce less (this is the classic upward-sloping supply curve). It would be difficult to estimate the slope of the supply curve for each of these markets given the global nature of the sector. However, it is reasonable to assume that the supply elasticity for the ocean marine transportation services market is likely to be greater than one. This is because output can more easily be adjusted due to a change in price. For the same reason, the supply elasticity for the new Category 3 engine market is also likely to be greater than one, especially since these engines are often used in other land-based industries, notably in power plants. The supply elasticity for the vessel construction market, on the other hand, may be less than or equal to one depending on the vessel type, since it may be harder to adjust production and/or store output if the price drops, or rapidly increase production if the price increases. Because of the nature of this industry, it would not be possible to easily switch production to other goods, or to stop or start production of new vessels.

On the consumption side, we assume that the demand for engines is a function of the demand for vessels, which is a function of the demand for international shipping (demand for engines and vessels is derived from the demand for marine transportation services). This makes intuitive sense: Category 3 engine and ocean-going vessel manufacturers would not be expected to build an engine or vessel unless there is a purchaser, and purchasers will want a new vessel/engine only if there is a need for one to supply marine transportation services. Deriving the price elasticity of demand for the vessel and engine markets from the international shipping market is an important feature of this analysis because it provides a link between the product markets.

In this analysis, the price elasticity of demand for marine transportation services, and therefore for vessels and Category 3 engines, is nearly perfectly inelastic. This stems from the fact that for most goods, there are no reasonable alternative shipping modes. In most cases, transportation by rail or truck is not feasible, and transportation by aircraft is too expensive. Approximately 90 percent of world trade by tonnage is moved by ship, and ships provide the most efficient method to transport these

[144] Stopford describes these markets as competitive. See Stopford, Martin. Maritime Economics, 3rd Edition (Routledge, 2009), Chapter 4.

[145] Tirole, Jean. The Theory of Industrial Organization (1989). MIT Press. See pages 223–224.

goods on a tonne-mile basis.[146] Stopford notes that ''shippers need the cargo and, until they have time to make alternative arrangements, must ship it regardless of cost * * * The fact that freight generally accounts for only a small portion of material costs reinforces this argument.'' [147] A nearly perfectly inelastic price elasticity of demand for marine transportation services means that virtually all of the compliance costs can be expected to be passed on to the consumers of marine transportation services, with no change in output for engine producers, ship builders, or owners and operators of ships engaged in international trade.

The economic impacts of the coordinated strategy presented in this section rely on the estimated engineering compliance costs described in Sections VII.A (fuels) and VII.B (engines) above. These costs include hardware costs for new U.S. vessels to comply with the Tier 2 and Tier 3 engine standards, and for existing U.S. vessels to comply with the MARPOL Annex VI requirements for existing engines. There are also hardware costs for fuel switching equipment on new and existing U.S. vessels to comply with the 1,000 ppm fuel sulfur limit; the cost analysis assumes that 32 percent of all vessels require fuel switching equipment to be added (new vessels) or retrofit (existing vessels). Also included are expected increases in operating costs for U.S. and foreign vessels operating in the inventory modeling domain, including the proposed ECA. These increased operating costs include changes in fuel consumption rates, increases in fuel costs, and the use of urea for engines equipped with SCR.[148]

(3) What Are the Estimated Market Impacts of the Coordinated Strategy?

(a) What Are the Estimated Engine and Vessel Market Impacts of the Coordinated Strategy?

The estimated market impacts for engines and vessels are based on the variable costs associated with the engine and vessel compliance programs; fixed costs are not included in the market analysis. This is appropriate because in a competitive market the industry supply curve is generally based on the market's marginal cost curve; fixed costs do not influence production decisions at the margin. Therefore, the market analysis for a competitive market is based on variable costs only.

The assumption of nearly perfectly inelastic demand for marine transportation services means that the quantity of these services purchased is not expected to change as a result of costs of complying with the ECA requirements. As a result, the demand for vessels and engines would also not change compared to the no-control scenario, and the quantities produced would remain the same.

The assumption of nearly perfectly inelastic demand for marine transportation services also means the price impacts of the coordinated strategy on new engines and vessels would be equivalent to the variable engineering compliance costs. Estimated price impacts for a sample of engine-vessel combinations are set out in Table VII–8 for medium speed engines, and Table VII–9 for slow speed engines. These are the estimated price impacts associated with the Tier 3 engine standards on a vessel that will switch fuels to comply with the fuel sulfur requirements in the ECA. Because the standards do not phase in, the estimated price impacts are the same for all years, beginning in 2016.

TABLE VII—8 SUMMARY OF ESTIMATED MARKET IMPACTS—MEDIUM SPEED TIER 3 ENGINES AND VESSELS

[$2006] [a]

Ship type	Average propulsion power	New vessel engine price impact (new tier 3 engine price impact) [b]	New vessel fuel switching equipment price impact [c]	New vessel total price impact
Auto Carrier	9,600	$573,200	$42,300	$615,500
Bulk Carrier	6,400	483,500	36,900	520,400
Container	13,900	687,800	49,200	736,000
General Cargo	5,200	450,300	34,900	475,200
Passenger	23,800	952,500	65,400	1,107,900
Reefer	7,400	511,000	38,500	549,500
RoRo	8,600	543,800	40,500	584,300
Tanker	6,700	492,800	37,400	530,200
Misc.	9,400	566,800	41,900	608,700

Notes:

[a] The new vessel engine price impacts listed here do not include a per engine cost of $10,000 for engines installed on U.S. vessels to comply with the proposed production testing requirement (§ 1042.302)

[b] Medium speed engine price impacts are estimated from the cost information presented in Chapter 5 using the following formula: (10%*($/SHIP_MECH→CR))+(30%*($/SHIP_ELEC→CR))+(T3 ENGINE MODS)+(T3SCR))

[c] Assumes 32 percent of new vessels would require the fuel switching equipment.

[146] Harrould-Koleib, Ellycia. Shipping Impacts on Climate: A Source with Solutions. Oceana, July 2008. A copy of this report can be found at *http://www.oceana.org/fileadmin/oceana/uploads/Climate_Change/Oceana_Shipping_Report.pdf*

[147] Stopford, Martin. *Maritime Economics, 3rd Edition.* Routledge, 2009. p. 163.

[148] The MARPOL amendments include Tier II and Tier III NO_X standards that apply to all vessels, including foreign vessels. While the analysis does not include hardware costs for the MARPOL Tier II and Tier III standards for foreign vessels because foreign vessels operate anywhere in the world, it is appropriate to include the operating costs for these foreign vessels while they are operating in our inventory modeling domain. This is because foreign vessels complying with the Tier II and Tier III standards will have a direct beneficial impact on U.S. air quality, and if we consider the benefits of these standards we should also consider their costs.

TABLE VII—9 SUMMARY OF ESTIMATED MARKET IMPACTS—SLOW SPEED TIER 3 ENGINES AND VESSELS

[$2006] [a]

Ship type	Average Propulsion Power	New vessel engine price impact (new tier 3 engine price impact) [b]	New vessel fuel switching equipment price impact [c]	New vessel total price impact
Auto Carrier	11,300	$825,000	$48,000	$873,000
Bulk Carrier	8,400	672,600	42,700	715,300
Container	27,500	1,533,100	63,900	1,597,000
General Cargo	7,700	632,900	41,000	673,900
Passenger	23,600	1,385,300	61,200	1,446,500
Reefer	10,400	781,000	46,500	827,500
RoRo	15,700	1,042,100	53,900	1,096,000
Tanker	9,800	744,200	45,300	789,500
Misc.	4,700	453,600	32,000	485,600

Notes:

[a] The new vessel engine price impacts listed here do not include a per engine cost of $10,000 for engines installed on U.S. vessels to comply with the proposed production testing requirement (§ 1042.302)

[b] Slow speed engine price impacts are estimated from the cost information presented in Chapter 5 using the following formula: (5%*($/SHIP_MECH→CR))+(15%*($/SHIP_ELEC→CR))+(T3 ENGINE MODS)+(T3 SCR))

[c] Assumes 32 percent of new vessels would require the fuel switching equipment.

The estimated price impacts for Tier 2 vessels would be substantially lower, given the technology that will be used to meet the Tier 2 standards is much less expensive. The cost of complying with the Tier 2 standards ranges from about $56,000 to $100,000 for a medium speed engine, and from about $130,000 to $250,000 for a slow speed engine. Again, because the standards do not phase in, the estimated price impacts are the same for all years the Tier 2 standards are required, 2011 through 2015.

These estimated price impacts for Tier 2 and Tier 3 vessels are small when compared to the price of a new vessel. A selection of new vessel prices is provided in Table VII–10; these range from about $40 million to $480 million. The program price increases range from about $600,000 to $1.5 million. A price increase of $600,000 to comply with the Tier 3 standards and fuel switching requirements would be an increase of approximately 2 percent for a $40 million vessel. The largest vessel price increase noted above for a Tier 3 passenger vessel is about $1.5 million; this is a price increase of less than 1 percent for a $478 million passenger vessel. Independent of the nearly-perfect inelasticity of demand, price increases of this magnitude would be expected to have little, if any, effect on the sales of new vessels, all other economic conditions held constant.

TABLE VII–10—NEWBUILD VESSEL PRICE BY SHIP TYPE AND SIZE, SELECTED VESSELS

[Millions, $2008]

Vessel type	Vessel size category	Size range (mean) (DWT)	Newbuild
Bulk carrier	Handy	10,095–39,990 (27,593)	$56.00
	Handymax	40,009–54,881 (47,616)	79.00
	Panamax	55,000–78,932 (69,691)	97.00
	Capesize	80,000–364,767 (157,804)	175.00
Container	Feeder	1,000–13,966 (9,053)	38.00
	Intermediate	14,003–36,937 (24,775)	70.00
	Panamax	37,042–54,700 (45,104)	130.00
	Post Panamax	55,238–84,900 (67,216)	165.00
Gas carrier	Midsize	1,001–34,800 (7,048)	79.70
	LGC	35,760–59,421 (50,796)	37.50
	VLGC	62,510–122,079 (77,898)	207.70
General cargo	Coastal Small	1,000–9,999 (3,789)	33.00
	Coastal Large	10,000–24,912 (15,673)	43.00
	Handy	25,082–37,865 (29,869)	52.00
	Panamax	41,600–49,370 (44,511)	58.00
Passenger	All	1,000–19,189 (6,010)	478.40
Reefer	All	1,000–19,126 (6,561)	17.30
Ro-Ro	All	1,000–19,126 (7,819)	41.20
Tanker	Coastal	1,000–23,853 (7,118)	20.80
	Handymax	25,000–39,999 (34,422)	59.00
	Panamax	40,000–75,992 (52,300)	63.00
	AFRAmax	76,000–117,153 (103,112)	77.00
	Suezmax	121,109–167,294 (153,445)	95.00
	VLCC	180,377–319,994 (294,475)	154.00

Sources: Lloyd's Shipping Economist (2008), Informa (2008), Lloyd's Sea-Web (2008).

(b) What Are the Estimated Fuel Market Impacts of the Coordinated Strategy?

The market impacts for the fuel markets were estimated through the modeling performed to estimate the fuel compliance costs for the coordinated strategy. In the WORLD model, the total quantity of fuel used is held constant, which is consistent with the assumption that the demand for international shipping transportation would not be expected to change due to the lack of transportation alternatives.

The expected price impacts of the coordinated strategy are set out in Table VII–11. Note that on a mass basis, less distillate than residual fuel is needed to go the same distance (5 percent less). The prices in Table VII–11 are adjusted for this impact.

Table VII–11 shows that the coordinated strategy is expected to result in a small increase in the price of marine distillate fuel, about 1.3 percent. The price of residual fuel is expected to decrease slightly, by less than one percent, due to a reduction in demand for that fuel.

TABLE VII–11—SUMMARY OF ESTIMATED MARKET IMPACTS—FUEL MARKETS

Fuel	Units	Baseline price	Control price	Adjusted for energy density	% change
Distillate	$/tonne	462	468	N/A	+1.3
Residual	$/tonne	322	321	N/A	−0.3
Fuel Switching	$/tonne	322	468	444	+38.9

Because of the need to shift from residual fuel to distillate fuel in the ECA, ship owners are expected to see an increase in their total cost of fuel. This increase is because distillate fuel is more expensive than residual fuel. Factoring in the higher energy content of distillate fuel relative to residual fuel, the fuel cost increase would be about 39 percent.

(c) What Are the Estimated Marine Transportation Market Impacts of the Coordinated Strategy?

We used the above information to estimate the impacts on the prices of marine transportation services. This analysis, which is presented in Chapter 7 of the draft RIA, is limited to the impacts of increases in operating costs due to the fuel and emission requirements of the coordinated strategy. Operating costs would increase due to the increase in the price of fuel, the need to switch to fuel with a sulfur content not to exceed 1,000 ppm while operating in the ECA, and due to the need to dose the aftertreatment system with urea to meet the Tier 3 standards. Table VII–12 summarizes these price impacts for selected transportation markets. Table VII–12 also lists the vessel and engine parameters that were used in the calculations.

TABLE VII–12—SUMMARY OF IMPACTS OF OPERATIONAL FUEL/UREA COST INCREASES

Vessel type	Vessel and engine parameters	Operational price increases
Container—North Pacific Circle Route	36,540 kW, 50,814 DWT	$17.53/TEU.
Bulk Carrier—North Pacific Circle Route	3,825 kW, 16,600 DWT	$0.56/tonne.
Cruise Liner—(Alaska)	31,500 kW, 226,000 DWT, 1,886 passengers.	$6.60/per passenger per day

This information suggests that the increase in marine transportation service prices would be small, both absolutely and when compared to the price charged by the ship owner per unit transported. For example, Stopford notes that the price of transporting a 20 foot container between the UK and Canada is estimated to be about $1,500; of that, $700 is the cost of the ocean freight; the rest is for port, terminal, and other charges.[149] An increase of about $18 represents an increase of less than 3 percent of ocean freight cost, and about one percent of transportation cost. Similarly, the price of a 7-day Alaska cruise varies from $100 to $400 per night or more. In that case, this price increase would range from 1.5 percent to about 6 percent.

(4) What Are the Estimated Social Costs of the Coordinated Strategy and How Are They Expected To Be Distributed Across Stakeholders?

The total social costs of the coordinated strategy are based on both fixed and variable costs. This is because fixed costs are a cost to society: they displace other product development activities that may improve the quality or performance of engines and vessels. In this economic impact analysis, fixed costs are accounted for in the year in which they occur, with the fixed costs associated with the Tier 2 engine standards accounted for in 2010 and the fixed costs associated with the Tier 3 engine standards and the ECA controls accounted for in the five-year period beginning prior to their effective dates.

The social costs of the coordinated strategy are estimated to be the same as the total engineering compliance costs. These costs for all years are presented in Table VII–4. For 2030, the social costs are estimated to be about $3.1 billion.[150] For the reasons described above and explained more fully in the draft RIA, these costs are expected to be borne fully by consumers of marine transportation services.

These social costs are small when compared to the total value of U.S. waterborne foreign trade. In 2007, waterborne trade for government and non-government shipments by vessel into and out of U.S. foreign trade zones, the 50 states, the District of Columbia, and Puerto Rico was about $1.4 trillion. Of that, about $1 trillion was for imports.[151]

[149] Stopford, Martin, *Maritime Economics,* 3rd Edition. Routledge, 2009. Page 519.

[150] The costs totals reported in this NPRM are slightly different than those reported in the ECA proposal. This is because the ECA proposal did not include costs associated with the Annex VI existing engine program, Tier II, or the costs associated with existing vessel modifications that may be required to accommodate the use of lower sulfur fuel. Further, the cost totals presented in the ECA package included Canadian cost estimates.

[151] Census Bureau's Foreign Trade Division, *U.S. Waterborne Foreign Trade by U.S. Custom Districts,* as reported by the Maritime Administration at

If only U.S. vessels are considered, the social costs of the coordinated strategy in 2030 would be about $427.5 million. Again, these social costs are small when compared to the annual revenue for this sector. In 2002, the annual revenue for this sector was about $19.8 billion.[152]

(5) Alternative Analysis

The above analysis is based on the assumption of near-perfectly inelastic demand for ocean marine transportation services. In this section, we discuss the implications of relaxing this assumption to consider the impacts of the coordinated strategy if consumers of marine transportation services were able to react to an increase in prices by reducing their demand for these services.

The marine transportation services market is a global market, which makes it complicated to estimate the price sensitivity of demand. In addition, that sensitivity would likely vary depending on the types of goods transported and the type of vessel used. For example, the demand elasticity for bulk cargo transportation services would likely vary depending on the type of bulk (*e.g.,* food, oil, electronic goods) and the type of vessel (bulk/tramp or liner). Instead of estimating these price elasticities, this alternative analysis relies on the price elasticities we developed for our 2008 rulemaking that set technology-forcing standards for Category 1 and Category 2 engines (73 FR 25098, May 6, 2008). Although these price elasticities of demand and supply were developed using data for United States markets only, they reflect behavioral reactions to price changes if alternative modes of transportation were available. The values used for the behavioral parameters for the Category 1 and 2 markets are provided in Table VII–13.

TABLE VII–13—BEHAVIORAL PARAMETERS USED IN LOCOMOTIVE/MARINE ECONOMIC IMPACT MODEL

Sector	Market	Demand elasticity	Source	Supply elasticity	Source
Marine	Marine Transportation Services.	−0.5 (inelastic)	Literature Estimate	0.6 (inelastic)	Literature Estimate.
	Commercial Vessels[a]	Derived	N/A	2.3 (elastic)	Econometric Estimate.
	Engines	Derived	N/A	3.8 (elastic)	Econometric Estimate.

Notes:
[a] Commercial vessels include tug/tow/pushboats, ferries, cargo vessels, crew/supply boats, and other commercial vessels.

The alternative price elasticity of demand for marine transportation services is inelastic, at −0.5. This means a one percent increase in price will result in a 0.5 percent decrease in demand. This inelastic demand elasticity will yield inelastic demand elasticities for both engines and vessels. The estimates of the price elasticity of supply are elastic, consistent with the primary analysis described above.

Rather than create a computer model to estimate the economic impacts of the coordinated strategy using this revised set of assumptions, we examine their impact qualitatively. In general, relaxing the condition of nearly perfectly inelastic demand elasticity would result in the compliance costs of the coordinated strategy being shared by consumers and suppliers. In the engine and vessel markets, the share borne by producers would nevertheless be expected to be small, given the elastic supply elasticity compared to the inelastic demand elasticity. Because suppliers would bear part of the compliance costs, the price increase for engines and vessels would be smaller than the per-unit engineering compliance costs. In the marine transportation market, the price impacts would be shared more equally between producers (vessel owners) and consumers (firms that purchase marine transportation services), due to the nearly identical price elasticity of supply (0.6) and demand (−0.5). However, given the relatively small per unit engineering costs, the total impacts on prices and quantities in these markets would still be expected to be modest.

In addition, there would be a small change in demand since consumers would react to an increase in price by reducing their consumption of marine transportation services. Again, because the relative price impact is small, the impact on quantity would also be small.

The distribution of compliance costs from our earlier rule are presented in Table VII–14. While the emission control requirements and the compliance cost structure of the coordinated strategy are somewhat different, these results give an idea of how costs would be shared if the assumption of nearly perfectly inelastic price elasticity of demand for the transportation services market in the ocean-going marine sector were relaxed.

TABLE VII–14—DISTRIBUTION OF SOCIAL COSTS AMONG STAKEHOLDER GROUPS—CATEGORY 1 AND CATEGORY 2 ENGINE PROGRAM

Stakeholder Group	2020 (percent)	2030 (percent)
Marine engine producers	0.8	0.5
Marine vessel producers	10.7	3.8
Recreational and fishing vessel consumers	8.4	4.1
Marine transportation service providers	36.4	41.5
Marine transportation service consumers	43.8	50.0

http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm, accessed April 9, 2009.

[152] U.S. Census Bureau, Industry Statistics Sampler, NAICS 48311, Deep sea, coastal, and Great Lakes transportation, at *http://www.census.gov/econ/census02/data/industry/E48311.HTM,* assessed on April 9, 2009.

TABLE VII–14—DISTRIBUTION OF SOCIAL COSTS AMONG STAKEHOLDER GROUPS—CATEGORY 1 AND CATEGORY 2 ENGINE PROGRAM—Continued

Stakeholder Group	2020 (percent)	2030 (percent)
Total	100.0	100.0

VIII. Benefits

This section presents our analysis of the health and environmental benefits that are estimated to occur as a result of EPA's coordinated strategy to address emissions from Category 3 engines and ocean-going vessels throughout the period from initial implementation through 2030. We provide estimated benefits for the entire coordinated strategy, including the Annex VI Tier 2 NO_X requirements and the ECA controls that will be mandatory for U.S. and foreign vessels through the Act to Prevent Pollution from Ships. However, unlike the cost analysis, this benefits analysis does not allocate benefits between the components of the program (the requirements in this rule and the requirements that would apply through MARPOL Annex VI and ECA implementation). This is because the benefits of the coordinated strategy will be fully realized only when the U.S. ECA is in place and both U.S. and foreign vessel are required to use lower sulfur fuel and operate their Tier 3 NO_X controls while in the designated area, and therefore it makes more sense to consider the benefits of the coordinated strategy as a whole.

The components of the coordinated strategy would apply stringent NO_X and SO_X standards to virtually all vessels that affect U.S. air quality, and impacts on human health and welfare would be substantial. As presented in Section II, the coordinated is expected to provide very large reductions in direct PM, NO_X, SO_X, and toxic compounds, both in the near term and in the long term. Emissions of NO_X (a precursor to ozone formation and secondarily-formed $PM_{2.5}$), SO_X (a precursor to secondarily-formed $PM_{2.5}$) and directly-emitted $PM_{2.5}$ contribute to ambient concentrations of $PM_{2.5}$ and ozone. Exposure to ozone and $PM_{2.5}$ is linked to adverse human health impacts such as premature deaths as well as other important public health and environmental effects.

Using the most conservative premature mortality estimates (Pope *et al.,* 2002 for PM2.5 and Bell *et al.,* 2004 for ozone),[153, 154] we estimate that implementation of the coordinated strategy would reduce approximately 13,000 premature mortalities in 2030 and yield approximately $110 billion in total benefits. The upper end of the premature mortality estimates (Laden *et al.,* 2006 for PM2.5 and Levy *et al.,* 2005 for ozone) [155, 156] increases avoided premature mortalities to approximately 32,000 in 2030 and yields approximately $280 billion in total benefits. Thus, even taking the most conservative premature mortality assumptions, the health impacts of the coordinated strategy presented in this proposal are clearly substantial.

A. Overview

We base our analysis on peer-reviewed studies of air quality and human health effects (see U.S. EPA, 2006 and U.S. EPA, 2008).[157, thnsp;158] These methods are described in more detail in the draft RIA that accompanies this proposal. To model the ozone and PM air quality impacts of the proposed CAA standards and requirements and the ECA designation, we used the Community Multiscale Air Quality (CMAQ) model (see Section II). The modeled ambient air quality data serves as an input to the Environmental Benefits Mapping and Analysis Program (BenMAP).[159] BenMAP is a computer program developed by the U.S. EPA that integrates a number of the modeling elements used in previous analyses (*e.g.,* interpolation functions, population projections, health impact functions, valuation functions, analysis and pooling methods) to translate modeled air concentration estimates into health effects incidence estimates and monetized benefits estimates.

The range of total ozone- and PM-related benefits associated with the coordinated strategy to control ship emissions is presented in Table VIII–1. We present total benefits based on the PM- and ozone-related premature mortality function used. The benefits ranges therefore reflect the addition of each estimate of ozone-related premature mortality (each with its own row in Table VIII–1) to estimates of PM-related premature mortality. These estimates represent EPA's preferred approach to characterizing the best estimate of benefits associated with the coordinated strategy. As is the nature of Regulatory Impact Analyses (RIAs), the assumptions and methods used to estimate air quality benefits evolve to reflect the Agency's most current interpretation of the scientific and economic literature. This analysis, therefore, incorporates four important changes from recent RIAs released by the Office of Transportation and Air Quality (OTAQ):

- As is the nature of Regulatory Impact Analyses (RIAs), the assumptions and methods used to estimate air quality benefits evolve over time to reflect the Agency's most current interpretation of the scientific and economic literature. For a period of time (2004–2008), the Office of Air and Radiation (OAR) valued mortality risk reductions using a value of statistical life (VSL) estimate derived from a limited analysis of some of the available studies. OAR arrived at a VSL using a

[153] Pope, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston. (2002). Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution. *Journal of the American Medical Association,* 287, 1132–1141.

[154] Bell, M.L., *et al.* (2004). Ozone and short-term mortality in 95 US urban communities, 1987–2000. *Journal of the American Medical Association, 292(19),* 2372–2378.

[155] Laden, F., J. Schwartz, F.E. Speizer, and D.W. Dockery. (2006). Reduction in Fine Particulate Air Pollution and Mortality. *American Journal of Respiratory and Critical Care Medicine. 173,* 667–672.

[156] Levy, J.I., S.M. Chemerynski, and J.A. Sarnat. (2005). Ozone exposure and mortality: an empiric bayes metaregression analysis. *Epidemiology. 16(4),* 458–68.

[157] U.S. Environmental Protection Agency. (2006). *Final Regulatory Impact Analysis (RIA) for the Proposed National Ambient Air Quality Standards for Particulate Matter.* Prepared by: Office of Air and Radiation. Retrieved March, 26, 2009 at *http: //www.epa.gov/ttn/ecas/ria.html.*

[158] U.S. Environmental Protection Agency. (2008). *Final Ozone NAAQS Regulatory Impact Analysis.* Prepared by: Office of Air and Radiation, Office of Air Quality Planning and Standards. Retrieved March, 26, 2009 at *http://www.epa.gov/ttn/ecas/ria.html.*

[159] Information on BenMAP, including downloads of the software, can be found at *http://www.epa.gov/ttn/ecas/benmodels.html.*

[157] U.S. Environmental Protection Agency. (2006). *Final Regulatory Impact Analysis (RIA) for the Proposed National Ambient Air Quality Standards for Particulate Matter.* Prepared by: Office of Air and Radiation. Retrieved March, 26, 2009 at *http: //www.epa.gov/ttn/ecas/ria.html.*

range of $1 million to $10 million (2000$) consistent with two meta-analyses of the wage-risk literature. The $1 million value represented the lower end of the interquartile range from the Mrozek and Taylor (2002) [160] meta-analysis of 33 studies and $10 million represented the upper end of the interquartile range from the Viscusi and Aldy (2003) [161] meta-analysis of 46 studies. The mean estimate of $5.5 million (2000$) [162] was also consistent with the mean VSL of $5.4 million estimated in the Kochi *et al.* (2006) [163] meta-analysis. However, the Agency neither changed its official guidance on the use of VSL in rule-makings nor subjected the interim estimate to a scientific peer-review process through the Science Advisory Board (SAB) or other peer-review group.

During this time, the Agency continued work to update its guidance on valuing mortality risk reductions, including commissioning a report from meta-analytic experts to evaluate methodological questions raised by EPA and the SAB on combining estimates from the various data sources. In addition, the Agency consulted several times with the Science Advisory Board Environmental Economics Advisory Committee (SAB–EEAC) on the issue. With input from the meta-analytic experts, the SAB–EEAC advised the Agency to update its guidance using specific, appropriate meta-analytic techniques to combine estimates from unique data sources and different studies, including those using different methodologies (*i.e.,* wage-risk and stated preference) (U.S. EPA–SAB, 2007).[164]

Until updated guidance is available, the Agency determined that a single, peer-reviewed estimate applied consistently best reflects the SAB–EEAC advice it has received. Therefore, the Agency has decided to apply the VSL that was vetted and endorsed by the SAB in the Guidelines for Preparing Economic Analyses (U.S. EPA, 2000) while the Agency continues its efforts to update its guidance on this issue.[165] This approach calculates a mean value across VSL estimates derived from 26 labor market and contingent valuation studies published between 1974 and 1991. The mean VSL across these studies is $6.3 million (2000$).[166]

The Agency is committed to using scientifically sound, appropriately reviewed evidence in valuing mortality risk reductions and has made significant progress in responding to the SAB–EEAC's specific recommendations. The Agency anticipates presenting results from this effort to the SAB–EEAC in the Fall 2009 and that draft guidance will be available shortly thereafter.

- In recent analyses, OTAQ has estimated $PM_{2.5}$-related benefits assuming that a threshold exists in the PM-related concentration-response functions (at 10 $\mu g/m^3$) below which there are no associations between exposure to $PM_{2.5}$ and health impacts. EPA strives to use the best available science to support our benefits analyses, and we recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. Based on our review of the body of scientific literature, EPA applied the no-threshold model in this analysis. Removing the threshold assumption is consistent with the approach taken in the recently published Portland Cement MACT RIA.[167] EPA's draft Integrated Science Assessment (2008g), which was recently reviewed by EPA's Clean Air Scientific Advisory Committee (CASAC),[168, 169] concluded that the scientific literature consistently finds that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship while recognizing potential uncertainty about the exact shape of the concentration-response function. Although this document does not represent final agency policy that has undergone the full agency scientific review process, it provides a basis for reconsidering the application of thresholds in $PM_{2.5}$ concentration-response functions used in EPA's RIAs. It is important to note that while CASAC provides advice regarding the science associated with setting the National Ambient Air Quality Standards, typically other scientific advisory bodies provide specific advice regarding benefits analysis. Because the Portland Cement RIA was completed while CASAC was reviewing the PM ISA, we solicited comment on the use of the no-threshold model for benefits analysis within the preamble of that proposed rule. The comment period for the Portland Cement proposed NESHAP has been extended until September 4, 2009.[170] Please see Section 6.4.1.3 of the RIA that accompanies this preamble for more discussion of the treatment of thresholds in this analysis.
- For the coordinated strategy, we rely on two empirical (epidemiological) studies of the relationship between ambient $PM_{2.5}$ and premature mortality (the extended analyses of the Harvard Six Cities study by Laden *et al* (2006) and the American Cancer Society (ACS) cohort by Pope *et al* (2002)) to anchor our benefits analysis, though we also present the $PM_{2.5}$-related premature mortality benefits associated with the estimates supplied by the expert elicitation as a sensitivity analysis. This approach was recently adopted in the Portland Cement MACT RIA. Since 2006, EPA has calculated benefits based on these two empirical studies and derived the range of benefits, including the minimum and maximum results, from an expert elicitation of the

[158] U.S. Environmental Protection Agency. (2008). *Final Ozone NAAQS Regulatory Impact Analysis*. Prepared by: Office of Air and Radiation, Office of Air Quality Planning and Standards. Retrieved March, 26, 2009 at *http://www.epa.gov/ttn/ecas/ria.html*.

[159] Information on BenMAP, including downloads of the software, can be found at *http://www.epa.gov/ttn/ecas/benmodels.html*.

[160] Mrozek, J.R., and L.O. Taylor. (2002). What Determines the Value of Life? A Meta-Analysis. *Journal of Policy Analysis and Management* 21(2):253–270.

[161] Viscusi, V.K., and J.E. Aldy. (2003). The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World. *Journal of Risk and Uncertainty* 27(1):5–76.

[162] In this analysis, we adjust the VSL to account for a different currency year (2006$) and to account for income growth to 2020 and 2030. After applying these adjustments to the $5.5 million value, the VSL is $7.7m in 2020 and $7.9 in 2030.

[163] Kochi, I., B. Hubbell, and R. Kramer. 2006. An Empirical Bayes Approach to Combining Estimates of the Value of Statistical Life for Environmental Policy Analysis. Environmental and Resource Economics. 34: 385–406.

[164] U.S. Environmental Protection Agency (U.S. EPA). 2007. SAB Advisory on EPA's Issues in Valuing Mortality Risk Reduction.*http://yosemite.epa.gov/sab/sabproduct.nsf/4128007E7876B8F0852573760058A978/$File/sab-08–001.pdf*.

[165] In the (draft) update of the Economic Guidelines, EPA retained the VSL endorsed by the SAB with the understanding that further updates to the mortality risk valuation guidance would be forthcoming in the near future. Therefore, this report does not represent final agency policy. The 2000 guidelines can be downloaded here: *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html,* and the draft updated version (2008) of the guidelines can be downloaded here: *http://yosemite.epa.gov/ee/epa/eerm.nsf/vwRepNumLookup/EE–0516?OpenDocument*.

[166] In this analysis, we adjust the VSL to account for a different currency year (2006$) and to account for income growth to 2020 and 2030. After applying these adjustments to the $6.3 million value, the VSL is $8.9m in 2020 and $9.1m in 2030.

[168] U.S. Environmental Protection Agency—Science Advisory Board (U.S. EPA–SAB). 2009. Review of EPA's Integrated Science Assessment for Particulate Matter (First External Review Draft, December 2008). EPA–COUNCIL–09–008. May. Available on the Internet at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/73ACCA834AB44A10852575BD0064346B/$File/EPA–CASAC–09–008-unsigned.pdf*.

[169] U.S. Environmental Protection Agency—Science Advisory Board (U.S. EPA–SAB). 2009b. Consultation on EPA's Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment. EPA–COUNCIL–09–009. May. Available on the Internet at *http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/723FE644C5D758DF852575BD00763A32/$File/EPA–CASAC–09–009-unsigned.pdf*.

relationship between exposure to $PM_{2.5}$ and premature mortality (Roman *et al.,* 2008).[171] Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates have fallen between the two epidemiology-based estimates (Roman *et al.,* 2008). Assuming no threshold in the empirically-derived premature mortality concentration response functions used in the analysis of the coordinated strategy, only one expert falls below the empirically-derived range while two of the experts are above this range (see Tables 6–5 and 6–6 in the draft RIA that accompanies this preamble). Please refer to the Portland Cement MACT RIA for more information about the preferred approach and the evolution of the treatment of threshold assumptions within EPA's regulatory analyses.

• The range of ozone benefits associated with the coordinated strategy is estimated based on risk reductions derived from several sources of ozone-related mortality effect estimates. This analysis presents six alternative estimates for the association based upon different functions reported in the scientific literature. We use three multi-city studies,[172, 173, 174] including the Bell, 2004 National Morbidity, Mortality, and Air Pollution Study (NMMAPS) that was used as the primary basis for the risk analysis in the ozone Staff Paper[175] and reviewed by the Clean Air Science Advisory Committee (CASAC).[176] We also use three studies that synthesize ozone mortality data across a large number of individual studies.[177, 178, 179] This approach is consistent with recommendations provided by the NRC in their ozone mortality report (NRC, 2008),[180] ''The committee recommends that the greatest emphasis be placed on estimates from new systematic multicity analyses that use national databases of air pollution and mortality, such as in the NMMAPS, without excluding consideration of meta-analyses of previously published studies.'' The NRC goes on to note that there are uncertainties within each study that are not fully captured by this range of estimates.

TABLE VIII–1—ESTIMATED 2030 MONETIZED PM-AND OZONE-RELATED HEALTH BENEFITS OF A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS[A]

2030 Total Ozone and PM Benefits—PM Mortality Derived from American Cancer Society Analysis and Six-Cities Analysis[a]			
Premature Ozone Mortality Function	Reference	Total Benefits (Billions, 2006$, 3% Discount Rate)[c,d]	Total Benefits (Billions, 2006$, 7% Discount Rate)[c,d]
Multi-city analyses	Bell *et al.,* 2004	$110—$280	$100—$250
	Huang *et al.,* 2005	120—280	110—250
	Schwartz, 2005	120—280	110—250
Meta-analyses	Bell *et al.,* 2005	120—280	110—250
	Ito *et al.,* 2005	120—280	110—260
	Levy *et al.,* 2005	120—280	110—260

Notes:

[a] Total includes premature mortality-related and morbidity-related ozone and $PM_{2.5}$ benefits. Range was developed by adding the estimate from the ozone premature mortality function to the estimate of $PM_{2.5}$-related premature mortality derived from either the ACS study (Pope *et al.,* 2002) or the Six-Cities study (Laden *et al.,* 2006).

[b] Note that total benefits presented here do not include a number of unquantified benefits categories. A detailed listing of unquantified health and welfare effects is provided in Table VIII–2.

[c] Results reflect the use of both a 3 and 7 percent discount rate, as recommended by EPA's Guidelines for Preparing Economic Analyses and OMB Circular A–4. Results are rounded to two significant digits for ease of presentation and computation.

The benefits in Table VIII–1 include all of the human health impacts we are able to quantify and monetize at this time. However, the full complement of human health and welfare effects associated with PM and ozone remain unquantified because of current limitations in methods or available data. We have not quantified a number of known or suspected health effects linked with ozone and PM for which appropriate health impact functions are not available or which do not provide easily interpretable outcomes (*i.e.,* changes in heart rate variability). Additionally, we are unable to quantify a number of known welfare effects, including reduced acid and particulate deposition damage to cultural monuments and other materials, and environmental benefits due to reductions of impacts of eutrophication in coastal areas. These are listed in Table VIII–2. As a result, the health benefits quantified in this section are likely underestimates of the total benefits attributable to the

[170] Readers interested in commenting on the use of the no-threshold model for benefits analysis should direct their comments to Docket ID No. EPA–HQ–OAR–2002–0051 (available at *http://www.regulations.gov*) before the comment period closes.

[171] Roman, Henry A., Walker, Katherine D., Walsh, Tyra L., Conner, Lisa, Richmond, Harvey M., Hubbell, Bryan J., and Kinney, Patrick L. (2008). Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268—2274.

[172] Bell, M.L., *et al.* (2004). Ozone and short-term mortality in 95 US urban communities, 1987–2000. Jama, 2004. 292(19): p. 2372–8.

[173] Huang, Y.; Dominici, F.; Bell, M. L. (2005) Bayesian hierarchical distributed lag models for summer ozone exposure and cardio-respiratory mortality. Environmetrics 16: 547–562.

[174] Schwartz, J. (2005) How sensitive is the association between ozone and daily deaths to control for temperature? Am. J. Respir. Crit. Care Med. 171: 627–631.

[175] U.S. EPA (2007) Review of the National Ambient Air Quality Standards for Ozone, Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper.EPA–452/R–07–003. This document is available in Docket EPA–HQ–OAR–2003–0190. Retrieved on April 10, 2009, from *http:www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html*

[176] CASAC (2007). Clean Air Scientific Advisory Committee's (CASAC) Review of the Agency's Final Ozone Staff Paper. EPA–CASAC–07–002. March 26.

[177] Bell, M.L., F. Dominici, and J.M. Samet. (2005). A meta-analysis of time-series studies of ozone and mortality with comparison to the national morbidity, mortality, and air pollution study. *Epidemiology,* 16(4): p. 436–45.

[178] Ito, K., S.F. De Leon, and M. Lippmann. (2005). Associations between ozone and daily mortality: analysis and meta-analysis. *Epidemiology.* 16(4): p. 446–57.

[179] Levy, J.I., S.M. Chemerynski, and J.A. Sarnat. (2005). Ozone exposure and mortality: an empiric bayes metaregression analysis. *Epidemiology.* 16(4): p. 458–68.

[180] National Research Council (NRC), 2008. Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution. The National Academies Press: Washington, DC.

implementation of the coordinated strategy to control ship emissions.

TABLE VIII–2—UNQUANTIFIED AND NON-MONETIZED POTENTIAL EFFECTS OF A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS

Pollutant/Effects	Effects not included in analysis—changes in:
Ozone Health[a]	Chronic respiratory damage.[b]
	Premature aging of the lungs.[b]
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/-).[e]
Ozone Welfare	Yields for:
	—commercial forests,
	—some fruits and vegetables,
	—non-commercial crops.
	Damage to urban ornamental plants.
	Impacts on recreational demand from damaged forest aesthetics.
	Ecosystem functions.
	Exposure to UVb (+/-).[e]
PM Health[c]	Premature mortality—short term exposures.[d]
	Low birth weight.
	Pulmonary function.
	Chronic respiratory diseases other than chronic bronchitis.
	Non-asthma respiratory emergency room visits.
	Exposure to UVb (+/-).[e]
PM Welfare	Residential and recreational visibility in non-Class I areas.
	Soiling and materials damage.
	Damage to ecosystem functions.
	Exposure to UVb (+/-).[e]
Nitrogen and Sulfate Deposition Welfare	Commercial forests due to acidic sulfate and nitrate deposition.
	Commercial freshwater fishing due to acidic deposition.
	Recreation in terrestrial ecosystems due to acidic deposition.
	Existence values for currently healthy ecosystems.
	Commercial fishing, agriculture, and forests due to nitrogen deposition.
	Recreation in estuarine ecosystems due to nitrogen deposition.
	Ecosystem functions
	Passive fertilization
CO Health	Behavioral effects
HC/Toxics Health[f]	Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde).
	Anemia (benzene).
	Disruption of production of blood components (benzene).
	Reduction in the number of blood platelets (benzene).
	Excessive bone marrow formation (benzene).
	Depression of lymphocyte counts (benzene).
	Reproductive and developmental effects (1,3-butadiene).
	Irritation of eyes and mucus membranes (formaldehyde).
	Respiratory irritation (formaldehyde).
	Asthma attacks in asthmatics (formaldehyde).
	Asthma-like symptoms in non-asthmatics (formaldehyde).
	Irritation of the eyes, skin, and respiratory tract (acetaldehyde).
	Upper respiratory tract irritation and congestion (acrolein)
HC/Toxics Welfare	Direct toxic effects to animals.
	Bioaccumulation in the food chain.
	Damage to ecosystem function.
	Odor.

Notes:

[a] The public health impact of biological responses such as increased airway responsiveness to stimuli, inflammation in the lung, acute inflammation and respiratory cell damage, and increased susceptibility to respiratory infection are likely partially represented by our quantified endpoints.

[b] The public health impact of effects such as chronic respiratory damage and premature aging of the lungs may be partially represented by quantified endpoints such as hospital admissions or premature mortality, but a number of other related health impacts, such as doctor visits and decreased athletic performance, remain unquantified.

[c] In addition to primary economic endpoints, there are a number of biological responses that have been associated with PM health effects including morphological changes and altered host defense mechanisms. The public health impact of these biological responses may be partly represented by our quantified endpoints.

[d] While some of the effects of short-term exposures are likely to be captured in the estimates, there may be premature mortality due to short-term exposure to PM not captured in the cohort studies used in this analysis. However, the PM mortality results derived from the expert elicitation do take into account premature mortality effects of short term exposures.

[e] May result in benefits or disbenefits.

[f] Many of the key hydrocarbons related to this rule are also hazardous air pollutants listed in the CAA.

B. Quantified Human Health Impacts

Tables VIII–3 and VIII–4 present the annual $PM_{2.5}$ and ozone health impacts in the 48 contiguous U.S. states associated with the coordinated strategy for both 2020 and 2030. For each endpoint presented in Tables VIII–3 and VIII–4, we provide both the mean estimate and the 90% confidence interval.

Using EPA's preferred estimates, based on the ACS and Six-Cities studies and no threshold assumption in the model of mortality, we estimate that the coordinated strategy would result in between 5,300 and 14,000 cases of avoided $PM_{2.5}$-related premature deaths annually in 2020 and between 13,000 and 32,000 avoided premature deaths annually in 2030. As a sensitivity analysis, when the range of expert opinion is used, we estimate between 1,900 and 18,000 fewer premature mortalities in 2020 and between 4,500 and 42,000 fewer premature mortalities in 2030 (see Tables 6–5 and 6–6 in the draft RIA that accompanies this proposal).

For ozone-related premature mortality, we estimate a range of between 61 to 280 fewer premature mortalities as a result of the coordinated strategy in 2020 and between 220 to 980 in 2030. The increase in annual benefits from 2020 to 2030 reflects additional emission reductions from coordinated strategy, as well as increases in total population and the average age (and thus baseline mortality risk) of the population.

TABLE VIII–3—ESTIMATED $PM_{2.5}$-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

Health effect	2020 Annual reduction in ship-related incidence (5th%–95th%ile)	2030 Annual reduction in ship-related incidence (5th%–95th%ile)
Premature Mortality—Derived from epidemiology literature: [b]		
Adult, age 30+, ACS Cohort Study (Pope *et al.,* 2002)	5,300 (2,100–8,500)	13,000 (5,000–20,000)
Adult, age 25+, Six-Cities Study (Laden *et al.,* 2006)	14,000 (7,400–20,000)	32,000 (18,000–47,000)
Infant, age <1 year (Woodruff *et al.,* 1997)	20 (0–55)	37 (0–100)
Chronic bronchitis (adult, age 26 and over)	3,800 (700–6,900)	8,500 (1,600–15,000)
Non-fatal myocardial infarction (adult, age 18 and over)	8,800 (3,200–14,000)	22,000 (8,100–35,000)
Hospital admissions–respiratory (all ages) [c]	1,200 (590–1,800)	2,900 1,400–4,200)
Hospital admissions–cardiovascular (adults, age >18) [d]	2,700 (2,000–3,200)	7,100 (5,000–8,300)
Emergency room visits for asthma (age 18 years and younger)	3,500 (2,000–4,900)	8,100 (4,800–11,000)
Acute bronchitis, (children, age 8–12)	8,500 (0–17,000)	19,000 (0–37,000)
Lower respiratory symptoms (children, age 7–14)	100,000 (49,000–150,000)	220,000 (110,000–330,000)
Upper respiratory symptoms (asthmatic children, age 9–18)	77,000 (24,000–130,000)	170,000 (54,000–290,000)
Asthma exacerbation (asthmatic children, age 6–18)	95,000 (10,000–260,000)	210,000 (23,000–580,000)
Work loss days	720,000 (630,000–810,000)	1,500,000 (1,300,000–1,700,000)
Minor restricted activity days (adults age 18–65)	4,300,000 (3,600,000–4,900,000)	9,000,000 (7,600,000–10,000,000)

Notes:

[a] Incidence is rounded to two significant digits. Estimates represent incidence within the 48 contiguous United States.

[b] PM-related adult mortality based upon the American Cancer Society (ACS) Cohort Study (Pope *et al.,* 2002) and the Six-Cities Study (Laden *et al.,* 2006). Note that these are two alternative estimates of adult mortality and should not be summed. PM-related infant mortality based upon a study by Woodruff, Grillo, and Schoendorf, (1997).[181]

[c] Respiratory hospital admissions for PM include admissions for chronic obstructive pulmonary disease (COPD), pneumonia and asthma.

[d] Cardiovascular hospital admissions for PM include total cardiovascular and subcategories for ischemic heart disease, dysrhythmias, and heart failure.

TABLE VIII–4—ESTIMATED OZONE-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [a]

Health effect	2020 Annual reduction in ship-related incidence (5th%–95th%ile)	2030 Annual reduction in ship-related incidence (5th%–95th%ile)
Premature Mortality, All ages [b]		

[181] Woodruff, T.J., J. Grillo, and K.C. Schoendorf. 1997. ''The Relationship Between Selected Causes of Postneonatal Infant Mortality and Particulate Air Pollution in the United States.'' *Environmental Health Perspectives* 105(6):608–612.

TABLE VIII–4—ESTIMATED OZONE-RELATED HEALTH IMPACTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS[a]—Continued

Health effect	2020 Annual reduction in ship-related incidence (5th%–95th%ile)	2030 Annual reduction in ship-related incidence (5th%–95th%ile)
Multi-City Analyses:		
Bell *et al.* (2004)—Non-accidental	61 (23–98)	220 (71–370)
Huang *et al.* (2005)–Cardiopulmonary	100 (43–160)	370 (140–610)
Schwartz (2005)—Non-accidental	93 (34–150)	340 (100–570)
Meta-analyses:		
Bell *et al.* (2005)—All cause	200 (100–290)	690 (330–1,100)
Ito *et al.* (2005)—Non-accidental	270 (170–370)	980 (580–1,400)
Levy *et al.* (2005)—All cause	280 (200–360)	980 (670–1,300)
Hospital admissions—respiratory causes (adult, 65 and older)[c]	470 (46–830)	2,000 (97–3,600)
Hospital admissions—respiratory causes (children, under 2)	380 (180–590)	1,200 (500–2,000)
Emergency room visit for asthma (all ages)	210 (0–550)	740 (0–1,900)
Minor restricted activity days (adults, age 18–65)	360,000 (160,000–570,000)	1,200,000 (440,000–1,900,000)
School absence days	130,000 (51,000–190,000)	450,000 (150,000–680,000)

Notes:

[a] Incidence is rounded to two significant digits. Estimates represent incidence within the 48 contiguous U.S.

[b] Estimates of ozone-related premature mortality are based upon incidence estimates derived from several alternative studies: Bell *et al.* (2004); Huang *et al.* (2005); Schwartz (2005) ; Bell *et al.* (2005); Ito *et al.* (2005); Levy *et al.* (2005). The estimates of ozone-related premature mortality should therefore not be summed.

[c] Respiratory hospital admissions for ozone include admissions for all respiratory causes and subcategories for COPD and pneumonia.

C. Monetized Benefits

Table VIII–5 presents the estimated monetary value of reductions in the incidence of ozone and $PM_{2.5}$-related health effects. All monetized estimates are stated in 2006$. These estimates account for growth in real gross domestic product (GDP) per capita between the present and the years 2020 and 2030. As the tables indicate, total benefits are driven primarily by the reduction in premature fatalities each year.

Our estimate of total monetized benefits in 2020 for the coordinated strategy, using the ACS and Six-Cities PM mortality studies and the range of ozone mortality assumptions, is between $47 billion and $110 billion, assuming a 3 percent discount rate, or between $42 billion and $100 billion, assuming a 7 percent discount rate. In 2030, we estimate the monetized benefits to be between $110 billion and $280 billion, assuming a 3 percent discount rate, or between $100 billion and $260 billion, assuming a 7 percent discount rate. The monetized benefit associated with reductions in the risk of both ozone- and $PM_{2.5}$-related premature mortality ranges between 90 to 98 percent of total monetized health benefits, in part because we are unable to quantify a number of benefits categories (see Table VIII–2). These unquantified benefits may be substantial, although their magnitude is highly uncertain.

Table VIII-6 Estimated Monetary Value in Reductions in Incidence of Health and Welfare Effects (in millions of 2006$) [a,b]

		2020	2030
$PM_{2.5}$-Related Health Effect		Estimated Mean Value of Reductions (5^{th} and 95^{th} %ile)	
Premature Mortality – Derived from Epidemiology Studies[c,d,]	Adult, age 30+ - ACS study (Pope et al., 2002)		
	3% discount rate	$43,000 ($5,000 - $110,000)	$100,000 ($12,000 - $270,000)
	7% discount rate	$38,000 ($4,500 - $100,000)	$94,000 ($11,000 - $250,000)
	Adult, age 25+ - Six-cities study (Laden et al., 2006)		
	3% discount rate	$110,000 ($14,000 - $270,000)	$270,000 ($35,000 - $670,000)
	7% discount rate	$98,000 ($13,000 - $250,000)	$240,000 ($32,000 - $610,000)
	Infant Mortality, <1 year – (Woodruff et al. 1997)	$180 ($0 - $670)	$330 ($0 - $1,300)
Chronic bronchitis (adults, 26 and over)		$1,900 ($140 - $6,500)	$4,300 ($340 - $15,000)
Non-fatal acute myocardial infarctions			
3% discount rate		$960 ($170 - $2,300)	$2,300 ($390 - $5,600)
7% discount rate		$930 ($160 - $2,300)	$2,200 ($360 - $5,500)
Hospital admissions for respiratory causes		$17 ($8.4 - $25)	$41 ($21 - $61)
Hospital admissions for cardiovascular causes		$76 ($48 - $110)	$190 ($120 - $270)
Emergency room visits for asthma		$1.3 ($0.70 - $1.9)	$3.0 ($1.6 - $4.5)
Acute bronchitis (children, age 8–12)		$0.63 ($0 - $1.6)	$1.4 ($0 - $3.4)
Lower respiratory symptoms (children, 7–14)		$2.0 ($0.75 - $3.7)	$4.4 ($1.7 - $8.1)
Upper respiratory symptoms (asthma, 9–11)		$2.4 ($0.65 - $5.3)	$5.3 ($1.5 - $12)
Asthma exacerbations		$5.1 ($0.51 - $15)	$11 ($1.1 - $34)
Work loss days		$110 ($94 - $120)	$230 ($200 - $260)
Minor restricted-activity days (MRADs)		$270 ($150 – $390)	$570 ($330 - $830)
Ozone-related Health Effect			
Premature Mortality, All ages – Derived from Multi-city analyses	Bell et al., 2004	$540 ($63 - $1,400)	$2,000 ($230 - $5,300)
	Huang et al., 2005	$910 ($110 - $2,300)	$3,400 ($390 - $8,900)
	Schwartz, 2005	$830 ($94 - $2,200)	$3,000 ($320 - $8,200)

Premature Mortality, All ages – Derived from Meta-analyses	Bell et al., 2005	$1,700 ($220 - $4,400)	$6,300 ($810 - $16,000)
	Ito et al., 2005	$2,400 ($330 - $5,900)	$8,900 ($1,200 - $22,000)
	Levy et al., 2005	$2,400 ($340 - $5,900)	$8,900 ($1,200 - $22,000)
Hospital admissions- respiratory causes (adult, 65 and older)		$11 ($1.1 - $20)	$47 ($2.3 - $85)
Hospital admissions- respiratory causes (children, under 2)		$3.8 ($1.8 – $5.9)	$12 ($5.0 - $20)
Emergency room visit for asthma (all ages)		$0.08 ($0.03 - $0.20)	$0.27 ($0 - $0.68)
Minor restricted activity days (adults, age 18-65)		$23 ($9.8 - $41)	$73 ($26 - $130)
School absence days		$12 ($4.6 - $17)	$40 ($13 - $61)

Notes:

[a] Monetary benefits are rounded to two significant digits for ease of presentation and computation. PM and ozone benefits are nationwide.

[b] Monetary benefits adjusted to account for growth in real GDP per capita between 1990 and the analysis year (2020 or 2030).

[c] Valuation assumes discounting over the SAB recommended 20 year segmented lag structure. Results reflect the use of 3 percent and 7 percent discount rates consistent with EPA and OMB guidelines for preparing economic analyses.

D. What Are the Limitations of the Benefits Analysis?

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Limitations of the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literature, which can lead to valuations that are higher or lower, are discussed in detail in the draft RIA and its supporting references. Key uncertainties that have a bearing on the results of the benefit-cost analysis of the coordinated strategy include the following:

- The exclusion of potentially significant and unquantified benefit categories (such as health, odor, and ecological benefits of reduction in air toxics, ozone, and PM);
- Errors in measurement and projection for variables such as population growth;
- Uncertainties in the estimation of future year emissions inventories and air quality;
- Uncertainty in the estimated relationships of health and welfare effects to changes in pollutant concentrations including the shape of the C–R function, the size of the effect estimates, and the relative toxicity of the many components of the PM mixture;
- Uncertainties in exposure estimation; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

As Table VIII–5 indicates, total benefits are driven primarily by the reduction in premature mortalities each year. Some key assumptions underlying the premature mortality estimates include the following, which may also contribute to uncertainty:

- Inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. Although biological mechanisms for this effect have not yet been completely established, the weight of the available epidemiological, toxicological, and experimental evidence supports an assumption of causality. The impacts of including a probabilistic representation of causality were explored in the expert elicitation-based results of the PM NAAQS RIA.
- All fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because PM produced via transported precursors emitted from marine engines may differ significantly from PM precursors released from electric generating units and other industrial sources. However, no clear scientific grounds exist for supporting differential effects estimates by particle type.
- The C–R function for fine particles is approximately linear within the range of ambient concentrations under consideration. Thus, the estimates include health benefits from reducing fine particles in areas with varied concentrations of PM, including both regions that may be in attainment with $PM_{2.5}$ standards and those that are at risk of not meeting the standards.
- There is uncertainty in the magnitude of the association between ozone and premature mortality. The range of ozone benefits associated with the proposed strategy is estimated based on the risk of several sources of ozone-related mortality effect estimates. In a recent report on the estimation of ozone-related premature mortality published by the National Research Council, a panel of experts and reviewers concluded that short-term exposure to ambient ozone is likely to contribute to premature deaths and that ozone-related mortality should be included in estimates of the health benefits of reducing ozone exposure.[182] EPA has

[182] National Research Council (NRC), 2008. Estimating Mortality Risk Reduction and Economic

Continued

requested advice from the National Academy of Sciences on how best to quantify uncertainty in the relationship between ozone exposure and premature mortality in the context of quantifying benefits.

Emissions and air quality modeling decisions are made early in the analytical process. For this reason, the emission control scenarios used in the air quality and benefits modeling are slightly different than the coordinated strategy. The discrepancies impact the benefits analysis in three ways:

- The air quality modeling used for the 2020 scenarios is based on inventory estimates that were modeled using incorrect boundary information. We believe the impact of this difference, while modest, likely leads to a small underestimate of the benefits that are presented in this section. Please refer to the Chapter 3 of the draft RIA for more information on the emissions excluded from the health impacts analysis.
- The 2020 air quality modeling scenarios do not include emission reductions associated with the implementation of global controls (set through IMO) beyond the assumed ECA boundary of 200 nautical miles (nm). Again, while we expect the impact of this difference is modest, the omission of these additional emission reductions likely leads to a small underestimate of the 2020 benefits presented in this section.
- As described in Section II, the air quality modeling for the 2030 scenario reflects air quality impacts associated with an assumed ECA distance of 100 nm with global controls (set through IMO) beyond the ECA boundary. To estimate the 2030 benefits associated with a 200 nm ECA boundary, we transferred the relationship between modeled impacts between 100 nm and 200 nm ECA boundaries observed in 2020. For each health endpoint and associated valuation, we calculated a ratio based on the national-level estimate for the 200 nm and 100 nm scenario and applied that to the related 2030 100 nm estimate. For the final rulemaking, we plan to model the 2030 coordinated strategy to control ship emissions with a 200 nm boundary and global controls beyond.

Despite the uncertainties described above, we believe this analysis provides a conservative estimate of the estimated economic benefits of the standards in future years because of the exclusion of potentially significant benefit categories that are not quantifiable at this time. Acknowledging benefits omissions and uncertainties, we present a best estimate of the total benefits based on our interpretation of the best available scientific literature and methods supported by EPA's technical peer review panel, the Science Advisory Board's Health Effects Subcommittee (SAB–HES). The National Academies of Science (NRC, 2002) has also reviewed EPA's methodology for analyzing the health benefits of measures taken to reduce air pollution. EPA addressed many of these comments in the analysis of the final PM NAAQS.[183] [184] This analysis incorporates this most recent work to the extent possible.

E. Comparison of Costs and Benefits

This section presents the cost-benefit comparison related to the expected impacts of our coordinated strategy for ocean-going vessels. In estimating the net benefits of the coordinated strategy, the appropriate cost measure is 'social costs.' Social costs represent the welfare costs of a rule to society and do not consider transfer payments (such as taxes) that are simply redistributions of wealth. For this analysis, we estimate that the social costs of the coordinated program are equivalent to the estimated compliance costs of the program. While vessel owners and operators will see their costs increase by the amount of those compliance costs, they are expected to pass them on in their entirety to consumers of marine transportation services in the form of increased freight rates. Ultimately, these costs will be borne by the final consumers of goods transported by ocean-going vessels in the form of higher prices for those goods. The social benefits of the coordinated strategy are represented by the monetized value of health and welfare improvements experienced by the U.S. population. Table VIII–6 contains the estimated social costs and the estimated monetized benefits of the coordinated strategy.

The results in Table VIII–6 suggest that the 2020 monetized benefits of the coordinated strategy are greater than the expected costs. Specifically, the annual benefits of the total program will range between $47 to $110 billion annually in 2020 using a three percent discount rate, or between $42 to $100 billion assuming a 7 percent discount rate, compared to estimated social costs of approximately $1.9 billion in that same year. These benefits are expected to increase to between $110 and $280 billion annually in 2030 using a three percent discount rate, or between $100 and $260 billion assuming a 7 percent discount rate, while the social costs are estimated to be approximately $3.1 billion. Though there are a number of health and environmental effects associated with the coordinated strategy that we are unable to quantify or monetize (see Table VIII–2), the benefits of the coordinated strategy far outweigh the projected costs.

Using a conservative benefits estimate, the 2020 benefits outweigh the costs by a factor of 22. Using the upper end of the benefits range, the benefits could outweigh the costs by a factor of 58. Likewise, in 2030 benefits outweigh the costs by at least a factor of 32 and could be as much as a factor of 90. Thus, even taking the most conservative benefits assumptions, benefits of the coordinated strategy clearly outweigh the costs.

TABLE VIII–6—SUMMARY OF ANNUAL BENEFITS AND COSTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [A]

[Millions of 2006 dollars]

Description	2020	2030
Total Estimated Costs [b]	$1,900	$3,100.
Total Estimated Health Benefits [c, d, e, f]		
3 percent discount rate	$47,000 to $110,000	$110,000 to $280,000.
7 percent discount rate	$42,000 to $100,000	$100,000 to $260,000.
Annual Net Benefits (Total Benefits—Total Costs)		
3 percent discount rate	$45,000 to $110,000	$110,000 to $280,000.

Benefits from Controlling Ozone Air Pollution. The National Academies Press: Washington, DC.

[183] National Research Council (NRC). 2002. Estimating the Public Health Benefits of Proposed Air Pollution Regulations. The National Academies Press: Washington, DC.

[184] U.S. Environmental Protection Agency. October 2006. *Final Regulatory Impact Analysis (RIA) for the Proposed National Ambient Air Quality Standards for Particulate Matter.* Prepared by: Office of Air and Radiation. *Available at http://www.epa.gov/ttn/ecas/ria.html.*

TABLE VIII–6—SUMMARY OF ANNUAL BENEFITS AND COSTS ASSOCIATED WITH A COORDINATED U.S. STRATEGY TO CONTROL SHIP EMISSIONS [A]—Continued

[Millions of 2006 dollars]

Description	2020	2030
7 percent discount rate	$40,000 to $98,000	$97,000 to $260,000.

Notes:

[a] All estimates represent annual benefits and costs anticipated for the years 2020 and 2030. Totals are rounded to two significant digits and may not sum due to rounding.

[b] The calculation of annual costs does not require amortization of costs over time. Therefore, the estimates of annual cost do not include a discount rate or rate of return assumption (see Chapter 7 of the draft RIA). In Chapter 7, however, we use both a 3 percent and 7 percent social discount rate to calculate the net present value of total social costs consistent with EPA and OMB guidelines for preparing economic analyses.

[c] Total includes ozone and $PM_{2.5}$ benefits. Range was developed by adding the estimate from the Bell *et al.,* 2005 ozone premature mortality function to $PM_{2.5}$-related premature mortality derived from the ACS (Pope *et al.,* 2002) and Six-Cities (Laden *et al.*, 2006) studies.

[d] Annual benefits analysis results reflect the use of a 3 percent and 7 percent discount rate in the valuation of premature mortality and nonfatal myocardial infarctions, consistent with EPA and OMB guidelines for preparing economic analyses.

[e] Valuation of premature mortality based on long-term PM exposure assumes discounting over the SAB recommended 20-year segmented lag structure described in the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March, 2005).

[f] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table VIII–2.

IX. Alternative Program Options

EPA's coordinated strategy to control emissions from ocean-going vessels consists of a number of components including Clean Air Act standards for Category 3 engines and designation of an ECA for U.S. coasts through amendment to MARPOL Annex VI. The coordinated strategy will ensure that all ships operating within 200 nautical miles of U.S. coasts meet the most stringent NO_X standards and fuel sulfur limits by 2015 (fuel sulfur) and 2016 (engine NO_X).

The air quality and benefits analysis we performed for the coordinated strategy suggests that substantial human health and environmental benefits can be obtained from additional reductions in emissions from ocean-going vessels, and many stakeholders have expressed a desire for additional NO_X reductions from OGV in earlier years, prior to the effective dates for the Tier 2 and Tier 3 NO_X limits. As described in Section I, above, EPA has a number of port initiatives under our National Clean Diesel Campaign to reduce emissions from this sector. These include recognition for efforts by port authorities and their customers to reduce emissions from OGV through a variety of efforts, grants under the Energy Policy Act of 2005 Diesel Emissions Reduction Program to electrify piers and repower C1 and C2 marine vessels, and grants under the Clean Air Act to demonstrate sea water scrubbers and to provide incentives to ship operators to use lower sulfur fuels.[185] EPA has also sponsored a number of workshops and conferences focused on exchanging technical information about emissions reduction techniques for ships (Clean Ships Conference in San Diego in 2007, Faster Freight meetings on East and West coasts, and up-coming workshop with MARAD). EPA welcomes comment on ways in which the NCDC can be improved through ideas such as incentives (including financing schemes) to facilitate faster introduction of cleaner fuels and engine technologies, eco-speed programs, and adoption of other emission reduction methods that can be used on a vessel-specific or port-specific basis.

In addition, we evaluated several programmatic alternatives including mandating the use of shoreside power in our CAA program, pulling the effective date of the CAA Tier 3 standards ahead, and various options for addressing emissions from existing engines. We also considered action under the Clean Air Act to apply the Tier 3 standards to foreign vessels that operate in the United States. However, as explained in more detail in Section V.D, foreign vessels will be required to comply with the Annex VI NO_X and fuel sulfur limits through U.S. ECA designation and therefore it is unnecessary to take action under the Act at this time.

The remainder of this section presents a summary of our analysis of these alternative control scenarios. We are interested in comments on each of these programmatic alternatives.

A. Mandatory Cold Ironing Requirement

To provide earlier air quality benefits, some commenters suggested adopting earlier Tier 3 NO_X standards and fuel sulfur limits, requiring standards for existing engines, and/or requiring the use of shoreside power while ships are at dock (called ''cold-ironing''). Shoreside power is an effective way to reduce emissions from ships while they are at berth. The U.S. Navy is a pioneer and has used cold-ironing successfully for many years. However, to be successful, this strategy requires changes to both the ship and the port. First, the ship must be equipped to use shore power through changes to its equipment and electrical systems. The IMO, working with the International Organization for Standardization (ISO), is currently developing harmonized requirements for these systems, and we believe it would be more effective for EPA to consider requiring such systems once the technology is better defined.[186] Second, the port terminal must ensure that the electricity is available at the berths. This is a significant barrier to the adoption of shoreside power on a national basis. However, some port authorities already require cold-ironing for frequent-calling vessels and are pursuing additional reductions from shoreside port equipment. The Ports of Los Angeles, Long Beach, Seattle, and Tacoma are among those with cold-ironing programs. EPA is working with East Coast ports to develop plans for shoreside power as part of port development plans.

B. Earlier Adoption of CAA Tier 3 Standards

We considered a programmatic alternative that would pull ahead the CAA Tier 3 NO_X standard from 2016 to 2014. This would require engine manufacturers to apply SCR two years earlier than they would be required to under the MARPOL Annex VI program.

This option presents serious technical feasibility challenges. Beginning in 2011, manufacturers will be introducing

[185] Clean Ports USA (see *http://www.epa.gov/cleandiesel/ports* for further information).

[186] See MEPC 59/4/3 (9 April 2009), Response to IMO Secretariat's invitation to ISO to make recommendations regarding fuel characteristics and parameters addressing air quality, ship safety, engine performance and crew health, Submitted by the International Organization for Standardization (ISO).

new engine-based technologies to meet the Tier 2 standards. We believe that these new NO_X-reducing technologies and emission control approaches will also be the basis for Tier 3 engine designs. It will be necessary for manufacturers to design, develop, and validate these engine-based technologies before they can be used in conjunction with exhaust aftertreatment or additional engine-based technologies required to meet Tier 3 standards. Once these Tier 2 technologies are mature and well-understood, they can be further refined and developed for use with the additional NO_X control technologies. The original five-year period between Tier 2 and Tier 3 was deemed challenging but feasible for engine manufacturers to design the Tier 3 engines and incorporate those engines into new vessel designs. For this reason, we do not believe it is technically feasible to advance the Tier 3 standards for new engines earlier.

Nevertheless, if such an alternative were feasible, we can estimate the inventory benefits associated with those earlier NO_X reductions. Cumulative NO_X emission reductions for the period 2014 to 2023 as a result of the coordinated strategy presented in this **Federal Register** notice are estimated to be 3 million short tons NO_X reduction beyond the Tier 1 standards (Table IX–1). Introducing the CAA Tier 3 standards two years earlier than proposed would affect only U.S. vessels and would reduce an additional 0.07 million short tons of reduction of NO_X beyond our coordinated strategy through 2023. The method we used to estimate these inventory impacts are presented in the draft RIA, Appendix 3B.

TABLE IX–1—COMPARISON OF NO_X REDUCTIONS THROUGH 2023 WITH ADOPTION OF CAA TIER 3 IN 2016 VERSUS 2014

Scenario	NO_X Emissions through 2023 (short tons)
Base Case (Tier 1 only NO_X standards)	10,494,636
Primary Case (2016 NO_X standards)	7,515,389
Alternative 1 (2014 NO_X standards for U.S. Vessels)	7,444,866

Due to the technical concerns described above, our review of this alternative leads us to conclude that advancing the introduction of the Tier 3 NO_X standards is not a feasible way to improve 2023 NO_X reductions and could create significant problems for implementation of the overall coordinated strategy. Nevertheless, we request comment on this alternative and whether it could be modified to improve its feasibility.

C. Standards for Existing Engines

We examined a third programmatic alternative, including improvements in NO_X emissions from pre-2016 engines. A control program for existing engines would help many areas, notably the South Coast of California, to achieve their ozone and PM NAAQS goals through Category 3 engine NO_X reductions sooner than fleet turnover would allow. In this section we describe several methods to control emissions from existing engines. We request comment on all aspects of these alternatives.

(1) Clean Air Act Remanufacturing Program

Our recently-finalized emission control program for marine diesel engines up to 30 liters per cylinder displacement includes standards that will apply to existing engines at the time they are remanufactured (73 FR 25098, May 6, 2008, at 25130). In that program, we define ''new marine engine'' to include an engine that has been remanufactured, which is defined as replacement of all cylinder liners, either in one event or over a five-year period. Vessel owners/operators and engine rebuilders who remanufacture those engines would be required to use a certified remanufacture system when an engine is remanufactured if such a certified system is available; if there is no certified kit, there is no requirement until the time of the next remanufacture event. The program applies to engines with maximum engine power greater than 600 kW and manufactured in 1973 or later, through Tier 2 (2012–14, depending on engine size). A certified marine remanufacture system must achieve a 25 percent reduction in PM emissions compared to the engine's measured baseline emissions level without increasing NO_X emissions.

The program, which is similar to locomotive remanufacture program, was possible to adopt under the Clean Air Act because many commercial Category 1 and 2 engines undergo periodic full like-new rebuilds to ensure their dependability by returning the engine to as-new condition. Many manufacturers provide guidance for a full rebuild to as-new condition, which might include replacing piston rings, heads, bearings, and gear train/camshaft as well as piston liners. Based on discussions with engine manufacturers, we determined that replacing all cylinder liners is a simple and clear indicator that the servicing being done is extensive enough for the engine to be considered functionally equivalent to a freshly manufactured engine, both mechanically and in terms of how it is used. Therefore, we defined remanufacture as the removal and replacement of all cylinder liners, either during a single maintenance event or over a five-year period. Marine diesel engines are not considered to be remanufactured if the rebuilding process falls short of this definition (*i.e.,* the cylinder liners are removed and replaced over more than a five-year period).

We do not think it is possible to adopt a similar program for Category 3 engines at this time. Even though Category 3 engines may remain in the fleet for several decades, they are not maintained in the same way as Category 1 or Category 2 engines. Category 3 engines are very large, with cylinder sizes of 90 liters not uncommon. Maintenance for these engines is very different than that for Category 1 or Category 2 engines. Specifically, piston liners, as well as other engine components, are not replaced unless there is a catastrophic failure. Our analysis of available information suggests that cylinder liners for engines this large are inspected based on hours of operation, with the standard interval being about 6,000 to 12,000 hours for engines operating on residual fuel and up to 25,000 hours for engines operating on distillate fuel.

Engine manufacturers specify how this inspection is to be performed. Typically, the liner is inspected, measured, dressed, honed or replaced if beyond specifications. As each cylinder has individual wear characteristics, the complete engine liner replacement is not normally done on all cylinders at one time, since this would be much more expensive than the maintenance according to the manufacturer specifications. If there is an extended drydock, it is possible that a ship owner may take advantage of this time to inspect and work on several or all cylinders, but it is doubtful that a complete cylinder liner replacement would be done due to the expense. These engines are an integral part of the vessel design, and it would be difficult to replace the cylinder liners if it is not absolutely necessary.

Other maintenance occurs on a cylinder-specific basis and is not comprehensive enough to return the engine to as-new condition. Finally, engine manufacturers have informed us that these engines are built to last, with most vessels being scrapped before the engine is worn out. Operating at lower speeds (130 rpm) also reduces wear on the cylinders.

Based on the above information and because there is no specific maintenance action common to all Category 3 engines that (1) would return an engine to as-new condition and (2) could be used to identify engines as being remanufactured and therefore ''new,'' we conclude it is not possible to extend the marine remanufacture program to Category 3 engines at this time.

(2) MARPOL Annex VI Existing Engine Program

MARPOL Annex VI has two sets of NO_X provisions that apply to existing engines. These requirements will apply to engines on U.S. vessels through the Act to Prevent Pollution from Ships and are briefly described in this section. In addition to these NO_X requirements, MARPOL Annex VI will provide significant PM reductions from existing vessels through its fuel sulfur requirements, particularly in a U.S. ECA. These PM benefits are described elsewhere in this **Federal Register** notice.

First, Annex VI requires any engine above 130 kW that undergoes a major conversion to comply with the standards that are in effect at the time that major conversion takes place. Major conversion means the engine is replaced by a non-identical engine, an engine is added to the vessel, the engine's maximum continuous rating is increased by more than 10 percent, or the engine undergoes any modification that would increase its emissions.

Second, the recent amendments to Annex VI add a provision that requires all engines at or above 90 liters per cylinder displacement and above 5,000 kW that were built between 1990 through 1999 to comply with the Tier I NO_X limits if there is a certified Approved Method (remanufacture system) for that engine. This kit-based approach is similar to our domestic program except it is triggered solely by the existence of a certified remanufacture system and does not also require a specific remanufacture event (*i.e.,* replacing all cylinder liners either all at once or within a period of five years). The Tier 1 NO_X limits are appropriate for this group of engines because they often are based on the same or a similar engine platform as the Tier 1 engines and the emission control techniques that apply to Tier 1 engines should also be applicable to many of the pre-Tier 1 engines. Pre-1990 engines were excluded from this program because their base engine platforms can be very different from Tier 1 engines; because many of the original engine manufacturers of these engines are no longer in business; and because the population of these engines is expected to be too small in 2010 to warrant emission controls. Engine manufacturers are expected to begin certifying Approved Methods when the Annex amendments go into force in July 2010; owners will be required to install the kits at the time of the first renewal survey that occurs 12 months after the kit is certified.

The combination of the Annex VI existing engine program to reduce NO_X emissions from very large Category 3 engines and the Annex VI fuel sulfur program will significantly reduce NO_X and PM emissions from existing vessels. Because these requirements will apply to Category 3 engines on U.S. and foreign vessels through APPS, it is not necessary to adopt these same requirements under our Clean Air Act authority to protect U.S. air quality or to implement Annex VI.

(3) Voluntary Marine Verification Program

We are considering a programmatic alternative to encourage additional NO_X reductions from Category 3 engines on ocean-going vessels. In combination with state or local incentives, this program would provide incentives for owners to achieve, on a voluntary basis, greater emission reductions earlier than required for new Category 3 engines, and to retrofit existing Category 3 engines with more advanced NO_X emission control technologies.

In this approach, States, localities, and ports would encourage vessel owners to participate in this program through specially-designed incentive plans. This would allow States, localities, and ports the flexibility to tailor use of the program to their specific needs.

To facilitate such state or local programs, EPA would set up a voluntary Marine Verification Program as an extension of our current diesel retrofit program. Under this program, we would provide a verification, based on simplified emission testing, for any vessel owner who provides data to show that the Category 3 propulsion engines on the relevant vessel achieve a more stringent tier of NO_X limits, Tier 2 or Tier 3, than otherwise applies to those engines. While verification would not be equivalent to EPA certification (the base engine certification would remain the same), it would provide assurance to the states and localities that adopt such programs that the emission reductions are occurring. The test methods used to make this demonstration would be the same as those that would be used to comply with the production testing requirements for new engines (see Section VI.A.1.d, above). The verification could be periodically reviewed to ensure the engine continues to meet the verified emission levels. This could occur at the time of the vessel certification surveys required by MARPOL Annex VI, either the intermediate survey (every two and a half years) or the renewal survey (every five years).

The voluntary Marine Verification Program would be available to Category 3 propulsion engines on new or existing vessels, and would be based on achieving the Tier 2 or Tier 3 NO_X limits and not on a percent reduction from a baseline. Owners could achieve these NO_X limits by adjusting the engine, retrofitting engine components, or retrofitting with an aftertreatment device. However, we would not consider an exhaust gas scrubber to be an acceptable control strategy for reducing NO_X emissions (see Section V.C.2.b, above).

Unlike a remanufacture program, which relies on the certification of remanufacture systems that would apply to all specified engines, the Marine Verification Program would apply to Category 3 propulsion engines on a vessel-specific basis. It would be up to the individual vessel owner to determine how to reduce the NO_X emissions from the engines on a vessel, and to demonstrate, per the testing

protocols outlined above, that the relevant engines achieve the more stringent NO_X limit. Note that an engine verification would not create the presumption that a verified retrofit constitutes a remanufacture system or Certified Approved Method that must be applied to all engines of the same model. However, we seek comment on whether there are ways to approve groups of engine in a verification to reduce the cost of the program by spreading design costs over more engines.

Participation in the Marine Verification Program would be completely voluntary: no state, locality, or port authority would be required to adopt this program, and no vessel owner would be required to retrofit a NO_X emission control technology.

We request comment on whether such a voluntary program would be beneficial to states and localities that seek earlier NO_X reductions, and whether port authorities would take advantage of it in the context of various incentive programs.

We also seek comment on how such a program could be applied in the context of the MARPOL Annex VI requirements for major conversions. Specifically, Regulation 13 of Annex VI requires that an engine that undergoes a major conversion be certified to the NO_X limits in effect at the time of the major conversion. A major conversion is defined as replacing an existing engine or adding an engine to a vessel, increasing the maximum continuous power of a vessel by more than ten percent, or by substantially modifying an engine. The NO_X Technical Code defines substantial modification as any modification that ''could potentially cause the engine to exceed'' the Regulation 13 NO_X limits. The NO_X Technical Code further specifies that, in the case of engines installed on vessels constructed before January 1, 2000, the impact on emissions must be shown by an emissions test. We do not think that participation in a Voluntary Marine Verification Program would trigger these requirements since ships would not be making adjustments that would increase emissions. However, we seek comment on whether they imply that a Portable Emissions Measurement System (PEMS)-based emission measurement should not be used and the simplified measurement methods contained in the NO_X Technical Code should be used instead in order to be in compliance with Annex VI and the NO_X Technical Code. If the latter is the case, we also seek comment on the cost of such emission measurement.

We seek comment on how the MARPOL Annex VI documentation for an engine, including its technical file, would need to be adjusted for a verified engine. We also seek comment on how this program would apply to foreign-flagged vessels. Specifically, if the Substantial Modification provisions of the NO_X Technical Code are triggered by the Voluntary Marine Verification Program, it could also be necessary that vessels built before 2000 obtain an Engine International Air Pollution Prevention certificate from its flag state Administration. The ship could also be required to obtain and maintain the documentation that goes with it (Engine Technical File, Record Book of Engine Parameters). EPA would not be able to re-issue an EIAPP for vessels not flagged in the United States. It would be up to participating vessel owners to obtain a new EIAPP or a revised EIAPP from their flag Administration. We seek comment on whether this would prevent owners from participating in the program.

X. Public Participation

We request comment on all aspects of the emission control program that we are proposing under the CAA. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated in the **DATES** section at the beginning of this document. If you have an interest in the proposed emission control program described in this document, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics with respect to our CAA proposal identified throughout this document.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES** located at the beginning of this document) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in Section X.B.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through the electronic public docket, *http://www.regulations.gov,* or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA–HQ–OAR–2007–0121. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this document.

C. Will There Be a Public Hearing?

We intend to hold two public hearings, one in the New York area and one in the Los Angeles area. We will publish information about the hearings on our Website, *http://www.epa.gov/otaq/oceanvessels.htm.*

If you would like to present testimony at the public hearings, we ask that you notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We

suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

D. Comment Period

The comment period for this rule will end on September 28, 2009.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

XI. Statutory and Executive Order Reviews

As explained in Section I.A, the program we are proposing is part of a coordinated strategy to address emissions from ocean-going vessels. That coordinated strategy includes, among other actions, the combination the global Tier 2 NO_X standards included in the amendments to Annex VI and the ECA Tier 3 NO_X limits and fuel sulfur limits that will apply when the U.S. coasts are designated as an ECA through an additional amendment to Annex VI. These engine and fuel standards will be enforceable for all vessels, U.S. and foreign, operating in the United States through the Act to Prevent Pollution from Ships. Because the coordinated strategy in its entirety is economically significant (see cost analysis in Section V), the components we are adopting in this rule (engine controls for Category 3 engines on U.S. vessels under our Clean Air Act program, as required by section 213 of the Act that are identical to the MARPOL Annex VI NO_X limits; limits on hydrocarbon and carbon monoxide emissions for Category 3 engines; PM measurement requirement; changes to our Clean Air Act diesel fuel program to allow production and sale of ECA-compliant fuel; changes to our emission control program for smaller marine diesel engines to harmonize with the Annex VI NO_X requirements, for U.S. vessels that operate internationally) may also be considered to be economically significant.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues due to the international nature of the use of Category 3 marine diesel engines. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with our coordinated strategy for controlling emissions from ocean-going vessels. While the costs of the coordinated strategy are ''significant,'' the costs of the CAA program described in this proposal are minimal, as explained above in the introduction to this section. This analysis is contained in the draft Regulatory Impact Analysis that was prepared, and is available in the docket for this rulemaking and at the docket Internet address listed under **ADDRESSES** above.

B. Paperwork Reduction Act

The information collection requirements in this 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 2345.01.

Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act. Recordkeeping and reporting requirements for manufacturers would be pursuant to the authority of section 208 of the Clean Air Act.

The data we require in this ICR is necessary to comply with Title II of the Clean Air Act, as amended in 1990. The Act directs us to adopt regulations for nonroad engines if we determine those engines contribute significantly to air pollution in the U.S. Now that we have made this determination, the Act directs us to set emission standards for any category of nonroad engines that contribute to air quality nonattainment in two or more areas in the U.S. We can only meet the requirements of the Act by collecting data from the regulated industry. Also, we will only have an effective program if we know that these engines maintain their certified emission level throughout their operating lives.

The burden for certification testing is generally based on conducting two engine tests for each engine family, then using that test data for several years. The manufacturer's application for certification involves an extensive effort the first year, followed by relatively little effort in subsequent years. We estimate that manufacturers will conduct new certification testing every five years; the costs have been estimated on an annual average basis. In addition to testing, manufacturers must prepare the application for certification and maintain appropriate records. We have estimated the cost of these combined activities, which include engineering and clerical effort, to be about $20,000 for each Category 3 marine diesel engine per certification cycle. As with the testing costs, we are presenting annual average costs. The burden for production-line testing is based on an industry-wide calculation. Rebuilders, including operators of marine vessels with Category 3 engines, must keep records as needed to show that rebuilt engines continue to meet emission standards, consistent with the manufacturer's original design. In addition, owners and operators of marine vessels with Category 3 engines must record information about their location when rebuilding engines or

making other adjustments and send minimal annual notification to EPA to show that engine maintenance and adjustments have not caused engines to be noncompliant. 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–2007–0121. Submit any comments related to the ICR to EPA and OMB. See the **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 August 28, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by September 28, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in manufacture of large diesel marine engines as defined by NAICS code 333618 with 1,000 or fewer employees (based on Small Business Administration size standards) or a small business primarily engaged in the shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small 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. This proposed rule will not impose any requirements on small entities. There are no small entities in this regulated industry. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. While the costs of the coordinated strategy exceed the $100 million per year threshold for the private sector, the costs of the components of that strategy that are the subject of this rule are less than $100 million per year, as explained in the introduction to this section and in Section VII. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule will be implemented at the Federal level and impose compliance obligations only on private industry. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA consulted with representatives from the National Association of Clean Air Agencies (NACAA, formerly STAPPA/ALAPCO), the Northeast States for Coordinated Air Use Management (NESCAUM), and the California Air Resources Board (CARB).

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule will be implemented at the Federal level and impose compliance costs only on manufacturers of marine engines and marine vessels. Tribal governments will be affected only to the extent they purchase and use the regulated engines and vehicles. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. While the costs of the coordinated strategy are ''significant,'' the costs of the CAA program described in this proposal are minimal, as explained above in the introduction to this section. The health and risk assessments associated with the coordinated strategy for controlling emissions from ocean-going vessels are contained in Section II.A of the preamble and Chapter 2 of the draft RIA, which has been placed in the public docket under Docket ID number EPA–HQ–OAR–2007–0121.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to the pollutants addressed by this proposed rule.

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

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' We have prepared a Statement of Energy Effects for this action as follows.

This rule's potential effects on energy supply, distribution, or use have been analyzed and are discussed in detail in Section 4.6 of the RIA. In summary, while we project that this rule would result in an energy effect that exceeds the 10,000 barrel per day change in crude oil production threshold noted in E.O. 13211, this rule does not significantly affect the energy use, production, or distribution beyond what is required by Annex VI of the International Convention for the Prevention of Pollution from Ships.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. The International Organization for Standardization has a voluntary consensus standard that can be used to test engines. However, the test procedures in this proposal reflect a level of development that goes substantially beyond the ISO or other published procedures. The proposed procedures incorporate new specifications for steady-state emission measurements and measuring emissions using field-testing procedures. The procedures we adopt in this rule will form the working template for ISO and national and state governments to define test procedures for measuring engine emissions. As such, we have worked extensively with the representatives of other governments, testing organizations, and the affected industries.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

Together, this proposed rule which addresses emissions from domestic-flagged vessels and the joint U.S./Canada ECA application to the IMO which addresses emissions from foreign-flagged vessels (referred to as the ''coordinated strategy'') will achieve significant reductions of various emissions from Category 3 marine diesel engines, including NO_X, SO_X, and direct PM. Exposure to these pollutants raises concerns regarding environmental health for the U.S. population in general including the minority populations and low-income populations that are the focus of the environmental justice executive order.

The emission reductions from the new standards in the coordinated strategy will have large beneficial effects on communities in proximity to port, harbor, and waterway locations, including low-income and minority communities. In addition to exhaust emission standards for freshly manufactured and remanufactured engines, the coordinated strategy, if finalized, would further reduce emissions from regulated engines that directly impact low-income and minority communities.

EPA recently updated its initial screening-level analysis of selected marine port areas to better understand the populations, including minority and low-income populations, that are exposed to diesel PM emission sources from these facilities.[187, 188] This screening-level analysis is an inexact tool and should only be considered for illustrative purposes to help understand potential impacts. The analysis included all emission sources as well as ocean-going marine diesel engines, and focused on a representative selection of national marine ports (45 ports total).[189, 190] Considering only ocean-going marine engine diesel PM emissions, the results indicate that 6.5 million people are exposed to ambient diesel PM levels that are 2.0 $\mu g/m^3$ and 0.2 $\mu g/m^3$ above levels found in areas further from these facilities. This population includes a disproportionate

[187] ICF International. December 1, 2008. Estimation of diesel particulate matter concentration isopleths near selected harbor areas with revised emissions (revised). Memorandum to EPA under Work Assignment Number 1–9, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[188] ICF International. December 10, 2008. Estimation of diesel particulate matter population exposure near selected harbor areas with revised harbor emissions (revised). Memorandum to EPA under Work Assignment Number 2–9, Contract Number EP–C–06–094. This memo is available in Docket EPA–HQ–OAR–2007–0121.

[189] The emissions inventories used as inputs for the analyses are not official estimates and likely underestimate overall emissions because they are not inclusive of all emission sources at the individual ports in the sample.

[190] The Agency selected a representative sample from the top 150 U.S. ports including coastal, inland and Great Lake ports.

number of low-income households, African-Americans, and Hispanics. The results from all emission sources show that nearly 18 million people are exposed to higher levels of diesel PM from all sources at the marine port areas than urban background levels. Because those living in the vicinity of marine ports are more likely to be low-income households and minority residents, these populations would receive a significant benefit from the combined coordinated strategy. See Section VIII of this preamble and Chapter 6 of the draft RIA for a discussion on the benefits of this rule, including the benefits to minority and low-income communities.

XII. Statutory Provisions and Legal Authority

Statutory authority for the controls in this final rule can be found in sections 203–209, 211, 213 (which specifically authorizes controls on emissions from nonroad engines and vehicles), 216, and 301 of the Clean Air Act (CAA), 42 U.S.C. 7414, 7522, 7523, 7424, 7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel Fuel, Fuel Additives, Imports, Labeling, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Motor vehicle.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1027

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Reporting and recordkeeping requirements.

40 CFR Part 1033

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Penalties, Railroads, Reporting and recordkeeping requirements.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1042

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Vessels, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1043

Environmental protection, Administrative practice and procedure, Air pollution control, Imports, Vessels, Reporting and recordkeeping requirements.

40 CFR Parts 1045, 1048, 1051, 1054, and 1060

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: June 26, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601.

2. Section 80.2 is amended as follows:

a. By revising paragraph (ccc).

b. By revising paragraph (nnn).

c. By adding paragraph (ttt).

§ 80.2 Definitions.

* * * * *

(ccc) *Heating Oil* means any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

* * * * *

(nnn) *Nonroad, locomotive, or marine (NRLM) diesel fuel* means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use, as a fuel in any nonroad diesel engines, including locomotive and marine diesel engines, except the following: Distillate fuel with a T90 at or above 700 °F that is used only in Category 2 and 3 marine engines is not NRLM diesel fuel, and ECA marine fuel is not NRLM diesel fuel. Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel. NR diesel fuel and LM diesel fuel are subcategories of NRLM diesel fuel.

(1) Any diesel fuel that is sold for use in stationary engines that are required to meet the requirements of § 80.510(a) and/or (b), when such provisions are applicable to nonroad engines, shall be considered NRLM diesel fuel.

(2) [Reserved]

* * * * *

(ttt) *ECA marine fuel* is distillate or residual fuel that is used, intended for use, or made available for use in Category 3 marine vessels operating within an Emission Control Area (ECA).

3. Revise the heading to Subpart I of part 80 to read as follows:

Subpart I—Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel

4. Section 80.501 is amended as follows:

a. By revising paragraph (a)(5).

b. By revising paragraph (a)(6).

c. By adding paragraph (a)(7).

§ 80.501 What fuel is subject to the provisions of this subpart?

(a) * * *

(5) ECA marine fuel.
(6) Other distillate fuels.
(7) Motor oil that is used as or intended for use as fuel in diesel motor vehicles or nonroad diesel engines or is blended with diesel fuel for use in diesel motor vehicles or nonroad diesel engines, including locomotive and marine diesel engines, at any downstream location.

* * * * *

5. Section 80.502 is amended as follows:
a. By revising paragraph (a).
b. By revising paragraph (b) introductory text and paragraph (b)(1) introductory text.
c. By revising paragraph (c).
d. By revising paragraph (d) introductory text.
e. By adding paragraph (g).
f. By adding paragraph (h).

§ 80.502 What definitions apply for purposes of this subpart?

* * * * *

(a) *Entity* means any refiner, importer, distributor, retailer or wholesale-purchaser consumer of any distillate fuel (or other product subject to the requirements of this subpart I).

(b) *Facility* means any place, or series of places, where an entity produces, imports, or maintains custody of any distillate fuel (or other product subject to the requirements of this subpart I) from the time it is received to the time custody is transferred to another entity, except as described in paragraphs (b)(1) through (4) of this section:

(1) Where an entity maintains custody of a batch of diesel fuel (or other product subject to the requirements of this subpart I) from one place in the distribution system to another place (*e.g.*, from a pipeline to a terminal), all owned by the same entity, both places combined are considered to be one single aggregated facility, except where an entity chooses to treat components of such an aggregated facility as separate facilities. The choice made to treat these places as separate facilities may not be changed by the entity during any applicable compliance period. Except as specified in paragraph (b)(2) of this section, where compliance requirements depend upon facility-type, the entire facility must comply with the requirements that apply to its components as follows:

* * * * *

(c) *Truck loading terminal* means any facility that dyes NRLM diesel fuel or ECA marine fuel, pays taxes on motor vehicle diesel fuel per IRS code (26 CFR part 48), or adds a fuel marker pursuant to § 80.510 to heating oil and delivers diesel fuel or heating oil into trucks for delivery to retail or ultimate consumer locations.

(d) *Batch* means a quantity of diesel fuel (or other product subject to the requirements of this subpart I) which is homogeneous with regard to those properties that are specified for MVNRLM diesel fuel or ECA marine fuel under this subpart I of this part, has the same designation under this subpart I (if applicable), and whose custody is transferred from one facility to another facility.

* * * * *

(g) *Emission Control Area.* An Emission Control Area (ECA), for the purposes of this Part, is defined as the area delineated in section 2 of the document ''CONSIDERATION AND ADOPTION OF AMENDMENTS TO MANDATORY INSTRUMENTS'' submitted by the governments of the United States and Canada to the International Maritime Organization on March 27, 2009, and all internal waters of the United States.

(h) *Marine diesel engine.* For the purposes of this subpart I only, marine diesel engine means a diesel engine installed on a Category 1 (C1) or Category 2 (C2) marine vessel.

6. Section 80.510 is amended as follows:
a. By revising the section heading.
b. By revising paragraph (f) introductory text and adding paragraph (f)(6).
c. By revising paragraph (g)(1).
d. By adding paragraph (k).

§ 80.510 What are the standards and marker requirements for NRLM diesel fuel and ECA marine fuel?

* * * * *

(f) *Marking provisions.* From June 1, 2012 through May 31, 2014:

* * * * *

(6) Marker solvent yellow 124 shall not be used in any MVNRLM or heating oil after May 31, 2014.

(g) * * *

(1) Northeast/Mid-Atlantic Area, which includes the following states and counties, through May 31, 2014: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington D.C., New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

* * * * *

(k) *Beginning June 1, 2014.* Except as otherwise specifically provided in this subpart, all ECA marine fuel is subject to a maximum per-gallon sulfur content of 1,000 ppm.

7. Section 80.511 is amended as follows:
a. By revising the section heading.
b. By revising paragraph (a).
c. By revising paragraphs (b)(4) and (b)(9).
d. By adding paragraph (b)(10).

§ 80.511 What are the per-gallon and marker requirements that apply to NRLM diesel fuel, ECA marine fuel, and heating oil downstream of the refiner or importer?

(a) *Applicable dates for marker requirements.* Beginning June 1, 2006, all NRLM diesel fuel and ECA marine fuel shall contain less than 0.10 milligrams per liter of the marker solvent yellow 124, except for LM diesel fuel subject to the marking requirements of § 80.510(e).

(b) * * *

(4) Except as provided in paragraphs (b)(5) through (b)(8) of this section, the per-gallon sulfur standard of § 80.510(c) shall apply to all NRLM diesel fuel beginning August 1, 2014 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all NRLM diesel fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all NRLM diesel fuel beginning December 1, 2014 for all locations.

* * * * *

(9) The per-gallon sulfur standard of § 80.510(k) shall apply to all ECA marine fuel beginning August 1, 2014 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all ECA marine fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all ECA marine fuel beginning December 1, 2014 for all locations.

(10) For the purposes of this section, distributors that have their own fuel storage tanks and deliver only to ultimate consumers shall be treated the same as retailers and their facilities treated the same as retail outlets.

8. Section 80.513 is amended by revising paragraph (e) to read as follows:

§ 80.513 What provisions apply to transmix processing facilities?

* * * * *

(e) From June 1, 2014 and beyond, NRLM diesel fuel produced by a transmix processor is subject to the standards of § 80.510(c).

9. Section 80.525 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.525 What requirements apply to kerosene blenders?

* * * * *

(b) Kerosene blenders are not subject to the requirements of this subpart applicable to refiners of diesel fuel, but are subject to the requirements and prohibitions applicable to downstream parties.

* * * * *

(d) Kerosene that a kerosene blender adds or intends to add to diesel fuel subject to the 15 ppm sulfur content standard must meet the 15 ppm sulfur content standard, and either of the following requirements:

(1) The product transfer document received by the kerosene blender indicates that the kerosene is diesel fuel that complies with the 15 ppm sulfur content standard.

(2) The kerosene blender has test results indicating the kerosene complies with the 15 ppm sulfur standard.

10. Section 80.551 is amended by revising paragraph (f) to read as follows:

§ 80.551 How does a refiner obtain approval as a small refiner under this subpart?

* * * * *

(f) Approval of small refiner status for refiners who apply under § 80.550(d) will be based on all information submitted under paragraph (c) of this section, except as provided in § 80.550(e).

* * * * *

11. Section 80.561 is amended by revising the section heading to read as follows:

§ 80.561 How can a refiner or importer seek temporary relief from the requirements of this subpart in case of extreme unforeseen circumstances?

* * * * *

12. Section 80.570 is amended by revising paragraph (a) to read as follows:

§ 80.570 What labeling requirements apply to retailers and wholesale purchaser-consumers of diesel fuel beginning June 1, 2006?

(a) From June 1, 2006 through September 30, 2010, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1), must affix the following conspicuous and legible label, in block letters of no less than 24-point bold type, and printed in a color contrasting with the background, to each pump stand:

ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2007 and later highway diesel vehicles and engines. Recommended for use in all diesel vehicles and engines.

* * * * *

13. Section 80.571 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.571 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel or heating oil beginning June 1, 2007?

* * * * *

(b) From June 1, 2007 through September 30, 2010, for pumps dispensing NRLM diesel fuel meeting the 500 ppm sulfur standard of § 80.510(a):

LOW SULFUR NON-HIGHWAY DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal Law *prohibits* use in highway vehicles or engines.

* * * * *

(d) From June 1, 2007 and beyond, for pumps dispensing non-motor vehicle diesel fuel for use other than in nonroad, locomotive, or marine engines, such as for use as heating oil:

HEATING OIL (May Exceed 500 ppm Sulfur)

WARNING

Federal law *prohibits* use in highway vehicles or engines, or in nonroad, locomotive, or marine diesel engines.

Its use may damage these diesel engines.

* * * * *

14. Section 80.572 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of NR and NRLM diesel fuel and heating oil beginning June 1, 2010?

* * * * *

(a) From June 1, 2010 through September 31, 2014, any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, motor vehicle diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1), must affix the following conspicuous and legible label, in block letters of no less than 24-point bold type, and printed in a color contrasting with the background, to each pump stand:

ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.

(b) From June 1, 2010 through September 30, 2012, for pumps dispensing NR diesel fuel subject to the 15 ppm sulfur standard of § 80.510(b):

ULTRA-LOW SULFUR NON-HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2011 and later nonroad diesel engines. Recommended for use in all other non-highway diesel engines.

WARNING

Federal law *prohibits* use in highway vehicles or engines.

* * * * *

15. Section 80.573 is amended by revising paragraph (a) to read as follows:

§ 80.573 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel and heating oil beginning June 1, 2012?

* * * * *

(a) From June 1, 2012 through September 30, 2014, for pumps dispensing NRLM diesel fuel subject to the 15 ppm sulfur standard of § 80.510(c):

ULTRA-LOW SULFUR NON-HIGHWAY DIESEL FUEL (15 ppm Sulfur Maximum)

Required for use in all model year 2011 and later nonroad diesel engines.

Recommended for use in all other non-highway diesel engines.

WARNING

Federal law *prohibits* use in highway vehicles or engines.

* * * * *

16. Section 80.574 is revised to read as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of ECA marine fuel beginning June 1, 2014?

(a) Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing ECA marine fuel must prominently and conspicuously display in the immediate area of each pump stand from which ECA marine fuel is offered for sale or dispensing, one of the following legible labels, as applicable, in block letters of no less than 24-point bold type, printed in a color contrasting with the background:

(1) From June 1, 2014 and beyond, for pumps dispensing ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k):

1,000 ppm SULFUR ECA MARINE FUEL (1,000 ppm Sulfur Maximum).

For use in Category 3 (C3) marine vessels only.

WARNING

Federal law *prohibits* use in any engine that is not installed on a C3 marine vessel; use of fuel oil with a sulfur content greater than 1,000 ppm in the U.S. Emission Control Area and all U.S. internal waters is illegal.

(2) The labels required by paragraph (a)(1) of this section must be placed on the vertical surface of each pump housing and on each side that has gallon and price meters. The labels shall be on the upper two-thirds of the pump, in a location where they are clearly visible.

(b) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA.

(1) *For US Mail:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) *For overnight or courier services:* U.S. EPA, Attn: Diesel Sulfur Alternative Label Request, 6406J, 1310 L Street, NW., 6th floor, Washington, DC 20005. (202) 343–9038.

17. Section 80.580 is amended by adding paragraphs (b)(1) and (c)(1) to read as follows:

§ 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(b) * * *

(1) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k)(1), sulfur content may be determined using ASTM D2622 (incorporated by reference, see paragraph (e) of this section).

* * * * *

(c) * * *

(1) *Options for testing sulfur content of 1,000 ppm diesel fuel.* (i) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using ASTM D4294, ASTM D5453, or ASTM D6920 (all incorporated by reference, see paragraph (e) of this section), provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(1) of this section; or

(ii) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), sulfur content may be determined using any test method approved under § 80.585.

* * * * *

18. Section 80.581 is amended by revising the section heading and paragraphs (a) and (c)(1) to read as follows:

§ 80.581 What are the batch testing and sample retention requirements for motor vehicle diesel fuel, NRLM diesel fuel, and ECA marine fuel?

(a) Beginning on June 1, 2006 or earlier pursuant to § 80.531 for motor vehicle diesel fuel, beginning June 1, 2010 or earlier pursuant to § 80.535 for NRLM diesel fuel, and beginning June 1, 2014 for ECA marine fuel, each refiner and importer shall collect a representative sample from each batch of motor vehicle or NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur content standard, or ECA marine fuel subject to the 1,000 ppm sulfur content standard. Batch, for the purposes of this section, means batch as defined under § 80.2 but without the reference to transfer of custody from one facility to another facility.

* * * * *

(c)(1) Any refiner who produces motor vehicle, NRLM diesel fuel, or ECA marine fuel using computer-controlled in-line blending equipment, including the use of an on-line analyzer test method that is approved under the provisions of § 80.580, and who, subsequent to the production of the diesel fuel batch tests a composited sample of the batch under the provisions of § 80.580 for purposes of designation and reporting, is exempt from the requirement of paragraph (b) of this section to obtain the test result required under this section prior to the diesel fuel leaving the refinery, provided that the refiner obtains approval from EPA. The requirement of this paragraph (c)(1) that the in-line blending equipment must include an on-line analyzer test method that is approved under the provisions of § 80.580 is effective beginning June 1, 2006.

* * * * *

19. Section 80.583 is amended by revising the section heading to read as follows:

§ 80.583 What alternative sampling and testing requirements apply to importers who transport motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel by truck or rail car?

* * * * *

20. Section 80.584 is amended by revising the section heading and adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 80.584 What are the precision and accuracy criteria for approval of test methods for determining the sulfur content of motor vehicle diesel fuel, NRLM diesel fuel, and ECA marine fuel?

(a) * * *

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k), of a standard deviation less than 18.07 ppm, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a single homogeneous commercially available diesel fuel with a sulfur content in the range of 700–1,000 ppm. The 20 results must be a series of tests with a sequential record of the analyses and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(b) * * *

(3) For ECA marine fuel subject to the 1,000 ppm sulfur standard of § 80.510(k):

(i) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 300–400 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur;

(ii) The arithmetic average of a continuous series of at least 10 tests performed on a commercially available gravimetric sulfur standard in the range of 900–1,000 ppm sulfur shall not differ from the ARV of that standard by more than 13.55 ppm sulfur; and

(iii) In applying the tests of paragraphs (b)(3)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences.

21. Section 80.585 is amended by revising the section heading and paragraphs (e)(2) and (e)(4) to read as follows:

§ 80.585 What is the process for approval of a test method for determining the sulfur content of diesel or ECA marine fuel?

* * * * *

(e) * * *

(2) Follow paragraph 7.3.1 of ASTM D 6299–02 to check standards using a reference material at least monthly or following any major change to the laboratory equipment or test procedure. Any deviation from the accepted reference value of a check standard greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm

(for ECA marine fuel subject to the 1,000 ppm sulfur standard must be investigated.

* * * * *

(4) Upon discovery of any quality control testing violation of paragraph A 1.5.1.3 or A 1.5.2.1 of ASTM D 6299–02, or any check standard deviation greater than 1.44 ppm (for diesel fuel subject to the 15 ppm sulfur standard), 19.36 ppm (for diesel fuel subject to the 500 ppm sulfur standard), or 36.14 ppm (for ECA marine fuel subject to the 1,000 ppm sulfur standard), conduct an investigation into the cause of such violation or deviation and, after restoring method performance to statistical control, retest retained samples from batches originally tested since the last satisfactory quality control material or check standard testing occasion.

22. Section 80.590 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a) introductory text, (a)(5), (a)(6) introductory text, and (a)(6)(ii).

c. By adding paragraph (a)(7)(vii).

d. By redesignating paragraphs (e) through (i) as paragraphs (f) through (j), respectively.

e. By adding a new paragraph (e).

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil, ECA marine fuel, and other distillates?

(a) This paragraph (a) applies on each occasion that any person transfers custody or title to MVNRLM diesel fuel, heating oil, or ECA marine fuel (including distillates used or intended to be used as MVNRLM diesel fuel, heating oil, or ECA marine fuel) except when such fuel is dispensed into motor vehicles or nonroad, locomotive, or marine equipment or C3 vessels. Note that 40 CFR part 1043 specifies requirements for documenting fuel transfers to certain marine vessels. For all fuel transfers subject to this paragraph (a), the transferor must provide to the transferee documents which include the following information:

* * * * *

(5) For transfers of MVNRLM diesel fuel or ECA marine fuel (beginning June 1, 2014), the sulfur content standard the transferor represents the fuel to meet.

(6) Beginning June 1, 2006, when an entity, from a facility at any point in the distribution system, transfers custody of a distillate or residual fuel designated under § 80.598, the following information must also be included:

* * * * *

(ii) An accurate and clear statement of the applicable designation and/or classification under § 80.598(a) and (b), for example, ''500 ppm sulfur NRLM diesel fuel'', or ''jet fuel''; and whether the fuel is dyed or undyed, and for heating oil, whether marked or unmarked where applicable.

(7) * * *

(vii) *ECA marine fuel.* For ECA marine fuel produced or imported beginning June 1, 2014, ''1,000 ppm sulfur (maximum) ECA marine fuel. For use in Category 3 marine vessels only. Not for use in engines not installed on C3 marine vessels.''

* * * * *

(e) Beginning June 1, 2014. For ECA marine fuel only (except for transfers to truck carriers, retailers or wholesale purchaser-consumers), product codes may be used to convey the information required under this section if such codes are clearly understood by each transferee. ''1000'' must appear clearly on the product transfer document, and may be contained in the product code. If the designation is included in the code, codes used to convey the statement in paragraph (a)(7)(vii) of this section must contain the number ''1000''. If another letter, number, or symbol is being used to convey the statement in paragraph (a)(7)(vii) of this section, it must be clearly defined and denoted on the product transfer document.

* * * * *

23. Section 80.593 is amended by revising the introductory text to read as follows:

§ 80.593 What are the reporting requirements for refiners and importers of motor vehicle diesel fuel subject to temporary refiner relief standards?

Beginning with 2006, or the first compliance period during which credits are generated under § 80.531(b) or (c), whichever is earlier, any refiner or importer who produces or imports motor vehicle diesel fuel subject to the 500 ppm sulfur standard under § 80.520(c), or any refiner or importer who generates, uses, obtains, or transfers credits under §§ 80.530 through 80.532, and continuing for each year thereafter, must submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require:

* * * * *

24. Section 80.597 is amended by revising paragraphs (c), (d), (e), and (f) and adding paragraph (g) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(c) *Registration for ECA marine fuel.* Refiners and importers that intend to produce or supply ECA marine fuel beginning June 1, 2014, must provide EPA the information under § 80.76 no later than December 31, 2012, if such information has not been previously provided under the provisions of this part. In addition, for each import facility, the same identifying information as required for each refinery under § 80.76(c) must be provided.

(d) *Entity registration.* (1) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2006 through May 31, 2010 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraphs (d)(1)(i) through (d)(1)(iii) of this section:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as 15 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(iii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iv) Fuel designated as California Diesel fuel under § 80.598 on which taxes have not been assessed and red dye has not been added (if required) pursuant to IRS code (26 CFR part 48) and that is delivered by pipeline to a terminal outside of the State of California pursuant to the provisions of § 80.617(b).

(2) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2007 through May 31, 2014 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraph (d)(1) of this section:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iii) Fuel designated as heating oil under § 80.598 that is unmarked pursuant to § 80.510(d) through (f).

(iv) Fuel designated as LM diesel fuel under § 80.598(a)(2)(iii) that is unmarked pursuant to § 80.510(e).

(3) Except as prescribed in paragraph (d)(6) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels beginning June 1, 2014 must register with EPA by December 31, 2012 or prior to commencement of producing, importing, or distributing any distillate or residual fuel listed in this paragraph (d):

(i) Fuel designated as 1,000 ppm sulfur ECA marine fuel under § 80.598.

(ii) [Reserved]

(4) Registration shall be on forms prescribed by the Administrator, and shall include the name, business address, contact name, telephone number, e-mail address, and type of production, importation, or distribution activity or activities engaged in by the entity.

(5) Registration shall include the information required under paragraph (e) of this section for each facility owned or operated by the entity that delivers or receives custody of a fuel described in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(6) *Exceptions for Excluded Liquids.* An entity that would otherwise be required to register pursuant to the requirements of paragraphs (d)(1) through (3) of this section is exempted from the registration requirements under this section provided that:

(i) The only diesel fuel or heating oil that the entity delivers or receives on which taxes have not been assessed or which is not received dyed pursuant to Internal Revenue Service (IRS) code 26 CFR part 48 is an excluded liquid as defined pursuant to IRS code 26 CFR 4081–1(b).

(ii) The entity does not transfer the excluded liquid to a facility which delivers or receives diesel fuel other than an excluded liquid on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(e) *Facility registration.* (1) List for each separate facility of an entity required to register under paragraph (d) of this section, the facility name, physical location, contact name, telephone number, e-mail address and type of facility. For facilities that are aggregated under § 80.502, provide information regarding the nature and location of each of the components. If aggregation is changed for any subsequent compliance period, the entity must provide notice to EPA prior to the beginning of such compliance period.

(2) If facility records are kept off-site, list the off-site storage facility name, physical location, contact name, and telephone number.

(3) *Mobile facilities:* (i) A description shall be provided in the registration detailing the types of mobile vessels that will likely be included and the nature of the operations.

(ii) Entities may combine all mobile operations into one facility; or may split the operations by vessel, region, route, waterway, *etc.* and register separate mobile facilities for each.

(iii) The specific vessels need not be identified in the registration, however information regarding specific vessel contracts shall be maintained by each registered entity for its mobile facilities, pursuant to § 80.602(d).

(f) *Changes to registration information.* Any company or entity shall submit updated registration information to the Administrator within 30 days of any occasion when the registration information previously supplied for an entity, or any of its registered facilities, becomes incomplete or inaccurate.

(g) *Issuance of registration numbers.* EPA will supply a registration number to each entity and a facility registration number to each of an entity's facilities that is identified, which shall be used in all reports to the Administrator.

25. Section 80.598 is amended as follows:

a. By revising paragraphs (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(C), (a)(2)(i)(D), (a)(2)(i)(E), and (a)(2)(i)(F).

b. By adding paragraph (a)(2)(i)(H).

c. By revising paragraph (a)(2)(v).

d. By adding paragraph (a)(3)(xv).

e. By revising paragraphs (b)(4)(i), (b)(4)(ii), (b)(7)(i), (b)(7)(ii), (b)(8) introductory text, (b)(8)(i), (b)(8)(ii), (b)(9)(ii), (b)(9)(vii), and (b)(9)(x).

f. By removing and reserving paragraph (e).

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(a) * * *

(2) * * *

(i) * * *

(A) Motor vehicle, nonroad, locomotive or marine (MVNRLM) diesel fuel.

(B) Heating oil.

(C) Jet fuel.

(D) Kerosene.

(E) No. 4 fuel.

(F) Distillate fuel for export only.

* * * * *

(H) ECA marine fuel. This designation may be used beginning June 1, 2014, and fuel designated as such is subject to the restriction in paragraph (a)(3)(xv) of this section.

* * * * *

(v) From June 1, 2006 through May 31, 2010, any batch designated as motor vehicle diesel fuel must also be designated according to one of the following distillation classifications that most accurately represents the fuel:

* * * * *

(3) * * *

(xv) Beginning June 1, 2014, any fuel designated as ECA marine fuel will be subject to all the following restrictions:

(A) Such fuel may not exceed a sulfur level of 1,000 ppm.

(B) Such fuel may only be produced, distributed, sold, and purchased for use in C3 marine vessels.

(b) * * *

(4) * * *

(i) #1D 500 ppm sulfur motor vehicle diesel fuel.

(ii) #2D 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(7) * * *

(i) 500 ppm sulfur NRLM diesel fuel.

(ii) Heating oil.

* * * * *

(8) Beginning June 1, 2014, whenever custody of a batch of distillate or residual fuel (other than jet fuel, kerosene, No. 4 fuel, fuel for export, or fuel intended for use outside an ECA) having a sulfur content greater than 15 ppm is transferred to another facility, the entity transferring custody must accurately and clearly designate the batch as one of the following and specify its volume:

(i) ECA marine fuel.

(ii) Heating oil.

* * * * *

(9) * * *

(ii) Until June 1, 2014, any distillate fuel containing greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 required under § 80.510(d), (e), or (f) must be designated as heating oil except that from June 1, 2010 through October 1, 2012 it may also be designated as LM diesel fuel as specified under § 80.510(e).

* * * * *

(viii) For facilities in areas other than those specified in § 80.510(g)(1) and (2), batches or portions of batches of unmarked distillate received designated as heating oil may be re-designated as NRLM or LM diesel fuel only if all the following restrictions are met:

(A) From June 1, 2007 through May 31, 2010, for any compliance period, the volume of high sulfur NRLM diesel fuel delivered from a facility cannot be greater than the volume received, unless the volume of heating oil delivered from the facility is also greater than the volume it received by an equal or greater proportion, as calculated in § 80.599(c)(2).

(B) From June 1, 2010 through May 31, 2014, for any compliance period, the volume of fuel designated as heating oil delivered from a facility cannot be less than the volume of fuel designated as heating oil received, as calculated in § 80.599(c)(4).

* * * * *

(x) Notwithstanding the provisions of paragraphs (b)(5) and (8) of this section, beginning October 1, 2007:

* * * * *

(e) [Reserved]

* * * * *

26. Section 80.599 is amended as follows:

a. By revising paragraph (a)(1).

b. By removing and reserving paragraph (a)(2).

c. By revising paragraph (e)(4).

§ 80.599 How do I calculate volume balances for designation purposes?

(a) * * *

(1) The annual compliance periods before the period beginning July 1, 2016 are shown in the following table:

Beginning date of annual compliance period	Ending date of annual compliance period
June 1, 2006	May 31, 2007.
June 1, 2007	June 30, 2008.
July 1, 2008	June 30, 2009.
July 1, 2009	May 31, 2010.
June 1, 2010	June 30, 2011.
July 1, 2011	May 31, 2012.
June 1, 2012	June 30, 2013.
July 1, 2013	May 31, 2014.

(2) [Reserved]

* * * * *

(e) * * *

(4) The following calculation may be used to account for wintertime blending of kerosene and the blending of non-petroleum diesel:

$$\#2MV500_O < = \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * (\#1MV15_I + \#2MV15_I + NPMV15_I)$$

Where:

$\#1MV15_I$ = the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$NPMV15_I$ = the total volume of fuel received during the compliance period that is designated as NP15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$\#1MV15_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #1D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

* * * * *

27. Section 80.600 is amended as follows:

a. By revising paragraphs (a)(5) and (a)(12).

b. By revising paragraphs (b)(1)(v) and (b)(3).

c. By revising paragraph (i).

d. By revising paragraphs (o)(1) and (o)(2).

§ 80.600 What records must be kept for purposes of the designate and track provisions?

(a) * * *

(5) Any refiner or importer shall maintain the records specified in paragraphs (a)(6) through (10) of this section for each batch of distillate or residual fuel that it transfers custody of and designates from June 1, 2014 and later as any of the following categories:

(i) Heating oil.

(ii) ECA marine fuel.

* * * * *

(12) Records must be maintained that demonstrate compliance with a refiner's compliance plan required under § 80.554, for distillate fuel designated as high sulfur NRLM diesel fuel and delivered from June 1, 2007 through May 31, 2010, for distillate fuel designated as 500 ppm sulfur NR diesel fuel and delivered from June 1, 2010 through May 31, 2012, and for distillate fuel designated as 500 ppm sulfur NRLM diesel fuel and delivered from June 1, 2012 through May 31, 2014 in the areas specified in § 80.510(g)(2).

* * * * *

(b) * * *

(1) * * *

(v) For each facility that receives fuel designated as heating oil, records for each batch of distillate or residual fuel with any of the following designations for which custody is received or delivered as well as any batches produced from June 1, 2014 and beyond:

(A) 1,000 ppm sulfur ECA marine fuel.

(B) Heating oil.

* * * * *

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred over each of the compliance periods, and over the periods from June 1, 2006 to the end of each compliance period. The records shall be maintained separately for each fuel designated under paragraph (b)(1) of this section, and for each EPA entity and facility registration number from whom the fuel was received or to whom it was delivered. For batches of fuel received from facilities without an EPA facility registration number:

(i) Any batches of fuel received marked pursuant to § 80.510(d) or (f) shall be deemed designated as heating oil.

(ii) Any batches of fuel received marked pursuant to § 80.510(e) shall be deemed designated as heating oil or LM diesel fuel.

(iii) Any batches of fuel received on which taxes have been paid pursuant to Section 4082 of the Internal Revenue Code (26 U.S.C. 4082) shall be deemed designated as motor vehicle diesel fuel.

(iv) Any 500 ppm sulfur diesel fuel dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(d) or (f) shall be deemed designated as NRLM diesel fuel.

(v) Any diesel fuel with less than or equal to 500 ppm sulfur which is dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(e) shall be deemed to be NR diesel fuel.

(vi) Beginning June 1, 2014, any batches of fuel with greater than 15 ppm sulfur, but less than or equal to 1,000 ppm sulfur, and not designated as heating oil shall be deemed to be 1,000 ppm ECA marine fuel.

* * * * *

(i) Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted components (*e.g.,* tank truck, barge, marine tanker, rail car, *etc.*) in each of its registered mobile facilities.

* * * * *

(o) * * *

(1) Any aggregated facility consisting of a refinery and truck loading terminal shall maintain records of all the following information for each batch of distillate fuel (and/or residual fuel with a sulfur level of 1,000 ppm or less that is intended for use in an ECA) produced by the refinery and sent over the aggregated facility's truck loading terminal rack:

(i) The batch volume.

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1).

(iii) The date of production.

(iv) A record designating the batch as distillate or residual fuel meeting the 500 ppm, 15 ppm, or 1,000 ppm ECA marine sulfur standard.

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all distillate fuel (and/or residual fuel with a sulfur level of 1,000 ppm or less that is

intended for use in an ECA) from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

28. Section 80.601 is amended by revising paragraph (b)(3)(x) to read as follows:

§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?

* * * * *

(b) * * *

(3) * * *

(x) Beginning with the report due August 31, 2011 and ending with the report due August 31, 2012, the volume balance under §§ 80.598(b)(9)(ix) and 80.599(d)(2).

* * * * *

29. Section 80.602 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a) introductory text, (a)(2) introductory text, and (a)(3).

c. By revising paragraphs (b) introductory text, (b)(4)(i), (b)(4)(ii).

d. By revising paragraphs (g)(1) and (g)(2).

§ 80.602 What records must be kept by entities in the NRLM diesel fuel, ECA marine fuel, and diesel fuel additive production, importation, and distribution systems?

(a) *Records that must be kept by parties in the NRLM diesel fuel, ECA marine fuel and diesel fuel additive production, importation, and distribution systems.* Beginning June 1, 2007, or June 1, 2006, if that is the first period credits are generated under § 80.535, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports nonroad, locomotive or marine diesel fuel, or ECA marine fuel (beginning June 1, 2014) subject to the provisions of this subpart, must keep all the following records:

* * * * *

(2) For any sampling and testing for sulfur content for a batch of NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur standard or any sampling and testing for sulfur content as part of a quality assurance testing program, and any sampling and testing for cetane index, aromatics content, marker solvent yellow 124 content or dye solvent red 164 content of NRLM diesel fuel, ECA marine fuel, NRLM diesel fuel additives or heating oil:

* * * * *

(3) The actions the party has taken, if any, to stop the sale or distribution of any NRLM diesel fuel or ECA marine fuel found not to be in compliance with the sulfur standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) *Additional records to be kept by refiners and importers of NRLM diesel fuel and ECA marine fuel.* Beginning June 1, 2007, or June 1, 2006, pursuant to the provisions of § 80.535 or § 80.554(d) (or June 1, 2014, pursuant to the provisions of § 80.510(k)), any refiner producing distillate or residual fuel subject to a sulfur standard under § 80.510, § 80.513, § 80.536, § 80.554, § 80.560, or § 80.561, for each of its refineries, and any importer importing such fuel separately for each facility, shall keep records that include the following information for each batch of NRLM diesel fuel, ECA marine fuel, or heating oil produced or imported:

* * * * *

(4) * * *

(i) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, ECA marine fuel, or heating oil, as applicable.

(ii) Meeting the 500 ppm sulfur standard of § 80.510(a), the 15 ppm sulfur standard of § 80.510(b) and (c), the 1,000 ppm sulfur standard of § 80.510(k), or other applicable standard.

* * * * *

(g) * * *

(1) All the following information for each batch of distillate fuel (or residual fuel with a sulfur level of 1,000 ppm or less if such fuel is intended for use in an ECA) produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume.

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1).

(iii) The date of production.

(iv) A record designating the batch as one of the following:

(A) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, ECA marine fuel, or heating oil, as applicable.

(B) Meeting the 500 ppm sulfur standard of § 80.510(a), the 15 ppm sulfur standard of § 80.510(b) and (c), the 1,000 ppm sulfur standard of § 80.510(k), or other applicable standard.

(C) Dyed or undyed with visible evidence of solvent red 164.

(D) Marked or unmarked with solvent yellow 124.

(2) Hand-off reports for all distillate fuel (or residual fuel with a sulfur level of 1,000 ppm or less if such fuel is intended for use in an ECA) from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2).

30. Section 80.606 is amended as follows:

a. By revising the section heading.

b. By revising paragraph (a) introductory text and paragraph (a)(1).

c. By revising paragraph (b).

d. By adding paragraph (c).

§ 80.606 What national security exemption applies to fuels covered under this subpart?

(a) The standards of all the fuels listed in paragraph (b) of this section do not apply to fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in any of the following:

(1) Tactical military motor vehicles or tactical military nonroad engines, vehicles or equipment, including locomotive and marine, having an EPA national security exemption from the motor vehicle emissions standards under 40 CFR 85.1708, or from the nonroad engine emission standards under 40 CFR part 89, 92, 94, or 1068.

* * * * *

(b)(1) The motor vehicle diesel fuel standards of § 80.520(a)(1), (a)(2), and (c).

(2) The nonroad, locomotive, and marine diesel fuel standards of § 80.510(a), (b), and (c).

(3) The 1,000 ppm ECA marine fuel standards of § 80.510(k).

(c) The exempt fuel must meet all the following conditions:

(1) It must be accompanied by product transfer documents as required under § 80.590.

(2) It must be segregated from non-exempt MVNRLM diesel fuel and ECA marine fuel at all points in the distribution system.

(3) It must be dispensed from a fuel pump stand, fueling truck or tank that is labeled with the appropriate designation of the fuel, such as ''JP–5'' or ''JP–8''.

(4) It may not be used in any motor vehicles or nonroad engines, equipment or vehicles, including locomotive and marine, other than the vehicles, engines, and equipment referred to in paragraph (a) of this section.

31. Section 80.607 is amended as follows:

a. By revising the section heading.

b. By revising paragraph (a).

c. By revising paragraphs (c)(3)(iv) and (c)(4).

d. By revising paragraphs (d)(2), (d)(3), and (d)(4).

e. By revising paragraph (e)(1).

f. By revising paragraph (f).

§ 80.607 What are the requirements for obtaining an exemption for diesel fuel or ECA marine fuel used for research, development or testing purposes?

(a) *Written request for a research and development exemption.* Any person may receive an exemption from the provisions of this subpart for diesel fuel or ECA marine fuel used for research, development, or testing purposes by submitting the information listed in paragraph (c) of this section to: Director, Transportation and Regional Programs Division (6406J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (postal mail); or Director, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail/courier); and Director, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(c) * * *

(3) * * *

(iv) The quantity of fuel which does not comply with the requirements of §§ 80.520 and 80.521 for motor vehicle diesel fuel, or § 80.510 for NRLM diesel fuel or ECA marine fuel.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including all the following:

(i) The site(s) of the program (including facility name, street address, city, county, state, and zip code).

(ii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request.

(iii) The manner in which information on the fuel used in the program (including quantity, fuel properties, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator upon request.

(iv) The manner in which the party will ensure that the research and development fuel will be segregated from motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel, as applicable, and how fuel pumps will be labeled to ensure proper use of the research and development fuel.

(v) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained.

(vi) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in this paragraph (c), and the location where such information will be maintained.

(d) * * *

(2) The research and development fuel must be designated by the refiner or supplier, as applicable, as research and development fuel.

(3) The research and development fuel must be kept segregated from non-exempt MVNRLM diesel fuel and ECA marine fuel at all points in the distribution system.

(4) The research and development fuel must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a fuel retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the research and development program that uses the fuel.

* * * * *

(e) * * *

(1) The volume of fuel subject to the approval shall not exceed the estimated amount under paragraph (c)(3)(iv) of this section, unless EPA grants a greater amount in writing.

* * * * *

(f) *Effects of exemption.* Motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel that is subject to a research and development exemption under this section is exempt from other provisions of this subpart provided that the fuel is used in a manner that complies with the purpose of the program under paragraph (c) of this section and the requirements of this section.

* * * * *

32. Section 80.608 is revised to read as follows:

§ 80.608 What requirements apply to diesel fuel and ECA marine fuel for use in the Territories?

The sulfur standards of § 80.520(a)(1) and (c) related to motor vehicle diesel fuel, of § 80.510(a), (b), and (c) related to NRLM diesel fuel, and of § 80.510(k) related to ECA marine fuel, do not apply to fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, provided that such diesel fuel is all of the following:

(a) Designated by the refiner or importer as high sulfur diesel fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.590(b)(1).

(d) Segregated from non-exempt MVNRLM diesel fuel and/or non-exempt ECA marine fuel at all points in the distribution system from the point the fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, while the exempt fuel is in the United States (or the United States Emission Control Area) but outside these Territories.

33. Section 80.610 is amended as follows:

a. By revising paragraph (a)(1) and adding paragraph (a)(4).

b. By revising paragraph (b).

c. By revising paragraph (c).

d. By revising paragraphs (e)(3)(iii) and (e)(4)(iii) and adding paragraph (e)(6).

e. By revising paragraph (g).

§ 80.610 What acts are prohibited under the diesel fuel sulfur program?

* * * * *

(a) * * *

(1) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel or heating oil that does not comply with the applicable standards, dye, marking or any other product requirements under this subpart I and 40 CFR part 69.

* * * * *

(4) Beginning June 1, 2014, produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport any fuel with a sulfur content above 1,000 ppm for use in an ECA or U.S. internal waters.

(b) *Designation and volume balance violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil or other fuel that does not comply with the applicable designation or volume balance requirements under §§ 80.598 and 80.599.

(c) *Additive violation.* (1) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport any fuel additive for use at a downstream location that does not comply with the applicable requirements of § 80.521.

(2) Blend or permit the blending into motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel at a downstream location, or use, or permit

the use, in motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel, of any additive that does not comply with the applicable requirements of § 80.521.

* * * * *

(e) * * *

(3) * * *

(iii) This prohibition begins December 1, 2014 in all other areas.

(4) * * *

(iii) This prohibition begins December 1, 2014 in all other areas.

* * * * *

(6) Beginning January 1, 2015 introduce (or permit the introduction of) any fuel with a sulfur content greater than 1,000 ppm for use in a Category 3 marine vessel within an ECA or U.S. internal waters.

* * * * *

(g) *Cause violating fuel or additive to be in the distribution system.* Cause motor vehicle diesel fuel, NRLM diesel fuel, or ECA marine fuel to be in the diesel fuel distribution system which does not comply with the applicable standard, dye or marker requirements or the product segregation requirements of this Subpart I, or cause any fuel additive to be in the fuel additive distribution system which does not comply with the applicable sulfur standards under § 80.521.

34. Section 80.612 is amended by revising paragraph (b) introductory text to read as follows:

§ 80.612 Who is liable for violations of this subpart?

* * * * *

(b) *Persons liable for failure to comply with other provisions of this subpart.* Any person who:

* * * * *

35. Section 80.613 is amended by revising paragraph (a)(1)(iv) introductory text to read as follows:

§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under this subpart?

(a) * * *

(1) * * *

(iv) For refiners and importers of diesel fuel subject to the 15 ppm sulfur standard under § 80.510(b) or (c) or § 80.520(a)(1), the 500 ppm sulfur standard under § 80.510(a) or § 80.520(c), and/or the 1,000 ppm sulfur standard under § 80.510(k), test results that—

* * * * *

36. Section 80.615 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 80.615 What penalties apply under this subpart?

* * * * *

(b) * * *

(2) Any person liable under § 80.612(a)(2) for causing motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or other distillate fuel to be in the distribution system which does not comply with an applicable standard or requirement of this Subpart I is subject to a separate day of violation for each and every day that the non-complying fuel remains any place in the diesel fuel distribution system.

* * * * *

(4) For purposes of this paragraph (b):

(i) The length of time the motor vehicle diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or other distillate fuel in question remained in the diesel fuel distribution system is deemed to be 25 days, except as further specified in paragraph (b)(4)(ii) of this section.

(ii) The length of time is deemed not to be 25 days if a person subject to liability demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle, NR diesel fuel, NRLM diesel fuel, ECA marine fuel, heating oil, or distillate fuel remained in the distribution system for fewer than or more than 25 days.

* * * * *

PART 85— CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

37. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart R—[Amended]

38. Section 85.1703 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 85.1703 Definition of motor vehicle.

(a) For the purpose of determining the applicability of section 216(2), a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle and excluded from the operation of the Act:

* * * * *

39. A new § 85.1715 is added to subpart R to read as follows:

§ 85.1715 Aircraft meeting the definition of motor vehicle.

This section applies for aircraft meeting the definition of motor vehicle in § 85.1703.

(a) For the purpose of this section, aircraft means any vehicle capable of sustained air travel above treetop heights.

(b) The standards, requirements, and prohibitions of 40 CFR part 86 do not apply for aircraft or aircraft engines. Standards apply separately to certain aircraft engines, as described in 40 CFR part 87.

Subpart X—[Amended]

40. A new § 85.2306 is added to subpart X to read as follows:

§ 85.2306 Inventory and stockpiling provisions related to new emission standards for heavy-duty engines.

(a) Notwithstanding any other provision of this subpart, a vehicle manufacturer may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new heavy-duty engine or vehicle equipped with a new heavy-duty engine after emission standards take effect for that engine or vehicle, unless the engine has an appropriate certificate of conformity or exemption. An appropriate certificate of conformity is one that applies for the same model year as the model year of the vehicle or that shows conformity with the same standards as engines manufactured in the model year of the vehicle (except as provided in paragraph (b) of this section).

(b) If new emission standards apply in a given model year, a new vehicle in that model year must be powered by an engine that is certified to the new standards, except that a manufacturer may continue to use up its normal inventory of earlier engines that were built before the date of the new or changed standards. For example, if a manufacturer's normal inventory practice is to keep on hand a one-month supply of engines based on its upcoming production schedule, a manufacturer may order engines in anticipation of the 2010 emission standards based on its normal inventory requirements late in the engine manufacturer's 2009 model year and install those engines in the manufacturer's vehicle, regardless of the date of installation. Also, if an equipment manufacturer's model year starts before the end of the calendar year preceding new standards, the equipment manufacturer may use engines from the previous model year for equipment produced before January

1 of the year that new standards apply. If emission standards for the engine do not change in a given model year, an equipment manufacturer may continue to install engines from the previous model year without restriction. Vehicle and engine manufacturers may not circumvent the provisions in paragraph (a) of this section by stockpiling engines (*i.e.,* acquiring more engines than normal for inventory) that were built before new or changed standards take effect or stockpiling engines that otherwise fail to have an appropriate certificate of conformity as provided in paragraph (a) of this section. Note that this allowance does not apply for vehicles subject to vehicle-based standards.

(c) A heavy-duty engine manufacturer, who otherwise produces engines covered by an appropriate certificate of conformity, may not cause or otherwise aid a vehicle manufacturer to fail to comply with paragraphs (a) and (b) of this section.

(d) Exemptions from certification requirements are described in subpart R of this part and apply as appropriate to this section.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN–USE HIGHWAY VEHICLES AND ENGINES

41. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

42. Subpart A is amended by removing the following sections: 86.000–15, 86.000–21, 86.000–23, 86.000–25, 86.001–1, 86.087–38, 86.090–8, 86.091–10, 86.094–1, 86.094–15, 86.094–17, 86.094–23, 86.094–9, 86.096–9, 86.096–10, 86.096–11, 86.096–14, 86.096–23, 86.098–7, 86.098–8, 86.098–11, 86.098–15, 86.098–17, 86.098–21, 86.098–22, 86.099–1, 86.099–30.

§ 86.000–28—[Amended]

43. Section 86.000–28 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraph (a)(3).

c. By removing paragraph (a)(4) introductory text.

d. By removing and reserving paragraphs (a)(4)(i)(A) through (a)(4)(i)(B)(*2*)(*i*).

e. By removing paragraphs (a)(4)(i)(B)(*2*)(*iii*) through (a)(4)(i)(D)(*2*).

f. By removing and reserving paragraph (a)(4)(ii)(B).

g. By removing paragraphs (a)(4)(ii)(C) and (a)(4)(iv) through (v).

h. By removing and reserving paragraphs (a)(5) through (6).

i. By removing paragraph (a)(7) introductory text.

j. By removing and reserving paragraphs (a)(7)(ii) through (b)(4)(i).

k. By removing paragraphs (b)(7) through (h).

44. Section 86.008–10 is amended by revising paragraph (a)(2) to read as follows:

§ 86.008–10 Emission standards for 2008 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a) * * *

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part:

(i) Perform the test interval set forth in paragraph (f)(1) of Appendix I of this part with a cold-start according to 40 CFR part 1065, subpart F. This is the cold-start test interval.

(ii) Shut down the engine after completing the test interval and allow 20 minutes to elapse. This is the hot soak.

(iii) Repeat the test interval. This is the hot-start test interval.

(iv) Calculate the total emission mass of each constituent, m, and the total work, W, over each test interval according to 40 CFR 1065.650.

(v) Determine your engine's brake-specific emissions using the following calculation, which weights the emissions from the cold-start and hot-start test intervals:

$$\text{brake-specific emissions} = \frac{m_{\text{cold-start}} + 6 \cdot m_{\text{hot-start}}}{W_{\text{cold-start}} + 6 \cdot W_{\text{hot-start}}}$$

* * * * *

45. Section 86.010–38 is amended by revising paragraphs (j) introductory text and (j)(15)(i) introductory text to read as follows:

§ 86.010–38 Maintenance instructions.

* * * * *

(j) The following provisions describe requirements related to emission control diagnostic service information for heavy-duty engines used in vehicles over 14,000 pounds gross vehicle weight (GVW):

* * * * *

(15) * * *

(i) By July 1, 2013, manufacturers shall make available for sale to the persons specified in paragraph (j)(3)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Upon Administrator approval, manufacturers will not be required to make available manufacturer-specific tools with reconfiguration capabilities if they can demonstrate to the satisfaction of the Administrator that these tools are not essential to the completion of an emissions-related repair, such as recalibration. As a condition of purchase, manufacturers may request that the purchaser take all necessary training offered by the engine manufacturer. Any required training materials and classes must comply with the following:

* * * * *

§ 86.091–7—[Amended]

46. Section 86.091–7 is amended by removing paragraph (a)(3) and removing and reserving paragraphs (c)(3) and (d)(2)

§ 86.094–7—[Amended]

47. Section 86.094–7 is amended as follows:

a. By removing the introductory text.

b. By removing paragraph (a) introductory text.

c. By removing and reserving paragraphs (a)(1) through (2), (b) through (c)(2), (c)(4) through (d)(1)(v), (d)(3) through (g), and (h)(1).

d. By removing paragraphs (h)(6) and (i).

§ 86.094–14—[Amended]

48. Section 86.094–14 is amended as follows:

a. By removing paragraph (c)(7)(i)(C)(*4*).

b. By removing and reserving paragraph (c)(11)(ii)(B)(*1*).

c. By removing paragraphs (c)(11)(ii)(B)(*16*) through (*18*).

d. By removing and reserving paragraphs (c)(11)(ii)(C) and (c)(11)(ii)(D)(*1*) through (*6*)

§ 86.094–21—[Amended]

49. Section 86.094–21 is amended by removing and reserving paragraph (b)(6).

§ 86.094–22—[Amended]

50. Section 86.094–22 is amended by removing and reserving paragraph (d)(1).

§ 86.094–26—[Amended]

51. Section 86.094–26 is amended as follows:

a. By removing and reserving paragraph (a)(2).

b. By removing the text of paragraphs (a)(3) introductory text and (a)(3)(i) introductory text.

c. By removing and reserving paragraphs (a)(3)(i)(A), (a)(3)(i)(C), (a)(3)(ii)(C), and (a)(4)(i)(C).

d. By removing paragraph (a)(6)(iii).

e. By removing and reserving paragraphs (a)(9)(ii) and (b)(2)(i) through (ii).

f. By removing paragraphs (b)(2)(iv) and (b)(4)(i)(C) through (D).

g. By removing and reserving paragraphs (b)(4)(ii), (c), and (d)(2)(ii).

§ 86.094–28—[Amended]

52. Section 86.094–28 is amended as follows:

a. By removing and reserving paragraphs (a)(1) through (2).

b. By removing the text of paragraphs (a)(4) introductory text and (a)(4)(i) introductory text.

c. By removing and reserving paragraph (a)(4)(i)(B)(*2*)(*ii*).

d. By removing paragraph (a)(4)(i)(C).

e. By removing and reserving paragraph (a)(4)(ii) and(iii).

f. By removing paragraph (a)(4)(v).

g. By removing the text of paragraph (a)(7) introductory text.

h. By removing and reserving paragraphs (a)(7)(i), (b)(1) through (2), and (b)(4)(ii).

i. By removing paragraphs (b)(4)(iii) through (iv), (b)(5) through (8), and (c) through (d).

§ 86.094–30—[Amended]

53. Section 86.094–30 is amended as follows:

a. By removing and reserving paragraphs (a)(3) and (a)(4)(i) through (ii).

b. By removing the text of paragraph (a)(4)(iv) introductory text.

c. By removing and reserving paragraphs (a)(10) through (11), (a)(13), (b)(1)(ii)(B), (b)(1)(ii)(D), and (b)(2).

d. By removing the text of paragraph (b)(4)(ii) introductory text.

e. By removing and reserving paragraph (b)(4)(ii)(B).

f. By removing paragraphs (b)(4)(iii) through (iv) and (f).

§ 86.095–14—[Amended]

54. Section 86.095–14 is amended by removing the introductory text and removing and reserving paragraphs (a) through (c)(11)(ii)(B)(*15*) and (c)(11)(ii)(D)(*7*) through (c)(15).

§ 86.095–23—[Amended]

55. Section 86.095–23 is amended to read as follows:

a. By removing and reserving paragraphs (a) and (b).

b. By removing and reserving paragraph (c)(2).

c. By removing and reserving paragraphs (d) and (e).

d. By removing and reserving paragraphs (h) through (k).

§ 86.095–26—[Amended]

56. Section 86.095–26 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a) through (b)(4)(i)(C) and (b)(4)(ii)(C).

c. By removing paragraphs (b)(4)(iii) through (d).

§ 86.095–30—[Amended]

57. Section 86.095–30 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a)(1) through (a)(3) and (a)(4)(i) through (iii).

c. By removing paragraphs (a)(4)(iv)(A) through (C).

d. By removing and reserving paragraphs (a)(5) through (12).

e. By removing paragraph (a)(14).

f. By removing and reserving paragraph (b).

g. By removing paragraphs (c) through (f).

§ 86.095–35—[Amended]

58. Section 86.095–35 is amended as follows:

a. By removing the introductory text.

b. By removing the text of paragraph (a)(2) introductory text.

c. By removing and reserving paragraphs (a)(2)(i) through (ii).

d. By removing the text of paragraph (a)(2)(iii) introductory text.

e. By removing and reserving paragraphs (a)(2)(iii)(A) through (C) and (c).

§ 86.096–7—[Amended]

59. Section 86.096–7 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a) through (h) (5).

c. By removing the text of paragraph (h)(6) introductory text.

d. By removing and reserving paragraph (h)(6)(i).

e. By removing paragraph (h)(7)(vii).

§ 86.096–8—[Amended]

60. Section 86.096–8 is amended as follows:

a. By removing paragraph (a)(1)(iii).

b. By removing and reserving paragraph (a)(2).

c. By removing paragraph (a)(3).

d. By removing the text of paragraph (b) introductory text.

e. By removing and reserving paragraphs (b)(1) through (b)(4).

§ 86.096–21—[Amended]

61. Section 86.096–21 is amended by removing the introductory text and removing and reserving paragraphs (a) through (j).

§ 86.096–24—[Amended]

62. Section 86.096–24 is amended as follows:

a. By removing and reserving paragraphs (a)(5) through (7), (b)(1)(i) through (ii), and (b)(1)(vii).

b. By removing the text of paragraph (b)(1)(viii) introductory text.

c. By removing and reserving paragraphs (b)(1)(viii)(A) and (f).

d. By removing paragraph (g)(3).

§ 86.096–26—[Amended]

63. Section 86.096–26 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a) and (b).

c. By removing and reserving paragraphs (c)(1) through (c)(3).

d. By removing paragraph (d).

§ 86.096–30—[Amended]

64. Section 86.096–30 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a)(1) through (14).

c. By removing paragraphs (a)(19) through (24).

d. By removing and reserving paragraph (b).

e. By removing paragraphs (c) through (f).

§ 86.097–9—[Amended]

65. Section 86.097–9 is amended as follows:

a. By removing paragraph (a)(1)(iv).

b. By removing and reserving paragraph (a)(2).

c. By removing paragraph (a)(3).

d. By removing and reserving paragraphs (b) and (d) through (f).

§ 86.098–10 [Amended]

66. Section 86.098–10 is amended by removing and reserving paragraph (b).

§ 86.098–23 [Amended]

67. Section 86.098–23 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (b)(2), (c), and (d)(2).

c. By removing paragraph (d)(3).

d. By removing and reserving paragraphs (f) through (g) and (l).

§ 86.098–24 [Amended]

68. Section 86.098–24 is amended as follows:

a. By removing the introductory text.

b. By removing paragraph (a) introductory text.

c. By removing and reserving paragraphs (a)(1) through (4).

d. By removing paragraph (a)(8) through (15).

e. By removing paragraphs (b) introductory text and (b)(1) introductory text.

f. By removing and reserving paragraphs (b)(1)(i) through (vi) and (b)(1)(viii)(B).

g. By removing paragraphs (b)(1)(ix) through (xii).

h. By removing and reserving paragraph (b)(2).

i. By removing paragraphs (b)(3) and (c) through (h).

§ 86.098–25 [Amended]

69. Section 86.098–25 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraph (a).

c. By removing paragraph (b) introductory text.

d. By removing and reserving paragraphs (b)(1) through (2).

e. By removing paragraph (b)(3) introductory text.

f. By removing and reserving paragraphs (b)(3)(i) through (v).

g. By removing paragraph (b)(3)(vi) introductory text.

h. By removing and reserving paragraphs (b)(3)(vi)(A) through (D).

i. By removing paragraphs (b)(3)(vii), (b)(4) through (7), and (c) through (h).

§ 86.098–26 [Amended]

70. Section 86.098–26 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a)(1) through (2).

c. By removing the text of paragraphs (a)(3) introductory text and (a)(3)(i) introductory text.

d. By removing and reserving paragraphs (a)(3)(i)(A) through (B).

e. By removing paragraph (a)(3)(i)(D).

f. By removing paragraph (a)(3)(ii) introductory text.

g. By removing and reserving paragraphs (a)(3)(ii)(A) through (B).

h. By removing paragraphs (a)(3)(ii)(D) and (a)(4) through (11).

i. By removing and reserving paragraph (b).

j. By removing paragraphs (c) through (d).

§ 86.098–28 [Amended]

71. Section 86.098–28 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a)(1) through (a)(3).

c. By removing the text of paragraph (a)(4)(i) introductory text.

d. By removing and reserving paragraphs (a)(4)(i)(A) through (B) and (a)(4)(ii)(A).

e. By removing paragraphs (a)(4)(iii) through (iv).

f. By removing and reserving paragraphs (a)(5) through (6), (a)(7)(i) through (ii), and (b).

g. By removing paragraphs (c) through (h).

§ 86.098–30 [Amended]

72. Section 86.098–30 is amended as follows:

a. By removing the introductory text.

b. By removing and reserving paragraphs (a)(1) through (18), (b)(1), and (b)(3).

c. By removing paragraph (b)(4) introductory text.

d. By removing and reserving paragraphs (b)(4)(i) and (b)(4)(ii)(A).

e. By removing paragraphs (b)(5) through (f).

§ 86.099–8 [Amended]

73. Section 86.099–8 is amended as follows:

a. By removing the introductory text.

b. By removing paragraph (a)(1) introductory text.

c. By removing and reserving paragraphs (a)(1)(i) through (ii), (b)(5), and (c).

d. By removing paragraphs (e) through (k).

§ 86.099–9 [Amended]

74. Section 86.099–9 is amended as follows:

a. By removing the introductory text.

b. By removing paragraph (a)(1) introductory text.

c. By removing and reserving paragraphs (a)(1)(i) through (iii).

d. By removing paragraph (c) through (k).

Subpart B—[Amended]

75. Section 86.138–96 is amended by revising paragraph (k) to read as follows:

§ 86.138–96 Hot soak test.

* * * * *

(k) For the supplemental two-diurnal test sequence (see § 86.130–96), perform a hot soak test as described in this section, except that the test shall be conducted within seven minutes after completion of the hot start exhaust test and temperatures throughout the hot soak measurement period must be between 68° and 86 °F. This hot soak test is followed by two consecutive diurnal heat builds, described in § 86.133–96(p).

* * * * *

76. Section 86.144–94 is amended by revising paragraph (c)(7)(ii) to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

* * * * *

(c) * * *

(7) * * *

(ii) For methanol-fueled vehicles, where fuel composition is $C_xH_yO_z$ as measured, or calculated, for the fuel used:

$$DF = \frac{100 \cdot \left(\frac{X}{x + y/2 + 3.76 \cdot \left(x + y/4 - z/2 \right)} \right)}{CO_{2e} + \left(HC_e + CO_e + C_{CH_3OH_e} + C_{HCHO_e} \right) \cdot 10^{-4}}$$

* * * * *

Subpart E—[Amended]

77. Section 86.415–78 is amended by revising paragraph (b) to read as follows:

§ 86.415–78 Production vehicles.

* * * * *

(b) Any manufacturer obtaining certification shall notify the Administrator of the number of vehicles of each engine family-engine displacement-emission control system-fuel system-transmission type-inertial mass category combination produced for sale in the United States during the preceding year. This report must be submitted every year within 45 days after the end of the model year.

* * * * *

Subpart G—Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

78. The heading for subpart G is revised as set forth above.

79. Section 86.601–84 is amended by revising the introductory text to read as follows:

§ 86.601–84 Applicability.

The provisions of this subpart apply to light-duty vehicles, light-duty trucks, and heavy-duty vehicles. References to ''light-duty vehicle'' or ''LDT'' in this subpart G shall be deemed to include light-duty trucks and heavy-duty vehicles as appropriate.

* * * * *

80. Subpart K is revised to read as follows:

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines

§ 86.1001 Applicability.

The selective enforcement auditing program described in 40 CFR part 1068, subpart E, applies for all heavy-duty engines. In addition, the provisions of 40 CFR 1068.10 and 1068.20 apply for any selective enforcement audits of these engines.

Subpart N—[Amended]

81. Section 86.1305–2010 is amended by revising paragraph (h)(2) to read as follows:

§ 86.1305–2010 Introduction; structure of subpart.

* * * * *

(h) * * *

(2) Follow the provisions of 40 CFR 1065.342 to verify the performance of any sample dryers in your system. Correct your measurements according to 40 CFR 1065.659, except use the value of K_w in § 86.1342–90(i) as the value of $(1—x_{H2Oexh})$ in Equation 1065.659–1.

* * * * *

Subpart T—[Amended]

82. Section 86.1910 is amended by revising paragraph (d) to read as follows:

§ 86.1910 How must I prepare and test my in-use engines?

* * * * *

(d) You must test the selected engines while they remain installed in the vehicle. Use portable emission sampling equipment and field-testing procedures referenced in § 86.1375. Measure emissions of THC, NMHC (by any method specified in 40 CFR part 1065, subpart J), CO, NO_x, PM (as appropriate), and CO_2. Measure or determine O_2 emissions using good engineering judgment.

* * * * *

PART 1027— FEES FOR ENGINE, VEHICLE, AND EQUIPMENT COMPLIANCE PROGRAMS

83. The authority citation for part 1027 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

84. Section 1027.101 is amended by revising paragraphs (a)(2)(iii) and (d) and adding paragraph (a)(4) to read as follows:

§ 1027.101 To whom do these requirements apply?

(a) * * *

(2) * * *

(iii) Marine compression-ignition engines we regulate under 40 CFR part 94, or 1042, or 1043.

* * * * *

(4) Portable fuel containers we certify under 40 CFR part 59, subpart F.

* * * * *

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines, vehicles, and fuel-system components. This part 1027 refers to each of these other parts generically as the ''standard-setting part.'' For example, 40 CFR part 1051 is always the standard-setting part for recreational vehicles. For some nonroad engines, we allow for certification related to evaporative emissions separate from exhaust emissions. In this case, 40 CFR part 1060 is the standard-setting part for the equipment or fuel system components you produce.

* * * * *

85. Section 1027.105 is amended by revising paragraph (b)(3) to read as follows:

§ 1027.105 How much are the fees?

* * * * *

(b) * * *

(3) The following fees apply for nonroad and stationary engines, vehicles, equipment, and components:

Category	Certificate type	Fee
(i) Locomotives and locomotive engines	All	$826
(ii) Marine compression-ignition engines and stationary compression-ignition engines with per-cylinder displacement at or above 10 liters.	All, including Annex VI	826
(iii) Other nonroad compression-ignition engines and stationary compression-ignition engines with per-cylinder displacement below 10 liters.	All	1,822
(iv) Large SI engines	All	826
(v) Stationary spark-ignition engines above 19 kW	All	826
(vi) Marine SI engines and small SI engines	Exhaust only	826
(vii) Stationary spark-ignition engines at or below 19 kW	Exhaust only	826
(viii) Recreational vehicles	Exhaust (or combined exhaust and evap)	826
(ix) Equipment and fuel-system components associated with nonroad and stationary spark-ignition engines, including portable fuel containers.	Evap (where separate certification is required).	241

* * * * *

86. Section 1027.150 is amended by revising the definition of ''Annex VI'' to read as follows:

§ 1027.150 What definitions apply to this subpart?

* * * * *

Annex VI means MARPOL Annex VI, which is an annex to the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto. Note that 40 CFR part 1043 contains regulations implementing portions of Annex VI, including certain certification provisions.

* * * * *

PART 1033—CONTROL OF EMISSIONS FROM LOCOMOTIVES

87. The authority citation for part 1033 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

88. Section 1033.15 is amended by revising paragraph (a) to read as follows:

§ 1033.15 Other regulation parts that apply for locomotives?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1033 describes how to apply the provisions of part 1065 of this chapter to test locomotives to determine whether they meet the exhaust emission standards in this part.

* * * * *

89. A new § 1033.30 is added to subpart A to read as follows:

§ 1033.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1033.925 and 40 CFR 1068.25 regarding recordkeeping requirements. If recordkeeping requirements are not specified, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1033.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (see § 1033.901).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

90. Section 1033.101 is amended by revising paragraph (d) to read as follows:

§ 1033.101 Exhaust emission standards.

* * * * *

(d) *Averaging, banking, and trading.* You may generate or use emission credits under the averaging, banking, and trading (ABT) program as described in subpart H of this part to comply with the NO_X and/or PM standards of this part. You may also use ABT to comply with the Tier 4 HC standards of this part as described in paragraph (j) of this section. Generating or using emission credits requires that you specify a family emission limit (FEL) for each pollutant you include in the ABT program for each engine family. These FELs serve as the emission standards for the engine family with respect to all required testing instead of the standards specified in paragraphs (a) and (b) of this section. FELs may not be higher than the following limits:

(1) FELs for Tier 0 and Tier 1 locomotives originally manufactured before 2002 may have any value.

(2) FELs for Tier 1 locomotives originally manufactured 2002 through 2004 may not exceed 9.5 g/bhp-hr for NO_X emissions or 0.60 g/bhp-hr for PM emissions measured over the line-haul duty cycle. FELs for these locomotives may not exceed 14.4 g/bhp-hr for NO_X emissions or 0.72 g/bhp-hr for PM emissions measured over the switch duty cycle.

(3) FELs for Tier 2 and Tier 3 locomotives may not exceed the Tier 1 standards of this section.

(4) FELs for Tier 4 locomotives may not exceed the Tier 3 standards of this section.

* * * * *

91. Section 1033.120 is amended by revising paragraph (c) to read as follows:

§ 1033.120 Emission-related warranty requirements.

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase a locomotive's emissions of any regulated pollutant. This includes components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty covers the components you sell even if another company produces the component. Your emission-related warranty does not cover components whose failure would not increase a locomotive's emissions of any regulated pollutant. For remanufactured locomotives, your emission-related warranty is required to cover only those parts that you supply or those parts for which you specify allowable part manufacturers. It does not need to cover used parts that are not replaced during the remanufacture.

* * * * *

92. Section 1033.150 is amended by revising paragraph (a)(4) to read as follows:

§ 1033.150 Interim provisions.

* * * * *

(a) * * *

(4) Estimate costs as described in this paragraph (a)(4).

(i) The cost limits described in paragraph (a)(1) of this section are specified in terms of 2007 dollars. Adjust these values for future years according to the following equation:

$$\text{Actual Limit} = (\text{2007 Limit}) \times [(0.6000) \times (\text{Commodity Index}) + (0.4000) \times (\text{Earnings Index})$$

Where:

2007 Limit = The value specified in paragraph (a)(1) of this section ($250,000 or $125,000).

Commodity Index = The U.S. Bureau of Labor Statistics Producer Price Index for Industrial Commodities Less Fuel (Series WPU03T15M05) for the month prior to the date you submit your application divided by 173.1.

Earnings Index = The U.S. Bureau of Labor Statistics Estimated Average Hourly Earnings of Production Workers for Durable Manufacturing (Series CES3100000008) for the month prior to the date you submit your application divided by 18.26.

(ii) Calculate all costs in current dollars (for the month prior to the date you submit your application). Calculate fuel costs based on a fuel price adjusted by the Association of American Railroads' monthly railroad fuel price index (P), which is available at *https://www.aar.org/~/media/AAR/RailCostIndexes/Index_MonthlyFuelPrices.ashx.* (Use the value for the column in which P equals 539.8 for November 2007.) Calculate a new fuel price using the following equation:

Fuel Price = ($2.76 per gallon) × (P/ 539.8)

* * * * *

Subpart C—[Amended]

93. Section 1033.220 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1033.220 Amending maintenance instructions.

You may amend your emission-related maintenance instructions after you submit your application for certification, as long as the amended instructions remain consistent with the provisions of § 1033.125. You must send the Designated Compliance Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If owners/operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those locomotives from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any of the specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

94. Section 1033.225 is amended by revising paragraphs (b)(2), (e), and (f) to read as follows:

§ 1033.225 Amending applications for certification.

* * * * *

(b) * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data locomotive is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified locomotive anytime after you send us your amended application, before we make a decision under paragraph (d) of this section. However, if we determine that the affected locomotives do not meet applicable requirements, we will notify you to cease production of the locomotives and may require you to recall the locomotives at no expense to the owner. Choosing to produce locomotives under this paragraph (e) is deemed to be consent to recall all locomotives that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days after we request it, you must stop producing the new or modified locomotives.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to locomotives you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all locomotives produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified locomotive, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your emission family only if you have test data from production locomotives showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines or fuel-system components you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

95. Section 1033.235 is amended by revising paragraphs (c) and (d) introductory text to read as follows:

§ 1033.235 Emission testing required for certification.

* * * * *

(c) We may measure emissions from any of your emission-data locomotives or other locomotives from the engine family.

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the locomotive to a test facility we designate. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions from one of your locomotives, the results of that testing become the official emission results for the locomotive. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your locomotives, we may set its adjustable parameters to any point within the adjustable ranges (see § 1033.115(b)).

(4) Before we test one of your locomotives, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply where we determine that an engine parameter is not an adjustable parameter (as defined in § 1042.901) but that it is subject to production variability.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests if all the following are true:

* * * * *

96. Section 1033.240 is amended by revising paragraph (b) introductory text to read as follows:

§ 1033.240 Demonstrating compliance with exhaust emission standards.

* * * * *

(b) Your engine family is deemed not to comply if any emission-data locomotive representing that family has test results showing a deteriorated emission level for any pollutant that is above an applicable emission standard . Use the following steps to determine the deteriorated emission level for the test locomotive:

* * * * *

97. Section 1033.255 is amended by revising paragraph (b) to read as follows:

§ 1033.255 EPA decisions.

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny

your application, we will explain why in writing.

* * * * *

Subpart D—[Amended]

98. Section 1033.325 is amended by revising paragraph (d) to read as follows:

§ 1033.325 Maintenance of records; submittal of information.

* * * * *

(d) Nothing in this section limits our authority to require you to establish, maintain, keep or submit to us information not specified by this section. We may also ask you to send less information.

* * * * *

Subpart F—[Amended]

99. Section 1033.501 is amended by revising paragraph (i) to read as follows:

§ 1033.501 General provisions.

* * * * *

(i) For passenger locomotives that can generate hotel power from the main propulsion engine, the locomotive must comply with the emission standards when in non-hotel setting. For hotel mode, the locomotive is subject to the notch cap provisions of § 1033.101 and the defeat device prohibition of § 1033.115.

* * * * *

100. Section 1033.530 is amended by revising paragraph (h) to read as follows:

§ 1033.530 Duty cycles and calculations.

* * * * *

(h) *Calculation adjustments for energy-saving design features.* The provisions of this paragraph (h) apply for locomotives equipped with new energy-saving locomotive design features. They do not apply for features that only improve the engine's brake-specific fuel consumption. They also do not apply for features that were commonly incorporated in locomotives before 2008.

(1) Manufacturers/remanufacturers choosing to adjust emissions under this paragraph (h) must do all of the following for certification:

(i) Describe the energy-saving features in your application for certification.

(ii) Describe in your installation instruction and/or maintenance instructions all steps necessary to utilize the energy-saving features.

(2) If your design feature will also affect the locomotives' duty cycle, you must comply with the requirements of paragraph (g) of this section.

(3) Calculate the energy savings as described in this paragraph (h)(3).

(i) Estimate the expected mean in-use fuel consumption rate (on a BTU per ton-mile basis) with and without the energy saving design feature, consistent with the specifications of paragraph (h)(4) of this section. The energy savings is the ratio of fuel consumed from a locomotive operating with the new feature to fuel consumed from a locomotive operating without the feature under identical conditions. Include an estimate of the 80 percent confidence interval for your estimate of the mean, and other statistical parameters we specify.

(ii) Your estimate must be based on in-use operating data, consistent with good engineering judgment. Where we have previously certified your design feature under this paragraph (h), we may require you to update your analysis based on all new data that are available. You must obtain preliminary approval before you begin collecting operational data for this purpose.

(iii) We may allow you to consider the effects of your design feature separately for different route types, regions, or railroads. We may require that you certify these different locomotives in different engine families and may restrict their use to the specified applications.

(iv) Design your test plan so that the operation of the locomotives with and without is as similar as possible in all material aspects (other than the design feature being evaluated). Correct all data for any relevant differences, consistent with good engineering judgment.

(v) Do not include any brake-specific energy savings in your calculated values. If it is not possible to exclude such effects from your data gathering, you must correct for these effects, consistent with good engineering judgment.

(4) Calculate adjustment factors as described in this paragraph (h)(4). If the energy savings will apply broadly, calculate and apply the adjustment on a cycle-weighted basis. Otherwise, calculate and apply the adjustment separately for each notch. To apply the adjustment, multiply the emissions (either cycle-weighted or notch-specific, as applicable) by the adjustment. Use the lower bound of the 80 percent confidence interval of the estimate of the mean as your estimated energy savings rate. We may cap your energy savings rate for this paragraph (h)(4) at 80 percent of the estimate of the mean. Calculate the emission adjustment factors as:

$AF = 1.000 - (\text{energy savings rate})$

(5) We may require you to collect and report data from locomotives we allow you to certify under this paragraph (h) and to recalculate the adjustment factor for future model years based on such data.

Subpart G—[Amended]

101. Section 1033.601 is amended by revising paragraph (a) to read as follows:

§ 1033.601 General compliance provisions.

* * * * *

(a) *Meaning of terms.* When used in 40 CFR part 1068, apply meanings for specific terms as follows:

(1) ''Manufacturer'' means manufacturer and/or remanufacturer.

(2) ''Date of manufacture'' means date of original manufacture for freshly manufactured locomotives and the date on which a remanufacture is completed for remanufactured engines.

* * * * *

102. Section 1033.625 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 1033.625 Special certification provisions for non-locomotive-specific engines.

* * * * *

(a) * * *

(1) Before being installed in the locomotive, the engines were covered by a certificate of conformity issued under 40 CFR Part 1039 (or part 89) that is effective for the calendar year in which the manufacture or remanufacture occurs. You may use engines certified during the previous years if they were subject to the same standards. You may not make any modifications to the engines unless we approve them.

* * * * *

(b) To certify your locomotives by design under this section, submit your application as specified in § 1033.205, with the following exceptions:

(1) Include the following instead of the locomotive test data otherwise required by § 1033.205:

(i) A description of the engines to be used, including the name of the engine manufacturer and engine family identifier for the engines.

(ii) A brief engineering analysis describing how the engine's emission controls will function when installed in the locomotive throughout the locomotive's useful life.

(iii) The emission data submitted under 40 CFR part 1039 (or part 89).

(2) You may separately submit some of the information required by § 1033.205, consistent with the provisions of § 1033.1(d). For example, this may be an appropriate way to submit detailed information about proprietary engine software. Note that this allowance to separately submit some of the information required by

§ 1033.205 is also available for applications not submitted under this section.

(c) Locomotives certified under this section are subject to all the requirements of this part except as specified in paragraph (b) of this section. The engines used in such locomotives are not considered to be included in the otherwise applicable engines family of 40 CFR part 1039 (or part 89).

* * * * *

103. A new § 1033.652 is added to read as follows:

§ 1033.652 Special provisions for exported locomotives.

(a) Uncertified locomotives. Locomotives covered by an export exemption under 40 CFR 1068.230 may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the U.S. Locomotives covered by this paragraph (a) may not include any EPA emission control information label. Such locomotives may include emission control information labels for the country to which they are being exported.

(b) Locomotives covered by export-only certificates. Locomotives may be certified for export under 40 CFR 1068.230. Such locomotives may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the U.S.

(c) Locomotives included in a certified engine family. Except as specified in paragraph (d) of this section, locomotives included in a certified engine family may be exported without restriction. Note that § 1033.705 requires that exported locomotives be excluded from emission credit calculations in certain circumstances.

(d) Locomotives certified to FELs above the standards. The provisions of this paragraph (d) apply for locomotive configurations included in engine families certified to one or more FELs above any otherwise applicable standard. Individual locomotives that will be exported may be excluded from an engine family if they are unlabeled. For locomotives that were labeled during production, you may remove the emission control information labels prior to export. All unlabeled locomotives that will be exported are subject to the provisions of paragraph (a) of this section. Locomotives that are of a configuration included in an engine family certified to one of more FELs above any otherwise applicable standard that includes an EPA emission control information label when exported are considered to be part of the engine family and must be included in credit calculations under § 1033.705. Note that this requirement does not apply for locomotives that do not have EPA emission control information labels, but that do have other labels (such as an export-only label).

Subpart H—[Amended]

104. Section 1033.705 is amended by revising paragraph (b) introductory text to read as follows:

§ 1033.705 Calculating emission credits.

* * * * *

(b) For each participating engine family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. For the end of year report, round the sum of emission credits to the nearest one hundredth of a megagram (0.01 Mg). Round your end of year emission credit balance to the nearest megagram (Mg). Use consistent units throughout the calculation. When useful life is expressed in terms of megawatt-hrs, calculate credits for each engine family from the following equation:

* * * * *

105. Section 1033.715 is revised to read as follows:

§ 1033.715 Banking emission credits.

(a) Banking is the retention of emission credits by the manufacturer/remanufacturer generating the emission credits (or owner/operator, in the case of transferred credits) for use in future model years for averaging, trading, or transferring. You may use banked emission credits only as allowed by § 1033.740.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1042.730. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging, trading, or transferring.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

106. Section 1033.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1033.725 Requirements for your application for certification.

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

107. Section 1033.730 is amended by revising paragraphs (b)(3) and (b)(5) to read as follows:

§ 1033.730 ABT reports.

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits under each FEL.

* * * * *

(5) Rated power for each locomotive configuration, and the average locomotive power weighted by U.S.-directed production volumes for the engine family.

* * * * *

108. Section 1033.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1033.735 Required records.

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each locomotive you produce that generates or uses emission credits under the ABT program. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also be able to identify the purchaser and destination for each engine you produce.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart J—[Amended]

109. Section 1033.901 is amended by revising the definitions for ''Carryover'', ''Total hydrocarbon'', ''Total hydrocarbon equivalent'', and ''Useful life'' and adding a new definition for ''Alcohol-fueled locomotive'' in alphabetical order to read as follows:

§ 1033.901 Definitions.

* * * * *

Alcohol-fueled locomotive means a locomotive with an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1033.235(d). This generally requires that the locomotives in the engine family do not differ in any aspect related to emissions.

* * * * *

Total hydrocarbon has the meaning given in 40 CFR 1065.1001. This generally means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled locomotives. The hydrogen-to-carbon mass ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

Useful life means the period during which the locomotive engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as work output or miles. It is the period during which a locomotive is required to comply with all applicable emission standards. See § 1033.101(g).

* * * * *

110. A new § 1033.925 is added to subpart J to read as follows:

§ 1033.925 Reporting and recordkeeping requirements.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*), the Office of Management and Budget approves the reporting and recordkeeping specified in the applicable regulations. The following items illustrate the kind of reporting and recordkeeping we require for engines regulated under this part:

(a) We specify the following requirements related to engine certification in this part 1033:

(1) In § 1033.150 we state the requirements for interim provisions.

(2) In subpart C of this part we identify a wide range of information required to certify engines.

(3) In § 1033.325 we specify certain records related to production-line testing.

(4) In subpart G of this part we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various special compliance provisions.

(5) In §§ 1033.725, 1033.730, and 1033.735 we specify certain records related to averaging, banking, and trading.

(6) In subpart I of this part we specify certain records related to meeting requirements for remanufactured engines.

(b) We specify the following requirements related to testing in 40 CFR part 1065:

(1) In 40 CFR 1065.2 we give an overview of principles for reporting information.

(2) In 40 CFR 1065.10 and 1065.12 we specify information needs for establishing various changes to published test procedures.

(3) In 40 CFR 1065.25 we establish basic guidelines for storing test information.

(4) In 40 CFR 1065.695 we identify data that may be appropriate for collecting during testing of in-use engines using portable analyzers.

(c) We specify the following requirements related to the general compliance provisions in 40 CFR part 1068:

(1) In 40 CFR 1068.5 we establish a process for evaluating good engineering judgment related to testing and certification.

(2) In 40 CFR 1068.25 we describe general provisions related to sending and keeping information.

(3) In 40 CFR 1068.27 we require manufacturers to make engines available for our testing or inspection if we make such a request.

(4) In 40 CFR 1068.105 we require vessel manufacturers to keep certain records related to duplicate labels from engine manufacturers.

(5) In 40 CFR 1068.120 we specify recordkeeping related to rebuilding engines.

(6) In 40 CFR part 1068, subpart C, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various exemptions.

(7) In 40 CFR part 1068, subpart D, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to importing engines.

(8) In 40 CFR 1068.450 and 1068.455 we specify certain records related to testing production-line engines in a selective enforcement audit.

(9) In 40 CFR 1068.501 we specify certain records related to investigating and reporting emission-related defects.

(10) In 40 CFR 1068.525 and 1068.530 we specify certain records related to recalling nonconforming engines.

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

111. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

112. Section 1039.5 is amended by revising paragraph (a) to read as follows:

§ 1039.5 Which engines are excluded from this part's requirements?

* * * * *

(a) *Locomotive engines.* (1) The following locomotive engines are not subject to the provisions of this part 1039:

(i) Engines in locomotives subject to the standards of 40 CFR part 92 or 1033.

(ii) Engines in locomotives that are exempt from the standards of 40 CFR part 1033 pursuant to the provisions of 40 CFR part 1033 or 1068 (except for the provisions of 40 CFR 1033.150(e)).

(iii) Engines in locomotives that are exempt from the standards of 40 CFR part 92 pursuant to the provisions of 40 CFR part 92 (except for the provisions of 40 CFR 92.907). For example, an engine that is exempt under 40 CFR 92.906 because it is in a manufacturer-owned locomotive is not subject to the provisions of this part 1039.

(2) The following locomotive engines are subject to the provisions of this part 1039:

(i) Engines in locomotives exempt from 40 CFR part 92 or 1033 pursuant to the provisions of 40 CFR 92.907 or 1033.150(e).

(ii) Locomotive engines excluded from the definition of locomotive in 40 CFR 1033.901.

* * * * *

113. Section 1039.15 is amended by revising paragraph (a) to read as follows:

§ 1039.15 Do any other regulation parts apply to me?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1039 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

* * * * *

114. A new § 1039.30 is added to subpart A to read as follows:

§ 1039.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1039.825 and 40 CFR 1068.25 regarding recordkeeping requirements. If recordkeeping requirements are not specified, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1039.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (see § 1039.801).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

115. Section 1039.120 is amended by revising paragraph (c) to read as follows:

§ 1039.120 What emission-related warranty requirements apply to me?

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase an engine's emissions of any regulated pollutant, including components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty covers these components even if another company produces the component. Your emission-related warranty does not cover components whose failure would not increase an engine's emissions of any regulated pollutant.

* * * * *

116. Section 1039.125 is amended by revising paragraphs (a)(1)(iii), (c), and (d) and adding paragraph (a)(5) to read as follows:

§ 1039.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(1) * * *

(iii) You provide the maintenance free of charge and clearly say so in your maintenance instructions.

* * * * *

(5) You may ask us to approve a maintenance interval shorter than that specified in paragraphs (a)(2) and (a)(3) of this section under § 1039.210, including emission-related components that were not in widespread use with nonroad compression-ignition engines before 2011. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

(d) *Noncritical emission-related maintenance.* Subject to the provisions of this paragraph (d), you may schedule any amount of emission-related inspection or maintenance that is not covered by paragraph (a) of this section (that is, maintenance that is neither explicitly identified as critical emission-related maintenance, nor that we approve as critical emission-related maintenance). Noncritical emission-related maintenance generally includes maintenance on the components we specify in 40 CFR part 1068, Appendix I, that is not covered in paragraph (a) of this section. You must state in the owners manual that these steps are not necessary to keep the emission-related warranty valid. If operators fail to do this maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim. Do not take these inspection or maintenance steps during service accumulation on your emission-data engines.

* * * * *

117. Section 1039.135 is amended by revising paragraphs (c)(6) and (c)(8) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(c) * * *

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; however, you may omit this from the label if you stamp, engrave, or otherwise permanently identify it elsewhere on the engine, in which case you must also describe in your application for certification where you will identify the date on the engine.

* * * * *

(8) Identify the emission-control system. Use terms and abbreviations as described in 40 CFR 1068.45. You may omit this information from the label if there is not enough room for it and you put it in the owners manual instead.

* * * * *

Subpart C—[Amended]

118. Section 1039.201 is amended by adding paragraph (h) to read as follows:

§ 1039.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to nonroad use after being used in motor vehicles, we may specify alternate certification provisions consistent with the intent of this part. See the definition of ''new nonroad engine'' in § 1039.801.

119. Section 1039.220 is revised to read as follows:

§ 1039.220 How do I amend the maintenance instructions in my application?

You may amend your emission-related maintenance instructions after you submit your application for certification as long as the amended instructions remain consistent with the provisions of § 1039.125. You must send the Designated Compliance Officer a written request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified maintenance, you may distribute the new maintenance instructions anytime after you send your request. For example, this paragraph (b) would cover adding instructions to increase the frequency of filter changes for engines in severe-duty applications.

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

120. Section 1039.225 is amended by revising paragraphs (b)(2), (e), and (f) to read as follows:

§ 1039.225 How do I amend my application for certification to include new or modified engines or to change an FEL?

* * * * *

(b) * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data engine is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days after we request it, you must stop producing the new or modified engines.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to engines you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all engines produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified engine, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire engine family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your engine family only if you have test data from production engines showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

121. Section 1039.230 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1039.230 How do I select engine families?

* * * * *

(b) Group engines in the same engine family if they are the same in all the following aspects:

(1) The combustion cycle and fuel.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Method of air aspiration.

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap).

(5) Combustion chamber design.

(6) Bore and stroke.

(7) Cylinder arrangement (for engines with aftertreatment devices only).

(8) Method of control for engine operation other than governing (*i.e.,* mechanical or electronic).

(9) Power category.

(10) Numerical level of the emission standards that apply to the engine.

* * * * *

(d) In unusual circumstances, you may group engines that are not identical with respect to the things listed in paragraph (b) of this section in the same engine family if you show that their emission characteristics during the useful life will be similar.

* * * * *

122. Section 1039.235 is amended by revising paragraphs (c) and (d) introductory text to read as follows:

§ 1039.235 What emission testing must I perform for my application for a certificate of conformity?

* * * * *

(c) We may measure emissions from any of your emission-data engines or other engines from the engine family, as follows:

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the engine to a test facility we designate. The engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions on one of your engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1039.115(e)).

(4) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply where we determine that an engine parameter is not an adjustable parameter (as defined in § 1039.801) but that it is subject to production variability.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests, but only if all the following are true:

* * * * *

123. Section 1039.240 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 1039.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the emission standards in § 1039.101(a) and (b), § 1039.102(a) and (b), § 1039.104, and § 1039.105 if all emission-data engines representing that family have test results showing deteriorated emission levels at or below these standards. This includes all test points over the course of the durability demonstration. Note that your FELs are considered to be the applicable emission standards with which you must comply if you participate in the ABT program in subpart H of this part.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. This includes all test points over the course of the durability demonstration.

(c) * * *

(1) *Additive deterioration factor for exhaust emissions.* Except as specified in paragraph (c)(2) of this section, use an additive deterioration factor for exhaust emissions. An additive deterioration factor is the difference between exhaust emissions at the end of the useful life and exhaust emissions at the low-hour test point. In these cases, adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero. Additive deterioration factors must be specified to one more decimal place than the applicable standard.

* * * * *

124. Section 1039.245 is amended by revising the introductory text to read as follows:

§ 1039.245 How do I determine deterioration factors from exhaust durability testing?

This section describes how to determine deterioration factors, either with an engineering analysis, with pre-existing test data, or with new emission measurements. Apply these deterioration factors to determine whether your engines will meet the duty-cycle emission standards throughout the useful life as described in § 1039.240.

* * * * *

125. Section 1039.250 is amended by revising paragraphs (a) introductory text and (c) and removing paragraph (e) to read as follows:

§ 1039.250 What records must I keep and what reports must I send to EPA?

(a) Within 45 days after the end of the model year, send the Designated Compliance Officer a report describing the following information about engines you produced during the model year:

* * * * *

(c) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in this section for eight years after we issue your certificate.

* * * * *

126. Section 1039.255 is amended by revising paragraph (b) to read as follows:

§ 1039.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart G—[Amended]

127. Section 1039.605 is amended by revising paragraph (d)(3) introductory text to read as follows:

§ 1039.605 What provisions apply to engines certified under the motor-vehicle program?

* * * * *

(d) * * *

(3) You must show that fewer than 50 percent of the engine family's total sales in the United States are used in nonroad applications. This includes engines used in any application without regard to which company manufactures the vehicle or equipment. Show this as follows:

* * * * *

128. Section 1039.610 is amended by revising paragraph (d)(3) introductory text to read as follows:

§ 1039.610 What provisions apply to vehicles certified under the motor-vehicle program?

* * * * *

(d) * * *

(3) You must show that fewer than 50 percent of the engine family's total sales in the United States are used in nonroad applications. This includes any type of vehicle, without regard to which company completes the manufacturing of the nonroad equipment. Show this as follows:

* * * * *

Subpart H—[Amended]

129. Section 1039.705 is amended by revising paragraph (b) before the equation to read as follows:

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

(b) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram (kg), using consistent units throughout the following equation:

* * * * *

130. Section 1039.715 is revised to read as follows:

§ 1039.715 How do I bank emission credits?

(a) Banking is the retention of emission credits by the manufacturer generating the emission credits for use in future model years for averaging or trading.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1039.730. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging or trading.

(c) Reserved credits become actual emission credits when you submit your final report. However, we may revoke

these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

131. Section 1039.720 is amended by revising paragraph (b) to read as follows:

§ 1039.720 How do I trade emission credits?

* * * * *

(b) You may trade actual emission credits as described in this subpart. You may also trade reserved emission credits, but we may revoke these emission credits based on our review of your records or reports or those of the company with which you traded emission credits. You may trade banked credits within an averaging set to any certifying manufacturer.

* * * * *

132. Section 1039.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1039.725 What must I include in my application for certification?

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

133. Section 1039.730 is amended by revising paragraphs (b)(3), (b)(5), and (f) to read as follows:

§ 1039.730 What ABT reports must I send to EPA?

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits under each FEL.

* * * * *

(5) Maximum engine power for each engine configuration, and the average engine power weighted by U.S.-directed production volumes for the engine family.

* * * * *

(f) Correct errors in your end-of-year report or final report as follows:

(1) You may correct any errors in your end-of-year report when you prepare the final report, as long as you send us the final report by the time it is due.

(2) If you or we determine within 270 days after the end of the model year that errors mistakenly decreased your balance of emission credits, you may correct the errors and recalculate the balance of emission credits. You may not make these corrections for errors that are determined more than 270 days after the end of the model year. If you report a negative balance of emission credits, we may disallow corrections under this paragraph (f)(2).

(3) If you or we determine anytime that errors mistakenly increased your balance of emission credits, you must correct the errors and recalculate the balance of emission credits.

134. Section 1039.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1039.735 What records must I keep?

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each engine you produce that generates or uses emission credits under the ABT program. You may identify these numbers as a range. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also be able to identify the purchaser and destination for each engine you produce.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart I—[Amended]

135. Section 1039.801 is amended by revising the definitions for ''Model year'', ''New nonroad engine'', ''Total hydrocarbon'', ''Total hydrocarbon equivalent'', and ''Useful life and adding definitions for ''Alcohol-fueled engine'', ''Carryover'', and ''Date of manufacture'' in alphabetical order to read as follows:

§ 1039.801 What definitions apply to this part?

* * * * *

Alcohol-fueled engine means an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1042.235(d). This generally requires that the engines in the engine family do not differ in any aspect related to emissions.

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

Model year means one of the following things:

(1) For freshly manufactured equipment and engines (see definition of ''new nonroad engine,'' paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a nonroad engine after being placed into service as a stationary engine, or being certified and placed into service as a motor vehicle engine, model year means the calendar year in which the engine was originally produced. For a motor vehicle engine that is converted to be a nonroad engine without having been certified, model year means the calendar year in which the engine becomes a new nonroad engine. (See definition of ''new nonroad engine,'' paragraph (2).)

(3) For a nonroad engine excluded under § 1039.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the engine was originally produced (see definition of ''new nonroad engine,'' paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad equipment, model year means the calendar year in which the engine is installed in the new nonroad equipment (see definition of ''new nonroad engine,'' paragraph (4)).

(5) For imported engines:

(i) For imported engines described in paragraph (5)(i) of the definition of

''new nonroad engine,'' *model year* has the meaning given in paragraphs (1) through (4) of this definition.

(ii) For imported engines described in paragraph (5)(ii) of the definition of ''new nonroad engine,'' *model year* has the meaning given in 40 CFR 89.602 for independent commercial importers.

(iii) For imported engines described in paragraph (5)(iii) of the definition of ''new nonroad engine,'' *model year* means the calendar year in which the engine is assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068.

* * * * *

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as ''brand new.'' In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine or a stationary engine that is later used or intended to be used in a piece of nonroad equipment. In this case, the engine is no longer a motor vehicle or stationary engine and becomes a ''new nonroad engine.'' The engine is no longer new when it is placed into nonroad service. This paragraph (2) applies if a motor vehicle engine or a stationary engine is installed in nonroad equipment, or if a motor vehicle or a piece of stationary equipment is modified (or moved) to become nonroad equipment.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1039.5, when that engine is installed in a piece of equipment that is covered by this part 1039. The engine is no longer new when it is placed into nonroad service covered by this part 1039. For example, this would apply to marine diesel engine that is no longer used in a marine vessel but is instead installed in a piece of nonroad equipment subject to the provisions of this part.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. This generally includes installation of used engines in new equipment. The engine is no longer new when the ultimate purchaser receives a title for the equipment or the product is placed into service, whichever comes first.

(5) An imported nonroad engine, subject to the following provisions:

(i) An imported nonroad engine covered by a certificate of conformity issued under this part that meets the criteria of one or more of paragraphs (1) through (4) of this definition, where the original engine manufacturer holds the certificate, is new as defined by those applicable paragraphs.

(ii) An imported engine covered by a certificate of conformity issued under this part, where someone other than the original engine manufacturer holds the certificate (such as when the engine is modified after its initial assembly), is a new nonroad engine when it is imported. It is no longer new when the ultimate purchaser receives a title for the engine or it is placed into service, whichever comes first.

(iii) An imported nonroad engine that is not covered by a certificate of conformity issued under this part at the time of importation is new, but only if it was produced on or after the dates shown in the following table. This addresses uncertified engines and equipment initially placed into service that someone seeks to import into the United States. Importation of this kind of engine (or equipment containing such an engine) is generally prohibited by 40 CFR part 1068. However, the importation of such an engine is not prohibited if the engine has a model year before 2004, since it is not subject to standards.

APPLICABILITY OF EMISSION STANDARDS FOR NONROAD DIESEL ENGINES

Maximum engine power	Initial date of emission standards
kW < 19	January 1, 2000.
19 ≤ kW < 37	January 1, 1999.
37 ≤ kW < 75	January 1, 1998.
75 ≤ kW < 130	January 1, 1997.
130 ≤ kW ≤ 560	January 1, 1996.
kW > 560	January 1, 2000.

* * * * *

Total hydrocarbon has the meaning given in 40 CFR 1065.1001. This generally means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The hydrogen-to-carbon mass ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. It is the period during which a nonroad engine is required to comply with all applicable emission standards. See § 1039.101(g).

* * * * *

§ 1039.810—[Removed]

136. Section 1039.810 is removed.

PART 1042—CONTROL OF EMISSIONS FROM NEW AND IN–USE MARINE COMPRESSION–IGNITION ENGINES AND VESSELS

137. The authority citation for part 1042 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

138. Section 1042.1 is revised to read as follows:

§ 1042.1 Applicability.

Except as provided in § 1042.5, the regulations in this part 1042 apply for all new compression-ignition marine engines (including new engines deemed to be compression-ignition engines under this section) and vessels containing such engines. See § 1042.901 for the definitions of engines and vessels considered to be new. This part 1042 applies as follows:

(a) This part 1042 applies for freshly manufactured marine engines starting with the model years noted in the following tables:

TABLE 1 TO § 1042.1—PART 1042 APPLICABILITY BY MODEL YEAR

Engine category	Maximum engine power [a]	Displacement (L/cyl) or application	Model year
Category 1	kW <75	disp.< 0.9	[b] 2009

TABLE 1 TO § 1042.1—PART 1042 APPLICABILITY BY MODEL YEAR—Continued

Engine category	Maximum engine power [a]	Displacement (L/cyl) or application	Model year
	75 ≤kW ≤3700	disp.< 0.9	2012
		0.9 ≤disp. < 1.2	2013
		1.2 ≤disp. < 2.5	2014
		2.5 ≤disp. < 3.5	2013
		3.5 ≤disp.< 7.0	2012
	kW > 3700	disp.< 7.0	2014
Category 2	kW ≤3700	7.0 ≤disp. < 15.0	2013
	kW > 3700	7.0 ≤disp. < 15.0	2014
	All	15 ≤disp. < 30	2014
Category 3	All	disp. > 30	2011

[a] See § 1042.140, which describes how to determine maximum engine power.
[b] See Table 1 of § 1042.101 for the first model year in which this part 1042 applies for engines with maximum engine power below 75 kW and displacement at or above 0.9 L/cyl.

(b) The requirements of subpart I of this part apply to remanufactured Category 1 and Category 2 engines beginning July 7, 2008.

(c) See 40 CFR part 94 for requirements that apply to engines with maximum engine power at or above 37 kW not yet subject to the requirements of this part 1042. See 40 CFR part 89 for requirements that apply to engines with maximum engine power below 37 kW not yet subject to the requirements of this part 1042.

(d) The provisions of §§ 1042.620 and 1042.901 apply for new engines used solely for competition beginning January 1, 2009.

(e) The marine engines listed in this paragraph (e) are subject to all the requirements of this part even if they do not meet the definition of ''compression-ignition'' in § 1042.901. The following engines are deemed to be compression-ignition engines for the purposes of this subchapter:

(1) Marine engines powered by natural gas or other gaseous fuels with maximum engine power at or above 250 kW. Note that gaseous-fueled engines with maximum engine power below 250 kW may or may not meet the definition of ''compression-ignition'' in § 1042.901.

(2) Marine gas turbine engines.

(3) Other marine internal combustion engines that do not meet the definition of ''spark-ignition'' in § 1042.901.

(f) Some of the provisions of this part may apply for other engines as specified in 40 CFR part 1043.

139. Section 1042.5 is amended by adding paragraph (c) to read as follows:

§ 1042.5 Exclusions.

* * * * *

(c) *Recreational gas turbine engines.* The requirements and prohibitions of this part do not apply to gas turbine engines installed on recreational vessels, as defined in § 1042.901.

140. Section 1042.15 is revised to read as follows:

§ 1042.15 Do any other regulation parts apply to me?

(a) Part 1043 of this chapter describes requirements related to international pollution prevention that apply for some of the engines subject to this part.

(b) The evaporative emission requirements of part 1060 of this chapter apply to vessels that include installed engines fueled with a volatile liquid fuel as specified in § 1042.107. (Note: Conventional diesel fuel is not considered to be a volatile liquid fuel.)

(c) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1042 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

(d) The requirements and prohibitions of part 1068 of this chapter apply to everyone, including anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the engines subject to this part 1042, or vessels containing these engines. Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for engine manufacturers, vessel manufacturers, and others.

(2) Rebuilding and other aftermarket changes.

(3) Exclusions and exemptions for certain engines.

(4) Importing engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for hearings.

(e) Other parts of this chapter apply if referenced in this part.

141. A new § 1042.30 is added to subpart A to read as follows:

§ 1042.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1042.925 and 40 CFR 1068.25 regarding recordkeeping requirements. If recordkeeping requirements are not specified, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1042.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (see § 1042.901).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

142. Section 1042.101 is amended by revising the section heading, Table 1 in paragraph (a)(3), and paragraph (d)(1)(iii) to read as follows:

§ 1042.101 Exhaust emission standards for Category 1 engines and Category 2 engines.

(a) * * *

(3) * * *

Table 1 to §1042.101— Tier 3 Standards for Category 1 Engines Below 3700 kW [a]

Power Density and Application	Displacement (L/cyl)	Maximum Engine Power	Model Year	PM (g/kW-hr)	NOx+HC (g/kW-hr) [b]
All	disp.< 0.9	kW <19	2009+	0.40	7.5
		19 ≤ kW < 75	2009-2013	0.30	7.5
			2014+	0.30	4.7
Commercial engines with kW/L ≤ 35[b]	disp.< 0.9	kW ≥ 75	2012+	0.14	5.4
	0.9 ≤ disp. < 1.2	all	2013+	0.12	5.4
	1.2 ≤ disp. < 2.5	kW < 600	2014-2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2014+	0.11	5.6
	2.5 ≤ disp. < 3.5	kW < 600	2013-2017	0.11	5.6
			2018+	0.10	5.6
		kW ≥ 600	2013+	0.11	5.6
	3.5 ≤ disp.< 7.0	kW < 600	2012-2017	0.11	5.8
			2018+	0.10	5.8
		kW ≥ 600	2012+	0.11	5.8
Commercial engines with kW/L > 35 and all recreational engines[b]	disp. < 0.9	kW ≥ 75	2012+	0.15	5.8
	0.9 ≤ disp. < 1.2	all	2013+	0.14	5.8
	1.2 ≤ disp. < 2.5		2014+	0.12	5.8
	2.5 ≤ disp. < 3.5		2013+	0.12	5.8
	3.5 ≤ disp. < 7.0		2012+	0.11	5.8

[a] No Tier 3 standards apply for commercial Category 1 engines at or above 3700 kW. See §1042.1(c) and paragraph (a)(7) of this section for the standards that apply for these engines.
[b] The applicable NOx+HC standards specified for Tier 2 engines in Appendix I of this part continue to apply instead of the values noted in the table for engines at or above 2000 kW. FELs for these engiens may not be higher than the Tier 1 NOx standard specified in Appendix I of this part.

* * * * *

(d) * * *

(1) * * *

(iii) Diesel-fueled and all other engines not described in paragraph (d)(1)(i) or (ii) of this section must comply with Tier 3 HC standards based on THC emissions and with Tier 4 standards based on NMHC emissions.

* * * * *

143. A new § 1042.104 is added to subpart B to read as follows:

§ 1042.104 Exhaust emission standards for Category 3 engines.

(a) *Duty-cycle standards.* Exhaust emissions from your engines may not exceed emission standards, as follows:

(1) Measure emissions using the test procedures described in subpart F of this part. Note that while no PM standards apply for Category 3 engines, PM emissions must be measured and reported.

(2) NO_X standards apply based on the engine's model year and maximum in-use engine speed as shown in the following table:

TABLE 1 TO § 1042.104 NO_X EMISSION STANDARDS FOR CATEGORY 3 ENGINES (G/KW-HR)

Emission standards	Model year	Maximum in-use engine speed		
		Less than 130 RPM	130–2000 RPM [a]	Over 2000 RPM
Tier 1	2004–2010 [b]	17.0	$45.0 \cdot n^{(-0.20)}$	9.8
Tier 2	2011–2015	14.4	$44.0 \cdot n^{(-0.23)}$	7.7
Tier 3	2016 and later	3.4	$9.0 \cdot n^{(-0.20)}$	2.0

[a] Applicable standards are calculated from n (maximum in-use engine speed, in RPM, as specified in § 1042.140), rounded to one decimal place.

[b] Tier 1 NO_x standards apply as specified in 40 CFR part 94 for engines originally manufactured in model years 2004 through 2010. They are shown here only for reference.

(3) The HC standard for Tier 2 and later engines is 2.0 g/kW-hr. This standard applies as follows:

(i) Alcohol-fueled engines must comply with HC standards based on THCE emissions.

(ii) Natural gas-fueled engines must comply with HC standards based on NMHC emissions.

(iii) Diesel-fueled and all other engines not described in paragraph (a)(3)(i) or (ii) of this section must comply with HC standards based on THC emissions.

(4) The CO standard for Tier 2 and later engines is 5.0 g/kW-hr.

(b) *Averaging, banking, and trading.* Category 3 engines are not eligible for participation in the averaging, banking, and trading (ABT) program as described in subpart H of this part.

(c) *Mode caps.* Measured NO_X emissions may not exceed the cap specified in this paragraph (c) for any applicable duty-cycle test modes with power greater than 10 percent maximum engine power. Calculate the mode cap by multiplying the applicable NO_X standard by 1.5 and rounding to the nearest 0.1 g/kW-hr. Note that mode caps do not apply for pollutants other than NO_X and do not apply for any modes of operation outside of the applicable duty-cycles in § 1042.505. Category 3 engines are not subject to not-to-exceed standards.

(d) *Useful life.* Your engines must meet the exhaust emission standards of this section over their full useful life, expressed as a period in years or hours of engine operation, whichever comes first.

(1) The minimum useful life value is 3 years or 10,000 hours of operation.

(2) Specify a longer useful life in hours for an engine family under either of two conditions:

(i) If you design, advertise, or market your engine to operate longer than the minimum useful life (your recommended hours until rebuild indicates a longer design life).

(ii) If your basic mechanical warranty is longer than the minimum useful life.

(e) *Applicability for testing.* The duty-cycle emission standards in this section apply to all testing performed according to the procedures in § 1042.505, including certification, production-line, and in-use testing. See paragraph (g) of this section for standards that apply for certain other test procedures, such as some production-line testing.

(f) *Domestic engines.* Engines installed on vessels excluded from 40 CFR part 1043 because they operate only domestically may not be certified for use with residual fuels.

(g) *Alternate installed-engine standards.* NO_X emissions may not exceed the standard specified in this paragraph (g) for test of engines installed on vessels when you are unable to operate the engine at the test points for the specified duty cycle, and you approximate these points consistent with the specifications of section 6 of Appendix 8 to the NO_X Technical Code. Calculate the alternate installed-engine standard by multiplying the applicable NO_X standard by 1.1 and rounding to the nearest 0.1 g/kW-hr.

144. Section 1042.110 is amended by revising paragraph (a)(2) and adding paragraphs (a)(3) and (d) to read as follows:

§ 1042.110 Recording reductant use and other diagnostic functions.

(a) * * *

(2) The onboard computer log must record in nonvolatile computer memory all incidents of engine operation with inadequate reductant injection or reductant quality. Use good engineering judgment to ensure that the operator can readily access the information to submit the report required by § 1042.660. For example, you may meet this requirement by documenting the incident in a text file that can be downloaded or printed by the operator.

(3) SCR systems on Category 3 engines must also conform to the provisions of paragraph (d) of this section if they are equipped with on-off controls as allowed under § 1042.115(g).

* * * * *

(d) For Category 3 engines equipped with on-off controls (as allowed by § 1042.115(g)), you must also equip your engine to continuously monitor NO_X concentrations in the exhaust. Use good engineering judgment to alert operators if measured NO_X concentrations indicate malfunctioning emission controls. Record any such operation in nonvolatile computer memory. You are not required to monitor NO_X concentrations during operation for which the emission controls may be disabled under § 1042.115(g).

For the purpose of this paragraph (d), ''malfunctioning emission controls'' means any condition in which the measured NO_X concentration exceeds the value expected when the engine is in compliance with the at-sea standard of § 1042.104(g). Determine these expected values during production-line testing of the engine, using linear interpolation between test points. You may also use additional intermediate test points measured during the production-line test. Note that the provisions of paragraph (a) of this section also apply for SCR systems covered by this paragraph (d). For engines subject to both the provisions of paragraph (a) of this section and this paragraph (d), use good engineering judgment to integrate diagnostic features to comply with both paragraphs.

145. Section 1042.115 is amended by revising paragraphs (d)(2) introductory text, (f) introductory text, and adding paragraphs (f)(4) and (g) to read as follows:

§ 1042.115 Other requirements.

* * * * *

(d) * * *

(2) Category 2 and Category 3 engines that have adjustable parameters must meet all the requirements of this part for any adjustment in the specified adjustable range. You must specify in your application for certification the adjustable range of each adjustable parameter on a new engine to–

* * * * *

(f) *Defeat devices.* You may not equip your engines with a defeat device. A defeat device is an auxiliary emission control device that reduces the effectiveness of emission controls under conditions that the engine may reasonably be expected to encounter during normal operation and use. (Note that this means emissions control for operation outside of and between the official test modes is generally expected to be similar to the emissions control demonstrated at the test modes for engines.) This does not apply to auxiliary emission control devices you identify in your certification application if any of the following is true:

* * * * *

(4) The engine is a Category 3 engine and the AECD conforms to the requirements of paragraph (g) of this section.

(g) *On-off controls for Category 3 engines.* Manufacturers may equip Category 3 engines with features that disable Tier 3 emission controls subject to the following provisions:

(1) Features that disable Tier 3 emission controls are considered to be AECDs whether or not they meet the definition of an AECD. For example, manually operated on-off features are AECDs under this paragraph (g). The features must be identified in your application for certification as AECDs.

(2) If IMO has not established an ECA for U.S. waters, you must demonstrate that the AECD will not disable emission controls while operating in areas where emissions could reasonably be expected to adversely affect U.S. air quality. If ECAs have been established for U.S. waters, then you must demonstrate that the AECD will not disable emission control while operating in waters within the outer boundaries of the ECAs. (Note: See the regulations in 40 CFR part 1043 for requirements related to operation in other ECAs.) Compliance with this paragraph will generally require that the AECD operation be based on Global Positioning System (GPS) inputs. We may consider any relevant information to determine whether your AECD conforms to this paragraph (g).

(3) The onboard computer log must record in nonvolatile computer memory all incidents of engine operation with the Tier 3 emission controls disabled.

(4) The engine must comply fully with the Tier 2 standards when the Tier 3 emission controls are disabled.

146. Section 1042.120 is amended by adding paragraph (b)(2) and revising paragraph (c) to read as follows:

§ 1042.120 Emission-related warranty requirements.

(b) * * *

(2) For Category 3 engines, your emission-related warranty must be valid throughout the engine's full useful life as specified in § 1042.104(d).

* * * * *

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase an engine's emissions of any regulated pollutant, including components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty for freshly manufactured marine engines covers these components even if another company produces the component. Your emission-related warranty does not cover components whose failure would not increase an engine's emissions of any regulated pollutant. For remanufactured engines, your emission-related warranty is required to cover only those parts that you supply or those parts for which you specify allowable part manufacturers. It does not need to cover used parts that are not replaced during the remanufacture.

* * * * *

147. Section 1042.125 is amended by revising the heading, introductory text, and paragraphs (a)(1)(iii) and (d) to read as follows:

§ 1042.125 Maintenance instructions.

Give the ultimate purchaser of each new engine written instructions for properly maintaining and using the engine, including the emission control system, as described in this section. The maintenance instructions also apply to service accumulation on your emission-data engines as described in § 1042.245 and in 40 CFR part 1065. The restrictions specified in paragraphs (a) through (e) of this section related to allowable maintenance apply only to Category 1 and Category 2 engines. Manufacturers may specify any maintenance for Category 3 engines.

(a) * * *

(1) * * *

(iii) You provide the maintenance free of charge and clearly say so in your maintenance instructions.

* * * * *

(d) *Noncritical emission-related maintenance.* Subject to the provisions of this paragraph (d), you may schedule any amount of emission-related inspection or maintenance that is not covered by paragraph (a) of this section (that is, maintenance that is neither explicitly identified as critical emission-related maintenance, nor that we approve as critical emission-related maintenance). Noncritical emission-related maintenance generally includes maintenance on the components we specify in 40 CFR part 1068, Appendix I that is not covered in paragraph (a) of this section. You must state in the owners manual that these steps are not necessary to keep the emission-related warranty valid. If operators fail to do this maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim. Do not take these inspection or maintenance steps during service accumulation on your emission-data engines.

* * * * *

148. Section 1042.135 is amended by revising paragraphs (c)(5), (c)(8), (c)(9), and (c)(11) and adding paragraph (c)(12) to read as follows:

§ 1042.135 Labeling.

* * * * *

(c) * * *

(5) State the date of manufacture [DAY (optional), MONTH, and YEAR]; however, you may omit this from the label if you stamp, engrave, or otherwise permanently identify it elsewhere on the engine, in which case you must also describe in your application for certification where you will identify the date on the engine.

* * * * *

(8) State the useful life for your engine family if the applicable useful life is based on the provisions of § 1042.101(e)(2) or (3), or § 1042.104(d)(2).

(9) Identify the emission control system. Use terms and abbreviations as described in 40 CFR 1068.45. You may omit this information from the label if there is not enough room for it and you put it in the owners manual instead.

* * * * *

(11) For a Category 1 or Category 2 engine that can be modified to operate on residual fuel, but has not been certified to meet the standards on such a fuel, include the statement: ''THIS ENGINE IS CERTIFIED FOR OPERATION ONLY WITH DIESEL FUEL. MODIFYING THE ENGINE TO OPERATE ON RESIDUAL OR INTERMEDIATE FUEL MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES.''

(12) For an engine equipped with on-off emissions controls as allowed by § 1042.115, include the statement: ''THIS ENGINE IS CERTIFIED WITH ON–OFF EMISSION CONTROLS. OPERATION OF THE ENGINE CONTRARY TO 40 CFR 1042.115(g) IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES.''

* * * * *

149. Section 1042.140 is amended by revising the heading and introductory text and adding paragraph (g) to read as follows:

§ 1042.140 Maximum engine power, displacement, power density, and maximum in-use engine speed.

This section describes how to determine the maximum engine power, displacement, and power density of an engine for the purposes of this part. Note that maximum engine power may differ from the definition of ''maximum test power'' in § 1042.901. This section also specifies how to determine maximum in-use engine speed for Category 3 engines.

* * * * *

(g) Calculate a maximum test speed for the nominal power curve as specified in 40 CFR 1065.610. This is the maximum in-use engine speed used for calculating the NO_X standard in § 1042.104 for Category 3 engines. Alternatively, you may use a lower value if engine speed will be limited in actual use to that lower value.

150. Section 1042.145 is amended by revising paragraph (a) and the heading of paragraph (c) introductory text and adding paragraph (h) to read as follows:

§ 1042.145 Interim provisions.

(a) *General.* The provisions in this section apply instead of other provisions in this part. This section describes when these interim provisions expire. Only the provisions of paragraph (h) of this section apply for Category 3 engines.

* * * * *

(c) *Part 1065 test procedures for Category 1 and Category 2 engines.*

* * *

* * * * *

(h) The following interim provisions apply for Category 3 engines:

(1) *Applicability of Tier 3 standards to Category 3 engines operating in Alaska, Hawaii, and U.S. Pacific territories.* (i) Category 3 engines are not required to comply with the Tier 3 NO_X standard when operating in areas of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. Category 3 engines are also not required to comply with the Tier 3 NO_X standards when operating in the waters of the smallest Hawaiian islands or in the waters of Alaska west of Kodiak. For the purpose of this paragraph (h)(1), ''the smallest Hawaiian islands'' includes all Hawaiian islands other than Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu. Engines must comply fully with the appropriate Tier 2 NO_X standard and all other applicable requirements when operating in the areas identified in this paragraph (h)(1).

(ii) The provisions of paragraph (h)(1)(i) of this section do not apply for areas included in an ECA. The Tier 3 standards apply in full for any area included in an ECA.

(2) *Part 1065 test procedures.* You must generally use the test procedures specified in subpart F of this part for Category 3 engines, including the applicable test procedures in 40 CFR part 1065. You may use a combination of the test procedures specified in this part and the test procedures specified in 40 CFR part 94 before January 1, 2016 without request. After this date, you must use test procedures only as specified in subpart F of this part.

Subpart C—[Amended]

151. Section 1042.201 is amended by revising paragraph (h) to read as follows:

§ 1042.201 General requirements for obtaining a certificate of conformity.

* * * * *

(h) For engines that become new after being placed into service, such as engines installed on imported vessels, we may specify alternate certification provisions consistent with the intent of this part. See the definition of ''new marine engine'' in § 1042.901.

152. Section 1042.205 is amended by adding paragraph (b)(12) and revising paragraphs (i), (o), and (s)(5) to read as follows:

§ 1042.205 Application requirements.

* * * * *

(b) * * *

(12) Include any other information required by this part with respect to AECDs. For example, see § 1042.115 for requirements related to on-off technologies.

* * * * *

(i) Include the maintenance and warranty instructions you will give to the ultimate purchaser of each new engine (see §§ 1042.120 and 1042.125). Describe your plan for meeting warranty obligations under § 1042.120.

* * * * *

(o) Present emission data for HC, NO_X, PM, and CO on an emission-data engine to show your engines meet emission standards as specified in §§ 1042.101 or 1042.104. Note that you must submit PM data for all engines, whether or not a PM standard applies. Show emission figures before and after applying adjustment factors for regeneration and deterioration factors for each pollutant and for each engine. If we specify more than one grade of any fuel type (for example, high-sulfur and low-sulfur diesel fuel), you need to submit test data only for one grade, unless the regulations of this part specify otherwise for your engine. Include emission results for each mode for Category 3 engines or for other engines if you do discrete-mode testing under § 1042.505. Note that §§ 1042.235 and 1042.245 allows you to submit an application in certain cases without new emission data.

* * * * *

(s) * * *

(5) For Category 2 and Category 3 engines, propose a range of adjustment for each adjustable parameter, as described in § 1042.115(d). Include information showing why the limits, stops, or other means of inhibiting adjustment are effective in preventing adjustment of parameters on in-use engines to settings outside your proposed adjustable ranges.

* * * * *

153. Section 1042.220 is revised to read as follows:

§ 1042.220 Amending maintenance instructions.

You may amend your emission-related maintenance instructions after you submit your application for certification as long as the amended instructions remain consistent with the provisions of § 1042.125. You must send the Designated Compliance Officer a written request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions. If operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those engines from in-use testing or deny a warranty claim.

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified maintenance, you may distribute the new maintenance instructions anytime after you send your request. For example, this paragraph (b) would cover adding instructions to increase the frequency of filter changes for engines in severe-duty applications.

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

154. Section 1042.225 is amended by revising paragraphs (b)(2), (e), and (f) to read as follows:

§ 1042.225 Amending applications for certification.

* * * * *

(b) * * *

(2) Include engineering evaluations or data showing that the amended engine family complies with all applicable requirements. You may do this by showing that the original emission-data engine is still appropriate for showing that the amended family complies with all applicable requirements.

* * * * *

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days after we request it, you must stop producing the new or modified engines.

(f) You may ask us to approve a change to your FEL in certain cases after the start of production. The changed FEL may not apply to engines you have already introduced into U.S. commerce, except as described in this paragraph (f). If we approve a changed FEL after the start of production, you must include the new FEL on the emission control information label for all engines produced after the change. You may ask us to approve a change to your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family at any time. In your request, you must show that you will still be able to meet the emission standards as specified in subparts B and H of this part. If you amend your application by submitting new test data to include a newly added or modified engine, as described in paragraph (b)(3) of this section, use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part. In all other circumstances, you must use the higher FEL for the entire family to calculate emission credits under subpart H of this part.

(2) You may ask to lower the FEL for your engine family only if you have test data from production engines showing that emissions are below the proposed lower FEL. The lower FEL applies only to engines you produce after we approve the new FEL. Use the appropriate FELs with corresponding production volumes to calculate emission credits for the model year, as described in subpart H of this part.

155. Section 1042.230 is amended by revising paragraphs (a), (b), (f) introductory text, and (g) and adding paragraph (d) to read as follows:

§ 1042.230 Engine families.

(a) For purposes of certification, divide your product line into families of engines that are expected to have similar emission characteristics throughout the useful life as described in this section. You may not group engines in different engine categories in the same family. Your engine family is limited to a single model year.

(b) For Category 1 engines, group engines in the same engine family if they are the same in all the following aspects:

(1) The combustion cycle and the fuel with which the engine is intended or designed to be operated.

(2) The cooling system (for example, raw-water vs. separate-circuit cooling).

(3) Method of air aspiration.

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap).

(5) Combustion chamber design.

(6) Nominal bore and stroke.

(7) Cylinder arrangement (for engines with aftertreatment devices only).

(8) Method of control for engine operation other than governing (*i.e.,* mechanical or electronic).

(9) Application (commercial or recreational).

(10) Numerical level of the emission standards that apply to the engine, except as allowed under paragraphs (f) and (g) of this section.

* * * * *

(d) For Category 3 engines, group engines into engine families based on the criteria specified in Section 4.3 of the Annex VI Technical Code (incorporated by reference in § 1042.910), except as allowed in paragraphs (e) and (f) of this section.

* * * * *

(f) You may group engines that are not identical with respect to the things listed in paragraph (b), (c), or (d) of this section in the same engine family, as follows:

* * * * *

(g) If you combine engines that are subject to different emission standards into a single engine family under paragraph (f) of this section, you must certify the engine family to the more stringent set of standards for that model year. For Category 3 engine families that include a range of maximum in-use engine speeds, use the highest value of maximum in-use engine speed to establish the applicable NO_X emission standard.

156. Section 1042.235 is amended by revising the introductory text and paragraphs (a), (c), and (d) introductory text to read as follows:

§ 1042.235 Emission testing required for a certificate of conformity.

This section describes the emission testing you must perform to show compliance with the emission standards in § 1042.101(a) or § 1042.104. See § 1042.205(p) regarding emission testing related to the NTE standards. See §§ 1042.240 and 1042.245 and 40 CFR part 1065, subpart E, regarding service accumulation before emission testing. See § 1042.655 for special testing provisions available for Category 3 engines subject to Tier 3 standards.

(a) Select an emission-data engine from each engine family for testing. For engines at or above 560 kW, you may use a development engine that is equivalent in design to the engine being certified. For Category 3 engines, you may use a single-cylinder version of the engine. Using good engineering judgment, select the engine configuration most likely to exceed an applicable emission standard over the useful life, considering all exhaust emission constituents and the range of installation options available to vessel manufacturers.

* * * * *

(c) We may measure emissions from any of your emission-data engines or other engines from the engine family, as follows:

(1) We may decide to do the testing at your plant or any other facility. If we do this, you must deliver the engine to a test facility we designate. The engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not

normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(2) If we measure emissions from one of your engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the specified adjustable ranges (see § 1042.115(d)).

(4) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter. For example, this would apply where we determine that an engine parameter is not an adjustable parameter (as defined in § 1042.901) but that it is subject to production variability.

(d) You may ask to use carryover emission data from a previous model year instead of doing new tests, but only if all the following are true:

* * * * *

157. Section 1042.240 is amended by revising paragraphs (a), (b), and (c) introductory text and adding paragraphs (e) and (f) to read as follows:

§ 1042.240 Demonstrating compliance with exhaust emission standards.

(a) For purposes of certification, your engine family is considered in compliance with the emission standards in § 1042.101(a) or § 1042.104 if all emission-data engines representing that family have test results showing deteriorated emission levels at or below these standards. This includes all test points over the course of the durability demonstration. See paragraph (f) of this section for provisions related to demonstrating compliance with non-duty-cycle standards, such as NTE standards.. Note that your FELs are considered to be the applicable emission standards with which you must comply if you participate in the ABT program in subpart H of this part.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. This includes all test points over the course of the durability demonstration.

(c) To compare emission levels from the emission-data engine with the applicable emission standards, apply deterioration factors to the measured emission levels for each pollutant. Section 1042.245 specifies how to test your Category 1 or Category 2 engine to develop deterioration factors that represent the deterioration expected in emissions over your engines' full useful life. See paragraph (e) of this section for determining deterioration factors for Category 3 engines. Your deterioration factors must take into account any available data from in-use testing with similar engines. Small-volume engine manufacturers and post-manufacture marinizers may use assigned deterioration factors that we establish. Apply deterioration factors as follows:

* * * * *

(e) For Category 3 engines, determine a deterioration factor based on an engineering analysis. The engineering analysis must describe how the measured emission levels from the emission-data engine show that engines comply with applicable emission standards throughout the useful life. Include this analysis in your application for certification and add a statement that all data, analyses, evaluations, and other information you used are available for our review upon request.

(f) For NTE standards and mode caps, use good engineering judgment to demonstrate compliance based on testing of low-hour engines. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards. We will deny your application for certification if we determine that your low-hour test data show that your engines would exceed one or more NTE standard or mode cap during their useful lives.

158. Section 1042.245 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1042.245 Deterioration factors.

This section describes how to determine deterioration factors for Category 1 and Category 2 engines, either with an engineering analysis, with pre-existing test data, or with new emission measurements. Apply these deterioration factors to determine whether your engines will meet the duty-cycle emission standards throughout the useful life as described in § 1042.240. This section does not apply for Category 3 engines.

(a) You may ask us to approve deterioration factors for an engine family with established technology based on engineering analysis instead of testing. Engines certified to a NO_x+HC standard or FEL greater than the Tier 3 NO_x+HC standard are considered to rely on established technology for control of gaseous emissions, except that this does not include any engines that use exhaust-gas recirculation or aftertreatment. In most cases, technologies used to meet the Tier 1 and Tier 2 emission standards would qualify as established technology. We must approve your plan to establish a deterioration factor under this paragraph (a) before you submit your application for certification.

* * * * *

159. Section 1042.250 is amended by revising paragraphs (a) and (c) and removing paragraph (e) to read as follows:

§ 1042.250 Recordkeeping and reporting.

(a) Send the Designated Compliance Officer information related to your U.S.-directed production volumes as described in § 1042.345. In addition, within 45 days after the end of the model year, you must send us a report describing information about engines you produced during the model year as follows:

(1) State the total production volume for each engine family that is not subject to reporting under § 1042.345.

(2) State the total production volume for any engine family for which you produce engines after completing the reports required in § 1042.345.

* * * * *

(c) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in this section for eight years after we issue your certificate.

* * * * *

160. Section 1042.255 is amended by revising paragraph (b) to read as follows:

§ 1042.255 EPA decisions.

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart D—[Amended]

161. Section 1042.301 is amended by revising paragraphs (a)(2), (c), (e), and (f) to read as follows:

§ 1042.301 General provisions.

(a) * * *

(2) We may exempt Category 1 engine families with a projected U.S.-directed production volume below 100 engines from routine testing under this subpart. Request this exemption in your application for certification and include your basis for projecting a production volume below 100 units. We will approve your request if we agree that you have made good-faith estimates of your production volumes. Your exemption is approved when we grant your certificate. You must promptly notify us if your actual production exceeds 100 units during the model year. If you exceed the production limit or if there is evidence of a nonconformity, we may require you to test production-line engines under this subpart, or under 40 CFR part 1068, subpart E, even if we have approved an exemption under this paragraph (a)(2).

* * * * *

(c) Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engine families, without regard to whether they have passed these production-line testing requirements. The requirements of this subpart do not affect our ability to do selective enforcement audits, as described in 40 CFR part 1068. Individual engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and 40 CFR part 1068.

* * * * *

(e) If you certify a Category 1 or Category 2 engine family with carryover emission data, as described in § 1042.235(d), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part. For Category 3 engines, you are not required to deliver engines to us, but we may inspect and test your engines at any facility at which they are assembled or installed in vessels.

162. A new § 1042.302 is added to subpart D to read as follows:

§ 1042.302 Applicability of this subpart for Category 3 engines.

If you produce Category 3 engines that are subject to the requirements of this part, you must test them as described in this subpart, except as specified in this section.

(a) You must test each engine at the sea trial of the vessel in which it is installed or within the first 300 hours of operation, whichever occurs first. Since you must test each engine, the provisions of §§ 1042.310 and 1042.315(b) do not apply for Category 3 engines. If we determine that an engine failure under this subpart is caused by defective components or design deficiencies, we may revoke or suspend your certificate for the engine family as described in § 1042.340. If we determine that an engine failure under this subpart is caused only by incorrect assembly, we may suspend your certificate for the engine family as described in § 1042.325.

(b) You are only required to measure NO_X emissions. You do not need to measure HC, CO or PM emissions under this subpart.

(c) If you are unable to operate the engine at the test points for the specified duty cycle, you may approximate these points consistent with the specifications of section 6 of Appendix 8 to the NO_X Technical Code and show compliance with the alternate installed-engine standard of § 1042.104(g). You must obtain EPA approval of your test procedure prior to testing the engine. Include in your request a description of your basis for concluding that the engine cannot be tested at the actual test points of the specified duty-cycle.

(d) You may measure NO_X emissions at additional test points for the purposes of the continuous NO_X monitoring requirements of § 1042.110(d). If you do, you must report these values along with your other test results. Describe in your application for certification how you plan to use these values for continuous NO_X monitoring.

(e) You may ask to measure emissions according to the Direct Measurement and Monitoring method specified in section 6.4 of the NO_X Technical Code.

163. Section 1042.305 is amended by revising paragraphs (a), (d) introductory text, (d)(2), (e)(2), and (g) to read as follows:

§ 1042.305 Preparing and testing production-line engines.

* * * * *

(a) *Test procedures.* Test your production-line engines using the applicable testing procedures in subpart F of this part to show you meet the duty-cycle emission standards in subpart B of this part. For Category 1 and Category 2 engines, the not-to-exceed standards apply for this testing of Category 1 and Category 2 engines, but you need not do additional testing to show that production-line engines meet the not-to-exceed standards. The mode cap standards apply for the testing of Category 3 engines.

* * * * *

(d) *Setting adjustable parameters.* Before any test, we may require you to adjust any adjustable parameter on a Category 1 engine to any setting within its physically adjustable range. We may adjust or require you to adjust any adjustable parameter on a Category 2 or Category 3 engine to any setting within its specified adjustable range.

* * * * *

(2) We may specify adjustments within the physically adjustable range or the specified adjustable range by considering their effect on emission levels. We may also consider how likely it is that someone will make such an adjustment with in-use engines.

(e) * * *

(2) For Category 2 or Category 3 engines, you may ask us to approve a Green Engine Factor for each regulated pollutant for each engine family. Use the Green Engine Factor to adjust measured emission levels to establish a stabilized low-hour emission level.

* * * * *

(g) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid under subpart F of this part. Explain in your written report reasons for invalidating any test and the emission results from all tests. If we determine that you improperly invalidated a test, we may require you to ask for our approval for future testing before substituting results of the new tests for invalid ones.

164. Section 1042.310 is amended by revising the section heading to read as follows:

§ 1042.310 Engine selection for Category 1 and Category 2 engines.

* * * * *

165. Section 1042.315 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1042.315 Determining compliance.

* * * * *

(a) Calculate your test results as follows:

(1) *Initial and final test results.* Calculate and round the test results for each engine. If you do several tests on an engine, calculate the initial results for each test, then add all the test results together and divide by the number of tests. Round this final calculated value for the final test results on that engine. Include the Green Engine Factor to determine low-hour emission results, if applicable.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1042.240(c)).

(3) *Round deteriorated test results.* Round the results to the number of decimal places in the emission standard expressed to one more decimal place.

(b) For Category 1 and Category 2 engines, if a production-line engine fails to meet emission standards and you test two additional engines as described in § 1042.310, calculate the average emission level for each pollutant for the three engines. If the calculated average emission level for any pollutant exceeds the applicable emission standard, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens. You may request to amend the application for certification to raise the FEL of the engine family as described in § 1042.225(f).

166. Section 1042.320 is amended by revising paragraph (a)(2) to read as follows:

§ 1042.320 What happens if one of my production-line engines fails to meet emission standards?

(a) * * *

(2) Include the test results and describe the remedy for each engine in the written report required under § 1042.345.

* * * * *

167. Section 1042.325 is amended by revising paragraph (e) to read as follows:

§ 1042.325 What happens if an engine family fails the production-line testing requirements?

* * * * *

(e) You may request to amend the application for certification to raise the FEL of the entire engine family before or after we suspend your certificate as described in § 1042.225(f). We will approve your request if the failure is not caused by a defect and it is clear that you used good engineering judgment in establishing the original FEL.

168. Section 1042.345 is amended by revising paragraphs (a)(6) and (b) to read as follows:

§ 1042.345 Reporting.

(a) * * *

(6) Provide the test number; the date, time and duration of testing; test procedure; all initial test results; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

* * * * *.

(b) We may ask you to add information to your written report so we can determine whether your new engines conform with the requirements of this subpart. We may also ask you to send less information.

* * * * *

169. Section 1042.350 is amended by revising paragraphs (b), (e), and (f) to read as follows:

§ 1042.350 Recordkeeping.

* * * * *

(b) Keep paper or electronic records of your production-line testing for eight years after you complete all the testing required for an engine family in a model year.

* * * * *

(e) If we ask, you must give us a more detailed description of projected or actual production figures for an engine family. We may ask you to divide your production figures by maximum engine power, displacement, fuel type, or assembly plant (if you produce engines at more than one plant).

(f) Keep records of the engine identification number for each engine you produce under each certificate of conformity. You may identify these numbers as a range. Give us these records within 30 days if we ask for them.

* * * * *

Subpart F—[Amended]

170. Section 1042.501 is amended by revising paragraphs (a) and (c) and adding paragraph (g) to read as follows:

§ 1042.501 How do I run a valid emission test?

(a) Use the equipment and procedures for compression-ignition engines in 40 CFR part 1065 to determine whether engines meet the duty-cycle emission standards in § 1042.101 or 1042.104. Measure the emissions of all regulated pollutants as specified in 40 CFR part 1065. Use the applicable duty cycles specified in § 1042.505.

* * * * *

(c) Use the fuels and lubricants specified in 40 CFR part 1065, subpart H, for all the testing we require in this part, except as specified in this section and § 1042.515.

(1) For service accumulation, use the test fuel or any commercially available fuel that is representative of the fuel that in-use engines will use.

(2) For diesel-fueled engines, use the appropriate diesel fuel specified in 40 CFR part 1065, subpart H, for emission testing. Unless we specify otherwise, the appropriate diesel test fuel for Category 1 and Category 2 engines is the ultra low-sulfur diesel fuel. If we allow you to use a test fuel with higher sulfur levels, identify the test fuel in your application for certification. Unless we specify otherwise, the appropriate diesel test fuel for Category 3 engines is the high-sulfur diesel fuel. For Category 2 and Category 3 engines, you may ask to use commercially available diesel fuel similar but not necessarily identical to the applicable fuel specified in 40 CFR part 1065, subpart H; we will approve your request if you show us that it does not affect your ability to demonstrate compliance with the applicable emission standards.

(3) For Category 1 and Category 2 engines that are expected to use a type of fuel (or mixed fuel) other than diesel fuel (such as natural gas, methanol, or residual fuel), use a commercially available fuel of that type for emission testing. If a given engine is designed to operate on different fuels, we may (at our discretion) require testing on each fuel. Propose test fuel specifications that take into account the engine design and the properties of commercially available fuels. Describe these test fuel specifications in the application for certification.

* * * * *

(g) For Category 3 engines, you may submit test data for NO_X, HC, and CO emissions that were collected as specified in the Annex VI Technical Code instead of test data collected as specified in 40 CFR part 1065. We may require you to include a brief engineering analysis showing how these data demonstrate that your engines would meet the applicable emission standards if you had used the test procedures specified in 40 CFR part 1065.

171. Section 1042.505 is amended by revising paragraph (b) introductory text to read as follows:

§ 1042.505 Testing engines using discrete-mode or ramped-modal duty cycles.

* * * * *

(b) Measure emissions by testing the engine on a dynamometer with one of the following duty cycles (as specified) to determine whether it meets the

emission standards in § 1042.101 or 1042.104:

* * * * *

172. Section 1042.525 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 1042.525 How do I adjust emission levels to account for infrequently regenerating aftertreatment devices?

* * * * *

(b) Calculating average adjustment factors. Calculate the average adjustment factor (EFA) based on the following equation: EFA = (F)(EFH) + (1 − F)(EFL)

Where:

F = the frequency of the regeneration event during normal in-use operation, expressed in terms of the fraction of equivalent tests during which the regeneration occurs. You may determine F from in-use operating data or running replicate tests. For example, if you observe that the regeneration occurs 125 times during 1000 MW-hrs of operation, and your engine typically accumulates 1 MW-hr per test, F would be (125) ÷ (1000) ÷ (1) = 0.125. No further adjustments, including weighting factors, may be applied to F.

EFH = Measured emissions from a test segment in which the regeneration occurs.

EFL = Measured emissions from a test segment in which the regeneration does not occur.

* * * * *

(g) *Category 3 engines.* We may specify an alternate methodology to account for regeneration events from Category 3 engines. If we do not, the provisions of this section apply as specified.

Subpart G—[Amended]

173. Section 1042.601 is amended by revising paragraph (b) and adding paragraphs (g) and (h) to read as follows:

§ 1042.601 General compliance provisions for marine engines and vessels.

* * * * *

(b) Subpart I of this part describes how the prohibitions of 40 CFR 1068.101(a)(1) apply for certain remanufactured engines. The provisions of 40 CFR 1068.105 do not allow the installation of a new remanufactured engine in a vessel that is defined as a new vessel unless the remanufactured engine is subject to the same standards as the standards applicable to freshly manufactured engines of the required model year.

* * * * *

(g) The selective enforcement audit provisions of 40 CFR part 1068 do not apply for Category 3 engines.

(h) The defect reporting requirements of 40 CFR 1068.501 apply for Category 3 engines, except the threshold for filing a defect report is two.

174. Section 1042.605 is amended by revising paragraph (a) to read as follows:

§ 1042.605 Dressing engines already certified to other standards for nonroad or heavy-duty highway engines for marine use.

(a) *General provisions.* If you are an engine manufacturer (including someone who marinizes a land-based engine), this section allows you to introduce new marine engines into U.S. commerce if they are already certified to the requirements that apply to compression-ignition engines under 40 CFR parts 85 and 86 or 40 CFR part 89, 92, 1033, or 1039 for the appropriate model year. If you comply with all the provisions of this section, we consider the certificate issued under 40 CFR part 86, 89, 92, 1033, or 1039 for each engine to also be a valid certificate of conformity under this part 1042 for its model year, without a separate application for certification under the requirements of this part 1042. This section does not apply for Category 3 engines.

* * * * *

175. Section 1042.610 is amended by revising the introductory text to read as follows:

§ 1042.610 Certifying auxiliary marine engines to land-based standards.

This section applies to auxiliary marine engines that are identical to certified land-based engines. See § 1042.605 for provisions that apply to propulsion marine engines or auxiliary marine engines that are modified for marine applications. This section does not apply for Category 3 engines.

* * * * *

176. Section 1042.615 is amended by revising the introductory text to read as follows:

§ 1042.615 Replacement engine exemption.

For Category 1 and Category 2 replacement engines, apply the provisions of 40 CFR 1068.240 as described in this section. New Category 3 engines are not eligible for the replacement-engine exemption.

* * * * *

177. Section 1042.620 is revised to read as follows:

§ 1042.620 Engines used solely for competition.

The provisions of this section apply for new engines and vessels built on or after January 1, 2009.

(a) We may grant you an exemption from the standards and requirements of this part for a new engine on the grounds that it is to be used solely for competition. The requirements of this part, other than those in this section, do not apply to engines that we exempt for use solely for competition.

(b) We will exempt engines that we determine will be used solely for competition. The basis of our determination is described in paragraphs (c) and (d) of this section. Exemptions granted under this section are good for only one model year and you must request renewal for each subsequent model year. We will not approve your renewal request if we determine the engine will not be used solely for competition.

(c) Engines meeting all the following criteria are considered to be used solely for competition:

(1) Neither the engine nor any vessels containing the engine may be displayed for sale in any public dealership or otherwise offered for sale to the general public. Note that this does not preclude display of these engines as long as they are not available for sale to the general public.

(2) Sale of the vessel in which the engine is installed must be limited to professional racing teams, professional racers, or other qualified racers. For replacement engines, the sale of the engine itself must be limited to professional racing teams, professional racers, other qualified racers, or to the original vessel manufacturer.

(3) The engine and the vessel in which it is installed must have performance characteristics that are substantially superior to noncompetitive models.

(4) The engines are intended for use only as specified in paragraph (e) of this section.

(d) You may ask us to approve an exemption for engines not meeting the criteria listed in paragraph (c) of this section as long as you have clear and convincing evidence that the engines will be used solely for competition.

(e) Engines are considered to be used solely for competition only if their use is limited to competition events sanctioned by the U.S. Coast Guard or another public organization with authorizing permits for participating competitors. Operation of such engines may include only racing events, trials to qualify for racing events, and practice associated with racing events. Authorized attempts to set speed records are also considered racing events. Engines will not be considered to be used solely for competition if they are ever used for any recreational or other noncompetitive purpose. Use of exempt engines in any recreational events, such as poker runs and

lobsterboat races, is a violation of 40 CFR 1068.101(b)(4).

(f) You must permanently label engines exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label an engine will void the exemption for that engine.

(g) If we request it, you must provide us any information we need to determine whether the engines are used solely for competition. This would include documentation regarding the number of engines and the ultimate purchaser of each engine as well as any documentation showing a vessel manufacturer's request for an exempted engine. Keep these records for five years.

178. Section 1042.625 is amended by adding introductory text to read as follows:

§ 1042.625 Special provisions for engines used in emergency applications.

This section describes an exemption that is available for certain Category 1 and Category 2 engines. This exemption is not available for Category 3 engines.

* * * * *

179. Section 1042.630 is amended by revising the introductory text to read as follows:

§ 1042.630 Personal-use exemption.

This section applies to individuals who manufacture vessels for personal use with used engines. If you and your vessel meet all the conditions of this section, the vessel and its engine are considered to be exempt from the standards and requirements of this part that apply to new engines and new vessels. The prohibitions in § 1068.101(a)(1) do not apply to engines exempted under this section. For example, you may install an engine that was not certified as a marine engine.

* * * * *

180. Section 1042.635 is amended by revising paragraph (a) to read as follows:

§ 1042.635 National security exemption.

* * * * *

(a) An engine is exempt without a request if it will be used or owned by an agency of the Federal government responsible for national defense, where the vessel in which it is installed has armor, permanently attached weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements. This applies to both remanufactured and freshly manufactured marine engines. Gas turbine engines are also exempt without a request if they will be owned by an agency of the Federal government responsible for national defense.

* * * * *

181. Section 1042.650 is amended by revising the introductory text to read as follows:

§ 1042.650 Migratory vessels.

The provisions of this section address concerns for vessel owners related to extended use of vessels with Tier 4 engines outside the United States where ultra low-sulfur diesel fuel is not available. The provisions of this section apply for Category 1 and Category 2 engines, including auxiliary engines installed on vessels with Category 3 propulsion engines. These provisions do not apply for any Category 3 engines.

* * * * *

182. A new § 1042.655 is added to subpart G to read as follows:

§ 1042.655 Special certification provisions for catalyst-equipped Category 3 engines.

This section describes an optional approach for demonstrating for certification that catalyst-equipped engines comply with applicable emission standards.

(a) *Eligibility.* You may use the provisions of this section without our prior approval to demonstrate that catalyst-equipped Category 3 engines meet the Tier 3 standards. In unusual circumstances, we may also allow you to use this approach to demonstrate that catalyst-equipped Category 2 engines meet the Tier 4 standards. We will generally approve this for Category 2 engines only if the engines are too large to be practically tested in a laboratory with a fully assembled catalyst system. If we approve this approach for a Category 2 engine, interpret references to Tier 3 in this section to mean Tier 4, and interpret references to Tier 2 in this section to mean Tier 3.

(b) *Required testing.* The emission-data engine must be tested as specified in Subpart F to verify that the engine-out emissions comply with the Tier 2 standards. The catalyst material must be tested under conditions that accurately represent actual engine conditions for the test points. This catalyst testing may be performed on a benchscale.

(c) *Engineering analysis.* Include with your application a detailed engineering analysis describing how the test data collected for the engine and catalyst material demonstrate that all engines in the family will meet all applicable emission standards. We may require that you submit this analysis separately from your application, or that you obtain preliminary approval under § 1042.210.

(d) *Verification.* You must verify your design by testing a complete production engine with installed catalysts in the final assembled configuration. Unless we specify otherwise, do this by complying with production-line testing requirements of subpart D of this part.

(e) *Other requirements.* All other requirements of this part, including the non-testing requirements for certification, apply for these engines.

183. Section 1042.660 is revised to read as follows:

§ 1042.660 Requirements for vessel manufacturers, owners, and operators.

(a) For vessels equipped with emission controls requiring the use of specific fuels, lubricants, or other fluids, owners and operators must comply with the manufacturer/remanufacturer's specifications for such fluids when operating the vessels. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(b)(1). For marine vessels containing Category 3 engines that are excluded from the requirements of 40 CFR part 1043 because they operate only domestically, it is also a violation of 40 CFR 1068.101(b)(1) to operate the vessel using residual fuel. Note that 40 CFR part 80 also includes provisions that restrict the use of certain fuels by certain marine engines.

(b) For vessels equipped with SCR systems requiring the use of urea or other reductants, owners and operators must report to us within 30 days any operation of such vessels without the appropriate reductant. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(a)(2). Note that such operation is a violation of 40 CFR 1068.101(b)(1).

(c) The provisions of this paragraph (c) apply for marine vessels containing Category 3 engines.

(1) All maintenance, repair, adjustment, and alteration of Category 3 engines subject to the provisions of this part performed by any owner, operator or other maintenance provider must be performed using good engineering judgment, in such a manner that the engine continues (after the maintenance, repair, adjustment or alteration) to meet the emission standards it was certified as meeting prior to the need for service. This includes but is not limited to complying with the maintenance instructions described in § 1042.125. Adjustments are limited to the range specified by the engine manufacturer in the approved application for certification.

(2) It is a violation of 40 CFR 1068.101(b)(1) to operate the vessel with the engine adjusted outside of the

specified adjustable range. Each two hour period of such operation constitutes a separate offense. A violation lasting less than two hours constitutes a single offense.

(3) The owner and operator of the engine must maintain on board the vessel records of all maintenance, repair, and adjustment that could reasonably affect the emission performance of any engine subject to the provision of this part. Owners and operators must also maintain, on board the vessel, records regarding certification, parameter adjustment, and fuels used. For engines that are automatically adjusted electronically, all adjustments must be logged automatically. Owners and operators must make these records available to EPA upon request. These records must include the following:

(i) The Technical File, Record Book of Engine Parameters, and bunker delivery notes that are required by the Annex VI Technical Code (incorporated by reference in § 1042.910). This file must be transferred to subsequent purchasers in the event of a sale of the engine or vessel.

(ii) Specific descriptions of engine maintenance, repair, adjustment, and alteration (including rebuilding). The descriptions must include at least the date, time, and nature of the maintenance, repair, adjustment, or alteration and the position of the vessel when the maintenance, repair, adjustment, or alteration was made.

(iii) Emission-related maintenance instructions provided by the manufacturer. These instructions must be transferred to subsequent purchasers in the event of a sale of the engine or vessel.

(4) Owners and operators of engines equipped with on-off emission controls must comply with the requirements of this paragraph (c)(4) whenever a malfunction of the emission controls is indicated as specified in § 1042.110(d). You must determine the cause of the malfunction and remedy it consistent with paragraph (c)(1) of this section. See paragraph (b) of this section if the malfunction is due to either a lack of reductant or inadequate reductant quality. If the malfunction occurs during the useful life, report the malfunction to the certificate holder for investigation and compliance with defect reporting requirements of 40 CFR 1068.501 (unless the malfunction is due to operation without adequate urea or other malmaintenance).

(d) For each marine vessel containing a Category 3 engine, the owner must annually review the vessel's records and submit to EPA a signed statement certifying compliance during the preceding year with the requirements of this part that are applicable to owners and operators of such vessels. Alternately, if review of the vessel's records indicates that there has been one or more violations of the requirements of this part, the owner must submit to EPA a signed statement specifying the noncompliance, including the nature of the noncompliance, the time of the noncompliance, and any efforts made to remedy the noncompliance. The statement of compliance (or noncompliance) required by this paragraph must be signed by the executive with responsibility for marine activities of the owner. If the vessel is operated by a different business entity than the vessel owner, the reporting requirements of this paragraph (e) apply to both the owner and the operator. Compliance with these review and certification requirements by either the vessel owner or the vessel operator with respect to a compliance statement will be considered compliance with these requirements by both of these parties for that compliance statement. The executive(s) may authorize a captain or other primary operator to conduct this review and submit the certification, provided that the certification statement is accompanied by written authorization for that individual to submit such statements. The Administrator may waive the requirements of this paragraph when equivalent assurance of compliance is otherwise available.

(e) Manufacturers, owners and operators must allow emission tests and inspections required by this part to be conducted and must provide reasonable assistance to perform such tests or inspections.

184. A new § 1042.670 is added to subpart G to read as follows:

§ 1042.670 Special provisions for gas turbine engines.

The provisions of this section apply for gas turbine engines.

(a) *Special test procedures.* Manufacturers seeking certification of gas turbine engines must obtain preliminary approval of the test procedures to be used, consistent with § 1042.210 and 40 CFR 1065.10.

(b) *Remanufacturing.* The requirements of subpart I of this part do not apply for gas turbine engines.

(c) *Equivalent displacement.* Apply displacement-based provisions of this part by calculating an equivalent displacement from the maximum engine power. The equivalent per-cylinder displacement (in liters) equals the maximum engine power in kW multiplied by 0.00311, except that all gas turbines with maximum engine power above 9,300 kW are considered to have an equivalent per-cylinder displacement of 29.0 liters.

(d) *Emission-related components.* All components meeting the criteria of 40 CFR 1068.501(a)(1) are considered to be emission-related components with respect to maintenance, warranty, and defect reporting for gas turbine engines.

(e) *Engines used for national defense.* See § 1042.635 for provisions related to exempting gas turbine engines used for national defense.

Subpart H—[Amended]

185. Section 1042.701 is amended by adding introductory text to read as follows:

§ 1042.701 General provisions.

This subpart describes how you may use emission credits to demonstrate that Category 1 and Category 2 engines comply with emission standards under this part. The provisions of this subpart do not apply for Category 3 engines.

* * * * *

186. Section 1042.705 is amended by revising paragraph (a) before the equation to read as follows:

§ 1042.705 Generating and calculating emission credits.

* * * * *

(a) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram (kg) using consistent units throughout the following equation:

* * * * *

187. Section 1042.715 is revised to read as follows:

§ 1042.715 Banking emission credits.

(a) Banking is the retention of emission credits by the manufacturer generating the emission credits for use in future model years for averaging or trading.

(b) You may designate any emission credits you plan to bank in the reports you submit under § 1042.730. During the model year and before the due date for the final report, you may designate your reserved emission credits for averaging or trading.

(c) Reserved credits become actual emission credits when you submit your

final report. However, we may revoke these emission credits if we are unable to verify them after reviewing your reports or auditing your records.

188. Section 1042.720 is amended by revising paragraph (b) to read as follows:

§ 1042.720 Trading emission credits.

* * * * *

(b) You may trade actual emission credits as described in this subpart. You may also trade reserved emission credits, but we may revoke these emission credits based on our review of your records or reports or those of the company with which you traded emission credits. You may trade banked credits within an averaging set to any certifying manufacturer.

* * * * *

189. Section 1042.725 is amended by revising paragraph (b)(2) to read as follows:

§ 1042.725 Information required for the application for certification.

* * * * *

(b) * * *

(2) Detailed calculations of projected emission credits (positive or negative) based on projected production volumes. We may require you to include similar calculations from your other engine families to demonstrate that you will be able to avoid a negative credit balance for the model year. If you project negative emission credits for a family, state the source of positive emission credits you expect to use to offset the negative emission credits.

190. Section 1042.730 is amended by revising paragraphs (b)(3) and (b)(5) to read as follows:

§ 1042.730 ABT reports.

* * * * *

(b) * * *

(3) The FEL for each pollutant. If you change the FEL after the start of production, identify the date that you started using the new FEL and/or give the engine identification number for the first engine covered by the new FEL. In this case, identify each applicable FEL and calculate the positive or negative emission credits under each FEL.

* * * * *

(5) Maximum engine power for each engine configuration, and the average engine power weighted by U.S.-directed production volumes for the engine family.

* * * * *

191. Section 1042.735 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 1042.735 Recordkeeping.

* * * * *

(b) Keep the records required by this section for at least eight years after the due date for the end-of-year report. You may not use emission credits for any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

(d) Keep records of the engine identification number for each engine you produce that generates or uses emission credits under the ABT program. You may identify these numbers as a range. If you change the FEL after the start of production, identify the date you started using each FEL and the range of engine identification numbers associated with each FEL. You must also be able to identify the purchaser and destination for each engine you produce.

(e) We may require you to keep additional records or to send us relevant information not required by this section in accordance with the Clean Air Act.

Subpart I—[Amended]

192. Section 1042.801 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 1042.801 General provisions.

This subpart describes how the provisions of this part 1042 apply for certain remanufactured marine engines.

(a) The requirements of this subpart apply for remanufactured Tier 2 and earlier commercial Category 1 and Category 2 marine engines at or above 600 kW, excluding those engines originally manufactured before 1973. Note that the requirements of this subpart do not apply for engines below 600 kW, Category 3 engines, engines installed on recreational vessels, or Tier 3 and later engines.

* * * * *

193. Section 1042.836 is amended by revising the introductory text and paragraphs (a) introductory text, and (c) to read as follows:

§ 1042.836 Marine certification of locomotive remanufacturing systems.

If you certify a Tier 0, Tier 1, or Tier 2 remanufacturing system for locomotives under 40 CFR part 1033, you may also certify the system under this part 1042, according to the provisions of this section. Note that in certain cases before 2013, locomotives may be certified under 40 CFR part 1033 to the standards of 40 CFR part 92.

(a) Include the following with your application for certification under 40 CFR part 1033 (or as an amendment to your application):

* * * * *

(c) Systems certified to the standards of 40 CFR part 92 are subject to the following restrictions:

(1) Tier 0 locomotives systems may not be used for any Category 1 engines or Tier 1 or later Category 2 engines.

(2) Where systems certified to the standards of 40 CFR part 1033 are also available for an engine, you may not use a system certified to the standards of 40 CFR part 92.

194. Section 1042.850 is amended by revising paragraph (c) to read as follows:

§ 1042.850 Exemptions and hardship relief.

* * * * *

(c) If you believe that a remanufacturing system that we identified as being available cannot be installed without significant modification of your vessel, you may ask us to determine that a remanufacturing system is not considered available for your vessel because the cost would exceed the total marginal cost threshold in § 1042.815(a)(2).

* * * * *

Subpart J—[Amended]

195. Section 1042.901 is amended by revising the definitions for ''Annex VI Technical Code'', ''Carryover'', ''Category 1'', ''Category 2'', ''Category 3'', ''Compression-ignition'', ''Deterioration factor'', ''Hydrocarbon (HC)'', ''Model year'', ''New marine engine'', ''Residual fuel'', ''Small-volume boat builder'', ''Small-volume engine manufacturer'', ''Tier 2'', ''Tier 3'', ''Total hydrocarbon'', ''Total hydrocarbon equivalent'', and ''Useful life'' and adding new definitions for ''Alcohol-fueled engine'', ''Annex VI'', ''Date of manufacture'', ''Emission control area (ECA)'', ''Gas turbine engine'', and ''Maximum in-use engine speed'' in alphabetical order to read as follows:

§ 1042.901 Definitions.

* * * * *

Alcohol-fueled engine means an engine that is designed to run using an alcohol fuel. For purposes of this definition, alcohol fuels do not include fuels with a nominal alcohol content below 25 percent by volume.

* * * * *

Annex VI means MARPOL Annex VI, which is an annex to the International

Convention on the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto.

Annex VI Technical Code or NO_X Technical Code means the ''Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines, 2008'' adopted by the International Maritime Organization (incorporated by reference in § 1042.910).

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1042.235(d). This generally requires that the engines in the engine family do not differ in any aspect related to emissions.

Category 1 means relating to a marine engine with specific engine displacement below 7.0 liters per cylinder. See § 1042.670 to determine equivalent per-cylinder displacement for nonreciprocating marine engines (such as gas turbine engines).

Category 2 means relating to a marine engine with a specific engine displacement at or above 7.0 liters per cylinder but less than 30.0 liters per cylinder. See § 1042.670 to determine equivalent per-cylinder displacement for nonreciprocating marine engines (such as gas turbine engines).

Category 3 means relating to a reciprocating marine engine with a specific engine displacement at or above 30.0 liters per cylinder.

* * * * *

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine. Note that certain other marine engines (such as those powered by natural gas with maximum engine power at or above 250 kW) are deemed to be compression-ignition engines in § 1042.1.

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

Deterioration factor means the relationship between emissions at the end of useful life and emissions at the low-hour test point (see §§ 1042.240 and 1042.245), expressed in one of the following ways:

(1) For multiplicative deterioration factors, the ratio of emissions at the end of useful life to emissions at the low-hour test point.

(2) For additive deterioration factors, the difference between emissions at the end of useful life and emissions at the low-hour test point.

* * * * *

Emission control area (ECA) means an area designated by IMO as an Emission Control Area. Note that this designation is made by amendment to MARPOL Annex VI.

* * * * *

Gas turbine engine has the meaning given in 40 CFR 1068.30. In general, this means anything commercially known as a gas turbine engine. It does not include external combustion steam engines.

* * * * *

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type, as described in § 1042.101(d) and § 1042.104(a).

* * * * *

Maximum in-use engine speed has the meaning given in § 1042.140.

* * * * *

Model year means one of the following things:

(1) For freshly manufactured marine engines (see definition of ''new marine engine,'' paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For seasonal production periods not including January 1, model year means the calendar year in which the production occurs, unless you choose to certify the applicable engine family with the following model year. For example, if your production period is June 1, 2010 through November 30, 2010, your model year would be 2010 unless you choose to certify the engine family for model year 2011.

(2) For an engine that is converted to a marine engine after being certified and placed into service as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine, model year means the calendar year in which the engine was originally produced. For an engine that is converted to a marine engine after being placed into service as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine without having been certified, model year means the calendar year in which the engine becomes a new marine engine. (see definition of ''new marine engine,'' paragraph (2)).

(3) [Reserved]

(4) For engines that are not freshly manufactured but are installed in new vessels, model year means the calendar year in which the engine is installed in the new vessel (see definition of ''new marine engine,'' paragraph (4)).

(5) For imported engines:

(i) For imported engines described in paragraph (5)(i) of the definition of ''new marine engine,'' *model year* has the meaning given in paragraphs (1) through (4) of this definition.

(ii) For imported engines described in paragraph (5)(ii) of the definition of ''new marine engine,'' *model year* means the calendar year in which the engine is modified.

(iii) For imported engines described in paragraph (5)(iii) of the definition of ''new marine engine,'' *model year* means the calendar year in which the engine is assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068. (6) For freshly manufactured vessels, model year means the calendar year in which the keel is laid or the vessel is at a similar stage of construction. For vessels that become new under paragraph (2) of the definition of ''new vessel'' (as a result of modifications), model year means the calendar year in which the modifications physically begin.

(7) For remanufactured engines, model year means the calendar year in which the remanufacture takes place.

* * * * *

New marine engine means any of the following things:

(1) A freshly manufactured marine engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as ''brand new.'' In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine, a nonroad engine that is not a marine engine, or a stationary engine that is later used or intended to be used as a marine engine. In this case, the engine is no longer a motor vehicle, nonmarine, or stationary engine and becomes a ''new marine engine.'' The engine is no longer new when it is placed into marine service as a marine engine. This paragraph (2) applies for engines we exclude under § 1042.5, where that engine is later installed as a marine engine in a vessel that is covered by this part 1042. For example, this would apply to an engine that is no longer used in a foreign vessel.

(3) [Reserved]

(4) An engine not covered by paragraphs (1) through (3) of this

definition that is intended to be installed in a new vessel. This generally includes installation of used engines in new vessels. The engine is no longer new when the ultimate purchaser receives a title for the vessel or it is placed into service, whichever comes first.

(5) A remanufactured marine engine. An engine becomes new when it is remanufactured (as defined in this section) and ceases to be new when placed back into service.

(6) An imported marine engine, subject to the following provisions:

(i) An imported marine engine covered by a certificate of conformity issued under this part that meets the criteria of one or more of paragraphs (1) through (4) of this definition, where the original engine manufacturer holds the certificate, is new as defined by those applicable paragraphs.

(ii) An imported remanufactured engine that would have been required to be certified if it had been remanufactured in the United States.

(iii) An imported engine that will be covered by a certificate of conformity issued under this part, where someone other than the original engine manufacturer holds the certificate (such as when the engine is modified after its initial assembly), is a new marine engine when it is imported. It is no longer new when the ultimate purchaser receives a title for the engine or it is placed into service, whichever comes first.

(iv) An imported marine engine that is not covered by a certificate of conformity issued under this part at the time of importation is new, but only if it was produced on or after the dates shown in the following table. This addresses uncertified engines and vessels initially placed into service that someone seeks to import into the United States. Importation of this kind of engine (or vessel containing such an engine) is generally prohibited by 40 CFR part 1068.

APPLICABILITY OF EMISSION STANDARDS FOR COMPRESSION-IGNITION MARINE ENGINES

Engine category and type	Power (kW)	Per-cylinder displacement (L/cyl)	Initial model year of emission standards
Category 1	P < 19	All	2000
Category 1	19 ≤ P < 37	All	1999
Category 1, Recreational	P ≥ 37	disp. < 0.9	2007
Category 1, Recreational	All	0.9 ≤ disp. < 2.5	2006
Category 1, Recreational	All	disp. ≥ 2.5	2004
Category 1, Commercial	P ≥ 37	disp. < 0.9	2005
Category 1, Commercial	All	disp. ≥ 0.9	2004
Category 2 and Category 3	All	disp. ≥ 5.0	2004

* * * * *

Residual fuel means any fuel with a T_{90} greater than 700 °F as measured with the distillation test method specified in 40 CFR 1065.1010. This generally includes all RM grades of marine fuel without regard to whether they are known commercially as residual fuel. For example, fuel marketed as intermediate fuel may be residual fuel.

* * * * *

Small-volume boat builder means a boat manufacturer with fewer than 500 employees and with annual worldwide production of fewer than 100 boats. For manufacturers owned by a parent company, these limits apply to the combined production and number of employees of the parent company and all its subsidiaries. Manufacturers that produce vessels with Category 3 engines are not small-volume boat builders.

Small-volume engine manufacturer means a manufacturer of Category 1 and/or Category 2 engines with annual worldwide production of fewer than 1,000 internal combustion engines (marine and nonmarine). For manufacturers owned by a parent company, the limit applies to the production of the parent company and all its subsidiaries. Manufacturers that certify or produce any Category 3 engines are not small-volume engine manufacturers.

* * * * *

Tier 2 means relating to the Tier 2 emission standards, as shown in § 1042.104 and Appendix I.

Tier 3 means relating to the Tier 3 emission standards, as shown in § 1042.101 and § 1042.104.

* * * * *

Total hydrocarbon has the meaning given in 40 CFR 1065.1001. This generally means the combined mass of organic compounds measured by the specified procedure for measuring total hydrocarbon, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The hydrogen-to-carbon mass ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. It is the period during which an engine is required to comply with all applicable emission standards. See §§ 1042.101(e) and 1042.104(d).

196. Section 1042.905 is amended by adding the acronym ''IMO'' in alphabetical order to read as follows:

§ 1042.905 Symbols, acronyms, and abbreviations.

* * * * *

*	*	*	*	*
IMO	International Maritime Organization.			
*	*	*	*	*

197. Section 1042.910 is revised to read as follows:

§ 1042.910 Reference materials.

Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information

Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a) *IMO material.* Table 1 to this section lists material from the International Maritime Organization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom or *http://www.imo.org.* Table 1 follows:

TABLE 1 TO § 1042.910—IMO MATERIALS

Document number and name	Part 1042 reference
Resolutions of the 1997 MARPOL Conference: Resolution 2—Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines, 2008.	1042.901

(b) [Reserved]

198. Appendix I to part 1042 is amended by revising paragraphs (b)(2) introductory text and (b)(3) to read as follows:

Appendix I to Part 1042—Summary of Previous Emission Standards

* * * * *

(b) * * *

(2) *Tier 2 primary standards.* Exhaust emissions from Category 1 engines at or above 37 kW and all Category 2 engines may not exceed the values shown in the following table:

* * * * *

(3) *Tier 2 supplemental standards.* The not-to-exceed emission standards specified in 40 CFR 94.8(e) apply for all engines subject to the Tier 2 standards described in paragraph (b)(2) of this appendix.

199. A new part 1043 is added to subchapter U to read as follows:

PART 1043—CONTROL OF NO_X, SO_X, and PM EMISSIONS FROM MARINE ENGINES AND VESSELS SUBJECT TO THE MARPOL PROTOCOL

Sec.

1043.1 Overview.
1043.5 Effective dates.
1043.10 Applicability.
1043.20 Definitions.
1043.30 General requirements.
1043.40 EIAPP certificates.
1043.41 EIAPP certification process.
1043.50 Approval of methods to meet Tier 1 retrofit NO_X standards.
1043.60 Operating requirements for engines and vessels subject to this part.
1043.70 General recordkeeping and reporting requirements.
1043.80 Recordkeeping and reporting requirements for fuel suppliers.
1043.90 Emission Control Areas. [Reserved]

Authority: 33 U.S.C. 1901–1915.

§ 1043.1 Overview.

The Act to Prevent Pollution from Ships (APPS) requires engine manufacturers, owners and operators of vessels, and other persons to comply with Annex VI of the MARPOL Protocol. This part implements portions of APPS as it relates to Regulations 13, 14 and 18 of Annex VI. These regulations clarify the application of some Annex VI provisions; provide procedures and criteria for the issuance of EIAPP certificates; and specify requirements applicable to ships that are not registered by Parties to Annex VI. Additional regulations may also apply with respect to the MARPOL Protocol, such as those issued by the U.S. Coast Guard in 33 CFR part 151.

(a) The general requirements for non-public U.S.-flagged and other Party vessels are specified in Annex VI, as implemented by 33 U.S.C. 1901–1915. These requirements apply to engine manufacturers, owners and operators of vessels, and other persons.

(b) The provisions of this part specify how Regulations 13, 14 and 18 of Annex VI, as implemented by 33 U.S.C. 1901–1915 will be applied to public vessels and U.S.-flagged vessels that operate only domestically. This Part also describes where the requirements of Regulation 13.5.1 of Annex VI and Regulation 14.4 of Annex VI will apply.

(c) The provisions of this part implements section 1902(e) of APPS by specifying that non-public vessels flagged by a country that is not a party to Annex VI are subject to the substantive requirements of Regulations 13, 14 and 18 of Annex VI as implemented by APPS.

(d) This part 1043 does not limit the requirements specified in Annex VI, as implemented by 33 U.S.C. 1901–1915, except as specified in § 1043.10(a)(2).

(e) The provisions of this part specify how to obtain EIAPP certificates and certificates for Approved Methods.

§ 1043.5 Effective dates.

(a) The requirement of APPS for marine vessels to comply with Annex VI of the MARPOL Protocol is in effect.

(b) Annex VI was amended on October 8, 2008 and enters into force July 1, 2010. The requirement of APPS for marine vessels to comply with the amended Annex VI is effective July 1, 2010.

(c) Compliance with the regulations of this part is required for all persons on or after July 1, 2010. In addition, compliance with §§ 1043.40 and 1043.41 is required before July 1, 2010 for manufacturers (and other persons) seeking EIAPP certificates prior to July 1, 2010.

(d) The requirements related to operation in ECAs for any portion of U.S. navigable waters or the U.S. exclusive economic zone are effective the date on which an ECA is designated by IMO.

§ 1043.10 Applicability.

(a) *U.S.-flagged vessels.* The provisions of this part apply for all U.S.-flagged vessels (including engines installed or intended to be installed on such vessels), except as specified in this paragraph (a).

(1) Public vessels are excluded from this part.

(2) Vessels that operate only domestically and conform to the requirements of this paragraph (a)(2) are excluded from Regulation 13 of Annex VI. For the purpose of this exclusion, the phrase ''operate only domestically'' means the vessels do not enter waters subject to the jurisdiction or control of any foreign country. (See §§ 1043.60 and 1043.70 for provision related to fuel use by such vessels). To be excluded, the vessel must conform to each of the following provisions:

(i) All compression ignition engines on the vessel must conform fully to all applicable provisions of 40 CFR parts 94 and 1042.

(ii) The vessel may not contain any engines with a specific engine displacement at or above 30.0 liters per cylinder.

(b) *Foreign-flagged vessels.* The provisions of this part apply for all non-public foreign-flagged vessels (including engines installed or intended to be installed on such vessels) as specified in this paragraph (b).

(1) The requirements of this part apply for foreign-flagged vessels operating in U.S. navigable waters or the U.S. EEZ.

(2) For non-public vessels flagged by a country that is not a party to Annex VI, the requirements of this part apply in the same manner as apply for Party vessels, except that engines on non-Party vessels are not required to have EIAPP certificates.

(c) *Fuel suppliers.* The provisions of § 1043.80 apply for all persons supplying fuel to any vessel subject to this part.

§ 1043.20 Definitions.

The following definitions apply to this part:

Administrator means the Administrator of the Environmental Protection Agency.

Annex VI means Annex VI of the MARPOL Protocol.

Designated Certification Officer means the EPA official to whom the Administrator has delegated authority to issue EIAPP certificates.

EIAPP certificate means a certificate issued to certify initial compliance with Regulation 13 of Annex VI. (Note that EIAPP stands for Engine International Air Pollution Prevention under Annex VI.)

Emission control area (ECA) means an area designated by IMO as an Emission Control Area plus all U.S. navigable waters shoreward of the ECA. For example, where an ECA has been designated by IMO to include the Gulf of St. Lawrence (or the Atlantic Ocean surrounding the Gulf of St. Lawrence), the ECA would be deemed to include the U.S. portions of the St. Lawrence River and Great Lakes for the purposes of this part.

Engine has the meaning given in 40 CFR 1068.30.

EPA means the United States Environmental Protection Agency.

Foreign-flagged vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

IMO means the International Maritime Organization.

Major conversion has the meaning given in Annex VI.

MARPOL Protocol has the meaning given in 33 U.S.C. 1901.

Navigable waters has the meaning given in 33 U.S.C. 1901.

Non-Party vessel means a vessel flagged by a country that is not a party to Annex VI.

NO_X Technical Code means the NO_X Technical Code of Annex VI.

Operator has the meaning given in 33 U.S.C. 1901.

Owner has the meaning given in 33 U.S.C. 1901.

Party vessel means a vessel flagged by a country that is a party to Annex VI.

Person has the meaning given in 33 U.S.C. 1901.

Public vessels means warships, naval auxiliary vessels and other vessels owned or operated by a sovereign country when engaged in noncommercial service.

Secretary has the meaning given in 33 U.S.C. 1901.

U.S.-flagged vessel means a vessel of U.S. registry or a vessel operated under the authority of the United States.

We means EPA.

§ 1043.30 General requirements.

(a) Manufacturers, owners and operators of vessels subject to this part must comply with Regulations 13, 14, and 18 of Annex VI and related provisions of this part. It is the responsibility of such manufacturers, owners and operators to ensure that all employees and other agents operating on their behalf comply with these requirements. Manufacturers of engines subject to this part must comply with all applicable requirements of Regulation 13 of Annex VI and related provisions of this part prior to the engine being installed in the vessel. Note that 33 U.S.C. 1907 also prohibits anyone from violating any provisions of the MARPOL Protocol, whether or not they are a manufacturer, owner or operator.

(b) Engines with power output of more than 130 kW that are listed in this paragraph (b) must be covered by a valid EIAPP certificate unless the engine is excluded under paragraph (c) of this section. An EIAPP certificate is valid for a given engine only if it certifies compliance with the Tier of standards applicable to that engine and the vessel into which it is being installed. Note that none of the requirements of this paragraph (b) are limited to new engines.

(1) Engines meeting any of the following criteria must be covered by a valid EIAPP certificate:

(i) Engines installed (or intended to be installed) on vessels that were constructed on or after January 1, 2000. This includes engines that met the definition of ''new marine engine'' in 40 CFR 1042.901 at any time on or after January 1, 2000, unless such engines are installed on vessels that were constructed before January 1, 2000.

(ii) Engines that undergo a major conversion on or after January 1, 2000, unless the engine have been exempt from this requirement under paragraph (e) of this section. See section 2.1 of Annex VI for a definition of major conversion.

(2) For such engines intended to be installed on U.S.-flagged vessels, the engine may not be introduced into U.S. commerce before it is covered by a valid EIAPP certificate, unless it has been exempted by EPA under 40 CFR part 1042 or part 1068. Uninstalled engines covered by a valid exemption under 40 CFR part 1042 or part 1068 may be introduced into U.S. commerce without a valid EIAPP certificate; however, this allowance does affect whether the engine must ultimately be covered by an EIAPP certificate. For example, engines allowed to be temporarily distributed in an uncertified configuration under 40 CFR 1068.260 would not be required to be covered by an EIAPP certificate while it is covered by the temporary exemption under 40 CFR 1068.260; however, it would be required to be covered by an EIAPP certificate before being placed into service. All uninstalled marine engines within the United States are presumed to be intended to be installed on a U.S.-flagged vessel, unless there is clear and convincing evidence to the contrary.

(3) For engines installed on Party vessels, the engine may not operate in the U.S. navigable waters or the U.S. exclusive economic zone, or other waters designated by the Administrator under 1902(a)(5) before it is covered by a valid EIAPP certificate. Engines installed on non-Party vessels are not required to have EIAPP certificates, provided the operator can demonstrate that the engines conform to the requirements of Regulation 13 of Annex VI. Evidence of conformity may be issued by either the government of a country that is party to Annex VI or a recognized classification society. For the purposes of this paragraph, ''recognized classification society'' means a classification society that is a participating member of the International Association of Classification Societies (IACS).

(c) The following engines are excluded from the requirement to have an EIAPP certificate (or equivalent demonstration of compliance in the case of non-Party vessels) or otherwise meet the requirements of Regulation 13 of Annex VI.

(1) Spark-ignition engines.

(2) Non-reciprocating engines.

(3) Engines that do not use liquid fuel.

(4) Engines intended to be used solely for emergencies. This includes engines that power equipment such as pumps that are intended to be used solely for emergencies and engines installed in lifeboats intended to be used solely for emergencies. It does not include engines to be used for both emergency and non-emergency purposes.

(d) The requirements specified in Annex VI apply for vessels subject to this part for operation in U.S. navigable waters or the U.S. EEZ. Vessels operating in waters deemed to be included in an ECA under this part (see § 1043.20) must comply with the requirements of Annex VI for operation in an ECA. This means that the requirements of Regulations 13.5 and

14.4 of Annex VI apply both in waters designated by IMO as an ECA and in all shoreward U.S. waters.

(e) A replacement engine may be exempted from Regulation 13 of annex VI by EPA if it is identical to the engine being replaced and that engine was not subject to Regulation 13 of Annex VI. Send requests for such exemptions to the Designated Certification Officer.

(f) Compliance with the provisions of this part 1043 does not affect your responsibilities under 40 CFR part 1042 for engines subject to that part 1042.

§ 1043.40 EIAPP certificates.

(a) Engine manufacturers seeking EIAPP certificates for new engines to be used in U.S.-flagged vessels must apply to EPA for an EIAPP certificate in compliance with the requirements of this section (which references 40 CFR part 1042) and the applicable requirements of Regulation 13 of Annex VI. Note that only the Administrator or the EPA official designated by the Administrator may issue EIAPP certificates on behalf of the United States Government.

(b) Persons other than engine manufacturers may apply for and obtain EIAPP certificates for new engines to be used in U.S.-flagged vessels by complying with the requirements of this section (which references 40 CFR part 1042) and the applicable requirements of Regulation 13 of Annex VI.

(c) In appropriate circumstances, EPA may issue an EIAPP certificate under this section for non-new engines or engines for vessels that will not initially be flagged in the U.S.

(d) The process for obtaining an EIAPP certificate is described in § 1043.41. That section references regulations in 40 CFR part 1042, which apply under the Clean Air Act. References in that part to certificates of conformity are deemed to mean EIAPP certificates. References in that part to the Clean Air Act as the applicable statute are deemed to mean 33 U.S.C. 1901–1915.

(e) For engines that undergo a major conversion or for engines installed on imported vessels that become subject to the requirements of this part, we may specify alternate certification provisions consistent with the intent of this part.

§ 1043.41 EIAPP certification process.

This section describes the process for obtaining the EIAPP certificate required by § 1043.40.

(a) You must send the Designated Certification Officer (see definition in § 1043.20) a separate application for an Engine International Air Pollution Prevention (EIAPP) certificate for each engine family. An EIAPP certificate is valid starting with the indicated effective date and is valid for any production until such time as the design of the engine family changes or more stringent emission standards become applicable, whichever comes first. You may obtain preliminary approval of portions of the application consistent with the provisions of 40 CFR 1042.210.

(b) The application must contain all the information required by this part. It must not include false or incomplete statements or information (see 40 CFR 1042.255). Include the information specified in 40 CFR 1042.205 except as follows:

(1) You must include the dates on which the test engines were built and the locations where the test engines were built.

(2) Include a copy of documentation required by Annex VI related to maintenance and in-use compliance (such as the Technical File and onboard NO_X verification procedures as specified by the NO_X Technical Code).

(3) You are not required to provide information required by 40 CFR 1042.205 about useful life, emission labels, deterioration factors, PM emissions, not-to-exceed standards.

(4) You must include a copy of your warranty instructions, but are not required to describe how you will meet warranty obligations.

(c) We may ask you to include less information than we specify in this section as long as you maintain all the information required by paragraph (b) of this section.

(d) You must use good engineering judgment for all decisions related to your application (see 40 CFR 1068.5).

(e) An authorized representative of your company must approve and sign the application.

(f) See 40 CFR 1042.255 for provisions describing how we will process your application.

(g) Your application, including the Technical File and onboard NO_X verification procedures, is subject to amendment as described in 40 CFR 1042.225.

(h) This paragraph (h) describes the emission testing you must perform.

(1) Select an emission-data engine from each engine family for testing. For engines at or above 560 kW, you may use a development engine that is equivalent in design to the engine being certified. For Category 3 engines, you may use a single-cylinder version of the engine. Using good engineering judgment, select the engine configuration most likely to exceed an applicable emission standard, considering all exhaust emission constituents and the range of installation options available to vessel manufacturers.

(2) Test your emission-data engines using the procedures and equipment specified in the NO_X Technical Code or subpart F of part 1042. We may require that your test be witnessed by an EPA official.

(3) We may measure emissions from any of your test engines or other engines from the engine family, as follows:

(i) We may decide to do the testing at your plant or any other facility. You must deliver the test engine to any test facility we designate. The test engine you provide must include appropriate manifolds, aftertreatment devices, electronic control units, and other emission-related components not normally attached directly to the engine block. If we do the testing at your plant, you must schedule it as soon as possible and make available the instruments, personnel, and equipment we need.

(ii) If we measure emissions from one of your test engines, the results of that testing become the official emission results for the engine. Unless we later invalidate these data, we may decide not to consider your data in determining if your engine family meets applicable requirements.

(iii) Before we test one of your engines, we may set its adjustable parameters to any point within the specified adjustable ranges (see 40 CFR 1042.115(d)).

(iv) Before we test one of your engines, we may calibrate it within normal production tolerances for anything we do not consider an adjustable parameter.

(4) We may require you to test a second engine of the same or different configuration in addition to the engine tested under paragraph (b) of this section.

(5) If you use an alternate test procedure under 40 CFR 1065.10 and later testing shows that such testing does not produce results that are equivalent to the procedures otherwise required by this part, we may reject data you generated using the alternate procedure.

(i) Collect emission data using measurements to one more decimal place than the applicable standard, then round the value to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each emission-data engine.

(j) Your engine family is considered in compliance with the emission standards in Regulation 13 of Annex VI if all emission-data engines representing that family have test results showing

emission levels at or below these standards. Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing an emission level above an applicable emission standard for any pollutant.

(k) If we determine your application is complete and shows that the engines meet all the requirements of this part, we will issue an EIAPP certificate for your engines. We may make the approval subject to additional conditions.

§ 1043.50 Approval of methods to meet Tier 1 retrofit NO_X standards.

Regulation 13 of Annex VI provides for certification of Approved Methods, which are retrofit procedures that enable Pre-Tier 1 engines to meet the Tier 1 NO_X standard of regulation 13 of Annex VI. Any person may request approval of such a method by submitting an application for certification of an Approve Method to the Designated Certification Officer. If we determine that your application conforms to the requirements of Regulation 13 of Annex VI, we will issue a certificate and notify IMO that your Approved Method has been certified.

§ 1043.60 Operating requirements for engines and vessels subject to this part.

(a) All of the operating requirements and restrictions of Regulations 13, 14, and 18 of Annex VI apply for vessels subject to this part.

(b) Nothing in this part limits the operating requirements and restrictions applicable for engines and vessels subject to 40 CFR part 1042 or the requirements and restrictions applicable for fuels subject to 40 CFR part 80.

(c) Operators of non-Party vessels must comply with the same operating requirements and restrictions as apply to other vessels under this part. This means they must comply with operating requirements and restrictions equivalent to those of Annex VI related to Regulations 13, 14, and 18.

(d) This paragraph (d) applies for vessels that are excluded from Regulation 13 of Annex VI under § 1043.10(a) because they operate only domestically. Where the operators of such vessels comply fully with the fuel requirements of 40 CFR part 80, they are deemed to be in full compliance with the fuel use requirements and prohibitions of Regulations 14 and 18 of Annex VI.

§ 1043.70 General recordkeeping and reporting requirements.

(a) Owners and operators of vessels subject to this part must keep all records required by Regulations 13, 14, and 18 of Annex VI. We may inspect these records as allowed by those Regulations and 33 U.S.C. 1901–1915. As part of our inspection, we may require that the owner submit copies of these records to us.

(b) Nothing in this part limits recordkeeping and reporting the Secretary may require, nor does it preclude the Secretary from providing copies of any records to EPA.

(c) Nothing in this part limits the recordkeeping and reporting requirements applicable with respect to engines and vessels subject to 40 CFR part 1042 or with respect to fuels subject to 40 CFR part 80.

(d) This paragraph (d) applies for vessels that are excluded from Regulation 13 of Annex VI under § 1043.10(a) because they operate only domestically. Where the operators of such vessels comply fully with the fuel requirements of 40 CFR part 80, they are deemed to be in full compliance with the fuel recordkeeping requirements and prohibitions of Annex VI.

§ 1043.80 Recordkeeping and reporting requirements for fuel suppliers.

If you supply any fuel for an engine on any vessel identified in paragraph (a) of this section, you must comply with the requirements of Regulation 18 of Annex VI to provide bunker delivery notes to the vessel operators and to keep copies for your records.

(a) The requirements of this section apply for fuel delivered to any of the following vessels:

(1) Vessels of 400 gross tonnage and above.

(2) Platforms and drilling rigs.

(b) Except as allowed by paragraph (c) of this section, the bunker delivery note must contain the following:

(1) The name and IMO number of receiving vessel.

(2) Port (or other description of the location, if the delivery does not take place at a port).

(3) Date the fuel is delivered to the vessel (or date on which the delivery begins where the delivery begins on one day and ends on a later day).

(4) Name, address, and telephone number of fuel supplier.

(5) Fuel type and designation under 40 CFR part 80.

(6) Quantity in metric tons.

(7) Density at 15 °C, in kg/m^3.

(8) Sulfur content in weight percent.

(9) A signed statement by an authorized representative of the fuel supplier certifying that the fuel supplied conforms to Regulations 14 and 18 of Annex VI consistent with its designation, intended use, and the date on which it is to be used. For example, with respect to conformity to Regulation 14 of Annex VI, a fuel designated and intended for use in an ECA any time between July 1, 2010 and January 1 2015 may not have a sulfur content above 1.00 weight percent.

(c) Measure density and sulfur content according to the specifications of Annex VI, or other methods we approve as equivalent. Where the density and/or sulfur content of the delivered fuel cannot be measured, we may allow the use of alternate methods to specify the density and/or sulfur content of the fuel. For example, where fuel is supplied from multiple tanks on a supply vessel, we may allow the density and sulfur content of the fuel to be calculated as a weighted average of the measured densities and sulfur contents of the fuel that is supplied from each tank.

§ 1043.90 Emission Control Areas. [Reserved]

PART 1045—CONTROL OF EMISSIONS FROM SPARK–IGNITION PROPULSION MARINE ENGINES AND VESSELS

200. The authority citation for part 1045 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

201. Section 1045.103 is amended by revising paragraph (b) introductory text to read as follows:

§ 1045.103 What exhaust emission standards must my outboard and personal watercraft engines meet?

* * * * *

(b) *Averaging, banking, and trading.* You may generate or use emission credits under the averaging, banking, and trading (ABT) program described in subpart H of this part for demonstrating compliance with $HC+NO_X$ emission standards. For CO emissions, you may generate or use emission credits for averaging as described in subpart H of this part, but such credits may not be banked or traded. To generate or use emission credits, you must specify a family emission limit for each pollutant you include in the ABT program for each engine family. These family emission limits serve as the emission standards for the engine family with respect to all required testing instead of the standards specified in this section. An engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meets the emission standards using emission

credits and the engines within the family meet the family emission limit. The following FEL caps apply:

* * * * *

202. Section 1045.125 is amended by adding paragraph (a)(3) and revising paragraphs (a)(2) and (c) to read as follows:

§ 1045.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(2) You may not schedule critical emission-related maintenance within the useful life period for aftertreatment devices, pulse-air valves, fuel injectors, oxygen sensors, electronic control units, superchargers, or turbochargers, except as specified in paragraph (a)(3), (b), or (c) of this section.

(3) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

203. Section 1045.140 is amended by revising paragraph (a) to read as follows:

§ 1045.140 What is my engine's maximum engine power?

(a) An engine configuration's maximum engine power is the maximum brake power point on the nominal power curve for the engine configuration, as defined in this section. Round the power value to the nearest whole kilowatt for engines above 30 kW and to the nearest 0.1 kilowatt for engines at or below 30 kW.

* * * * *

204. Section 1045.145 is amended by adding paragraph (o) to read as follows:

§ 1045.145 Are there interim provisions that apply only for a limited time?

* * * * *

(o) *Banking early credits for jet boat engines.* Banked emission credits that were originally generated from outboard and personal watercraft engines under 40 CFR part 91 may be used to certify jet boat engines under the provisions § 1045.660.

Subpart C—[Amended]

205. Section 1045.201 is amended by adding paragraph (h) to read as follows:

§ 1045.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines installed on imported vessels or engines converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. See § 1045.645 and the definition of ''new propulsion marine engine'' in § 1045.801.

206. Section 1045.220 is amended by revising paragraph (a) to read as follows:

§ 1045.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

207. Section 1045.240 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 1045.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the duty-cycle emission standards in § 1045.103 or § 1045.105 if all emission-data engines representing that family have test results showing deteriorated emission levels at or below these standards. This includes all test points over the course of the durability demonstration. Note that your FELs are considered to be the applicable emission standards with which you must comply if you participate in the ABT program in subpart H of this part. See paragraph (e) of this section for provisions related to demonstrating compliance with NTE standards.

(b) Your engine family is deemed not to comply with the duty-cycle emission standards in § 1045.103 or § 1045.105 if any emission-data engine representing that family has test results showing a deteriorated emission level for any pollutant that is above an applicable emission standard. Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable not-to-exceed emission standard for any pollutant. The provisions of this paragraph (b) apply for all test points over the course of the durability demonstration.

* * * * *

(e) Use good engineering judgment to demonstrate compliance with NTE standards based on testing with low-hour engines. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards.

Subpart E—[Amended]

208. Section 1045.405 is amended by revising paragraph (c) introductory text to read as follows:

§ 1045.405 How does this program work?

* * * * *

(c) Send us an in-use testing plan for engine families selected for testing. Complete the testing within 24 calendar months after we receive your plan. Send us the in-use testing plan according to the following deadlines:

* * * * *

Subpart F—[Amended]

209. Section 1045.515 is amended by revising paragraph (c)(5) introductory text to read as follows:

§ 1045.515 What are the test procedures related to not-to-exceed standards?

* * * * *

(c) * * *

(5) For two-stroke engines not equipped with a catalyst, the NTE zone described in paragraph (c)(3) of this section is divided into subzones for testing to determine compliance with the applicable NTE standards. Measure

emissions to get an NTE result by collecting emissions at five points as described in this paragraph (c)(5). Calculate a weighted test result for these emission measurements using the weighting factors from Appendix II of this part for the corresponding modal result (similar to discrete-mode testing for certification). Test engines over the following modes corresponding to the certification duty cycle:

* * * * *

Subpart H—[Amended]

210. Section 1045.701 is amended by revising paragraphs (d), (g), (j)(4) and (j)(5) to read as follows:

§ 1045.701 General provisions.

* * * * *

(d) Sterndrive/inboard engines certified under § 1045.660 for jet boats may use HC+NOx and CO exhaust credits generated from outboard and personal watercraft engines, as long as the credit-using engine is the same model as an engine model from an outboard or personal watercraft family. Such emission credits that you generate under this part 1045 may be used for averaging, but not for banking or trading. The FEL caps for such jet boat families are the HC+NOx and CO standard for outboard and personal watercraft engines. U.S.-directed sales from jet boat engines using the provisions of this paragraph (d) may not be greater than the U.S.-directed sales of the same engine model for outboard or personal watercraft engines.

* * * * *

(g) Emission credits may be used for averaging in the model year they are generated or banked for averaging in future model years, except that CO emission credits for outboard and personal watercraft engines may not be banked or traded.

* * * * *

(j) * * *

(4) Engines or vessels not subject to the requirements of this part, such as those excluded under § 1045.5.

(5) Any other engines or vessels where we indicate elsewhere in this part 1045 that they are not to be included in the calculations of this subpart.

211. Section 1045.705 is amended by revising paragraph (a) to read as follows:

§ 1045.705 How do I generate and calculate exhaust emission credits?

* * * * *

(a) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round the sum of emission credits to the nearest kilogram (kg) using consistent units throughout the following equation:

$$\text{Emission credits (kg)} = (\text{STD} - \text{FEL}) \times (\text{Volume}) \times (\text{Power}) \times (\text{UL}) \times (\text{LF}) \times (10^{-3})$$

Where:

STD = the emission standard, in g/kW-hr.

FEL = the family emission limit for the family, in g/kW-hr.

Volume = the number of engines eligible to participate in the averaging, banking, and trading program within the given family during the model year, as described in § 1045.701(j).

Power = maximum engine power for the family, in kilowatts (see § 1045.140).

UL = The useful life for the given family.

LF = load factor. Use 0.207. We may specify a different load factor if we approve the use of special test procedures for an engine family under 40 CFR 1065.10(c)(2), consistent with good engineering judgment.

* * * * *

Subpart I—[Amended]

212. Section 1045.801 is amended by revising the definition of ''Fuel system'' and paragraphs (2) and (5)(iii) of the definition of ''Model year'' to read as follows:

§ 1045.801 What definitions apply to this part?

* * * * *

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents. In the case where the fuel tank cap or other components (excluding fuel lines) are directly mounted on the fuel tank, they are considered to be a part of the fuel tank.

* * * * *

Model year * * *

(2) For an engine that is converted to a propulsion marine engine after being certified and placed into service as a motor vehicle engine, a nonroad engine that is not a propulsion marine engine, or a stationary engine, model year means the calendar year in which the engine was originally produced. For an engine that is converted to a propulsion marine engine after being placed into service as a motor vehicle engine, a nonroad engine that is not a propulsion marine engine, or a stationary engine without having been certified, model year means the calendar year in which the engine becomes a new propulsion marine engine. (See definition of ''new propulsion marine engine,'' paragraph (2).)

* * * * *

(5) * * *

(iii) For imported engines described in paragraph (5)(iii) of the definition of ''new propulsion marine nonroad engine,'' *model year* means the calendar year in which the engine is assembled in its imported configuration, unless specified otherwise in this part or in 40 CFR part 1068.

* * * * *

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK–IGNITION ENGINES

213. The authority citation for part 1048 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

214. Section 1048.15 is amended by revising paragraph (b) to read as follows:

§ 1048.15 Do any other regulation parts apply to me?

* * * * *

(b) Part 1065 of this chapter describes procedures and equipment specifications for testing engines to measure exhaust emissions. Subpart F of this part 1048 describes how to apply the provisions of part 1065 of this chapter to determine whether engines meet the exhaust emission standards in this part.

* * * * *

215. A new § 1048.30 is added to subpart A to read as follows:

§ 1048.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1048.825 and 40 CFR 1068.25 regarding recordkeeping requirements. If recordkeeping requirements are not specified, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1048.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (see § 1048.801).

(d) Any written information we require you to send to or receive from another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

216. Section 1048.120 is amended by revising paragraph (b) to read as follows:

§ 1048.120 What emission-related warranty requirements apply to me?

* * * * *

(b) *Warranty period.* Your emission-related warranty for evaporative emission controls must be valid for at least two years. Your emission-related warranty for exhaust emission controls must be valid for at least 50 percent of the engine's useful life in hours of operation or at least three years, whichever comes first. In the case of a high-cost warranted part, the warranty must be valid for at least 70 percent of the engine's useful life in hours of operation or at least five years, whichever comes first. You may offer an emission-related warranty more generous than we require. The emission-related warranty for the engine may not be shorter than any published warranty you offer without charge for the engine. Similarly, the emission-related warranty for any component may not be shorter than any published warranty you offer without charge for that component. If an engine has no hour meter, we base the warranty periods in this paragraph (b) only on the engine's age (in years). The warranty period begins when the engine is placed into service.

* * * * *

217. Section 1048.125 is amended by adding paragraph (a)(4) and revising paragraph (c) to read as follows:

§ 1048.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(4) You may ask us to approve a maintenance interval shorter than that specified in paragraphs (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as substandard fuel or atypical engine operation. For example, you may specify more frequent cleaning of fuel system components for engines you have reason to believe will be using fuel that causes substantially more engine performance problems than commercial fuels of the same type that are generally available across the United States. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

Subpart C—[Amended]

218. Section 1048.201 is amended by adding paragraph (h) to read as follows:

§ 1048.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to nonroad use after being used in motor vehicles, we may specify alternate certification provisions consistent with the intent of this part. See the definition of ''new nonroad engine'' in § 1048.801.

219. Section 1048.220 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1048.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

220. Section 1048.240 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For purposes of certification, your engine family is considered in compliance with the applicable numerical emission standards in § 1048.101(a) and (b) if all emission-data engines representing that family have test results showing deteriorated emission levels at or below these standards. This includes all test points over the course of the durability demonstration. See paragraph (e) of this section for provisions related to demonstrating compliance with field-testing standards.

(b) Your engine family is deemed not to comply if any emission-data engine representing that family has test results showing a deteriorated emission level for any pollutant that is above an applicable emission standard from § 1048.101(a) and (b). Similarly, your engine family is deemed not to comply if any emission-data engine representing that family has test results showing any emission level above the applicable field-testing standard for any pollutant. This includes all test points over the course of the durability demonstration.

* * * * *

(e) Use good engineering judgment to demonstrate compliance with field-testing standards based on testing with low-hour engines. You may, but are not required to, apply the same deterioration factors used to show compliance with the applicable duty-cycle standards.

221. Section 1048.245 is amended by revising paragraph (e) to read as follows:

§ 1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?

* * * * *

(e) You may demonstrate that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1048.105(c), with the following technologies:

(i) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive pressure of 24.5 kPa (3.5 psig); however, they may contain air inlets that open when there is a vacuum pressure inside the tank. Nonmetal fuel tanks must also use one of the qualifying designs for controlling permeation emissions specified in 40 CFR 1060.240.

(ii) [Reserved]

(2) For certification to the standards specified in § 1048.105(d), demonstrating that you use design features to prevent fuel boiling under all normal operation. If you install engines in equipment, you may do this using fuel temperature data measured during normal operation. Otherwise, you may do this by including appropriate information in your emission-related installation instructions.

(3) We may establish additional options for design-based certification where we find that new test data demonstrate that a technology will ensure compliance with the emission standards in this section.

222. Section 1048.255 is amended by revising paragraph (b) to read as follows:

§ 1048.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart E—[Amended]

223. Section 1048.405 is amended by revising paragraph (b) to read as follows:

§ 1048.405 How does this program work?

* * * * *

(b) Send us an in-use testing plan within 12 calendar months after we direct you to test a particular engine family. Complete the testing within 24 calendar months after we receive your plan.

* * * * *

Subpart F—[Amended]

224. Section 1048.505 is amended by revising the section heading and paragraph (b)(5)(i) to read as follows:

§ 1048.505 How do I test engines using steady-state duty cycles, including ramped-modal testing?

* * * * *

(b) * * *

(5) * * *

(i) The following duty cycle applies for discrete-mode testing:

TABLE 3 OF § 1048.505

Mode number	Engine speed	Torque (percent)[1]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	3.0	0.50
2	Maximum test	75	3.0	0.50

[1] The percent torque is relative to the maximum torque at maximum test speed.

* * * * *

Subpart I—[Amended]

225. Section 1048.801 is amended by adding definitions for ''Carryover'' and ''Date of manufacture'' in alphabetical order to read as follows:

§ 1048.801 What definitions apply to this part?

* * * * *

Carryover means relating to certification based on emission data generated from an earlier model year as described in § 1042.235(d). This generally requires that the engines in the engine family do not differ in any aspect related to emissions.

* * * * *

Date of manufacture has the meaning given in 40 CFR 1068.30.

* * * * *

PART 1051— CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

226. The authority citation for part 1051 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

227. Section 1051.15 is amended by revising paragraph (a) to read as follows:

§ 1051.15 Do any other regulation parts apply to me?

(a) Parts 86 and 1065 of this chapter describe procedures and equipment specifications for testing vehicles and engines to measure exhaust emissions. Subpart F of this part 1051 describes how to apply the provisions of parts 86 and 1065 of this chapter to determine whether vehicles meet the exhaust emission standards in this part.

* * * * *

228. Section 1051.20 is amended by adding paragraph (g) to read as follows:

§ 1051.20 May I certify a recreational engine instead of the vehicle?

* * * * *

(g) Apply the provisions of 40 CFR part 1068 for engines certified under this section as if they were subject to engine-based standards. For example, you may rely on the provisions of 40 CFR 1068.261 to have vehicle manufacturers install catalysts that you describe in your application for certification.

229. A new § 1051.30 is added to subpart A to read as follows:

§ 1051.30 Submission of information.

(a) This part includes various requirements to record data or other information. Refer to § 1051.825 and 40 CFR 1068.25 regarding recordkeeping requirements. If recordkeeping requirements are not specified, store these records in any format and on any media and keep them readily available for one year after you send an associated application for certification, or one year after you generate the data if they do not support an application for certification. You must promptly send us organized, written records in English if we ask for them. We may review them at any time.

(b) The regulations in § 1051.255 and 40 CFR 1068.101 describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. This includes information not related to certification.

(c) Send all reports and requests for approval to the Designated Compliance Officer (see § 1051.801).

(d) Any written information we require you to send to or receive from

another company is deemed to be a required record under this section. Such records are also deemed to be submissions to EPA. We may require you to send us these records whether or not you are a certificate holder.

Subpart B—[Amended]

230. Section 1051.125 is amended by adding paragraph (a)(3) and revising paragraph (c) to read as follows:

§ 1051.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(3) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(2) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

231. Section 1051.135 is amended by revising paragraph (c)(12) to read as follows:

§ 1051.135 How must I label and identify the vehicles I produce?

* * * * *

(c) * * *

(12) State: ''THIS VEHICLE MEETS U.S. EPA REGULATIONS FOR [MODEL YEAR] [SNOWMOBILES or OFF-ROAD MOTORCYCLES or ATVs or OFF-ROAD UTILITY VEHICLES].''.

* * * * *

Subpart C—[Amended]

232. Section 1051.201 is amended by adding paragraph (h) to read as follows:

§ 1051.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For vehicles that become new after being placed into service, such as vehicles converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. See § 1051.650 and the definition of ''new'' in § 1051.801.

233. Section 1051.220 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1051.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

(c) You need not request approval if you are making only minor corrections (such as correcting typographical mistakes), clarifying your maintenance instructions, or changing instructions for maintenance unrelated to emission control. We may ask you to send us copies of maintenance instructions revised under this paragraph (c).

234. Section 1051.255 is amended by revising paragraph (b) to read as follows:

§ 1051.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(b) We may deny your application for certification if we determine that your engine family fails to comply with emission standards or other requirements of this part or the Clean Air Act. We will base our decision on all available information. If we deny your application, we will explain why in writing.

* * * * *

Subpart I—[Amended]

235. Section 1051.801 is amended by revising paragraph (2) of the definition for ''All-terrain vehicle'' and the definition for ''Offroad utility vehicle'' to read as follows:

§ 1051.801 What definitions apply to this part?

* * * * *

All-terrain vehicle means * * *

(2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, are intended primarily for transportation, and have a maximum vehicle speed higher than 25 miles per hour . Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.

* * * * *

Offroad utility vehicle means a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload capacity of 350 pounds or more or seating for six or more passengers. Vehicles intended primarily for recreational purposes that are not capable of transporting six passengers (such as dune buggies) are not offroad utility vehicles. (**Note:** § 1051.1(a) specifies that some offroad utility vehicles are required to meet the requirements that apply for all-terrain vehicles.) Unless there is significant information to the contrary, we consider vehicles to be intended primarily for recreational purposes if they are marketed for recreational use, have a rear payload capacity no greater than 1,000 pounds, and meet at least five of the following criteria:

(1) Front and rear suspension travel is greater than 18 cm.

(2) The vehicle has no tilt bed.

(3) The vehicle has no mechanical power take-off (PTO) and no permanently installed hydraulic system for operating utility-oriented accessory devices.

(4) The engine has in-use operating speeds at or above 4,000 rpm.

(5) Maximum vehicle speed is greater than 35 miles per hour.

(6) The speed at which the engine produces peak power is above 4,5000 rpm and the engine is equivalent to engines in ATVs that you have certified. For the purpose of this paragraph (6), the engine is considered equivalent if it could be included in the same emission family based on the characteristics specified in § 1051.230(b).

(7) Gross Vehicle Weight Rating is no greater than 3,750 pounds. This is the maximum design loaded weight of the vehicle as defined in 40 CFR 86.1803–01, including passengers and cargo.

* * * * *

PART 1054—CONTROL OF EMISSIONS FROM NEW, SMALL NONROAD SPARK-IGNITION ENGINES AND EQUIPMENT

236. The authority citation for part 1054 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

237. Section 1054.1 is amended by revising paragraph (a)(4) to read as follows:

§ 1054.1 Does this part apply for my engines and equipment?

(a) * * *

(4) This part 1054 applies for other spark-ignition engines as follows:

(i) The provisions of §§ 1054.620 and 1054.801 apply for new engines used solely for competition beginning January 1, 2010.

(ii) The provisions of §§ 1054.660 and 1054.801 apply for new engines used in emergency rescue equipment beginning January 1, 2010.

* * * * *

Subpart B—[Amended]

238. Section 1054.125 is amended by adding paragraph (a)(4) and revising paragraph (c) to read as follows:

§ 1054.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(4) You may ask us to approve a maintenance interval shorter than that specified in paragraph (a)(3) of this section. In your request you must describe the proposed maintenance step, recommend the maximum feasible interval for this maintenance, include your rationale with supporting evidence to support the need for the maintenance at the recommended interval, and demonstrate that the maintenance will be done at the recommended interval on in-use engines. In considering your request, we will evaluate the information you provide and any other available information to establish alternate specifications for maintenance intervals, if appropriate.

* * * * *

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations, such as atypical engine operation. You must clearly state that this additional maintenance is associated with the special situation you are addressing. We may disapprove your maintenance instructions if we determine that you have specified special maintenance steps to address engine operation that is not atypical, or that the maintenance is unlikely to occur in use. If we determine that certain maintenance items do not qualify as special maintenance under this paragraph (c), you may identify this as recommended additional maintenance under paragraph (b) of this section.

* * * * *

Subpart C—[Amended]

239. Section 1054.201 is amended by adding paragraph (h) to read as follows:

§ 1054.201 What are the general requirements for obtaining a certificate of conformity?

* * * * *

(h) For engines that become new after being placed into service, such as engines converted to run on a different fuel, we may specify alternate certification provisions consistent with the intent of this part. See § 1054.645 and the definition of ''new nonroad engine'' in § 1054.801.

240. Section 1054.205 is amended by revising paragraph (b) to read as follows:

§ 1054.205 What must I include in my application?

* * * * *

(b) Explain how the emission control systems operate. Describe the evaporative emission controls and show how your design will prevent running loss emissions, if applicable. Also describe in detail all system components for controlling exhaust emissions, including all auxiliary emission control devices (AECDs) and all fuel-system components you will install on any production or test engine. Identify the part number of each component you describe. For this paragraph (b), treat as separate AECDs any devices that modulate or activate differently from each other. Include sufficient detail to allow us to evaluate whether the AECDs are consistent with the defeat device prohibition of § 1054.115. For example, if your engines will routinely experience in-use operation that differs from the specified duty cycle for certification, describe how the fuel-metering system responds to varying speeds and loads not represented by the duty cycle. If you test an emission-data engine by disabling the governor for full-load operation such that the engine operates at an air-fuel ratio significantly different than under full-load operation with an installed governor, explain why these differences are necessary or appropriate. For conventional carbureted engines without electronic fuel controls, it is sufficient to state that there is no significant difference in air-fuel ratios.

* * * * *

241. Section 1054.220 is amended by revising paragraph (a) to read as follows:

§ 1054.220 How do I amend the maintenance instructions in my application?

* * * * *

(a) If you are decreasing or eliminating any specified maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. This would generally include replacing one maintenance step with another. We may approve a shorter time or waive this requirement.

* * * * *

Subpart G—[Amended]

242. Section 1054.601 is amended by adding paragraph (c) to read as follows:

§ 1054.601 What compliance provisions apply to these engines?

* * * * *

(c) The provisions of 40 CFR 1068.215 apply for cases in which the manufacturer takes possession of engines for purposes of recovering components as described in this paragraph (c). Note that this paragraph (c) does not apply for certified engines that still have the emission control information label since such engines do not need an exemption.

(1) You must label the engine as specified in 40 CFR 1068.215(c)(3), except that the label may be removable as specified in 40 CFR 1068.45(b).

(2) You may not resell the engine. For components other than the engine block, you may generate revenue from the sale of the components that you recover, or from the sale of new engines containing these components. You may also use components other than the engine block for engine rebuilds as otherwise allowed under the regulations. You may use the engine block from an engine that is exempted under this paragraph (c) only to make a new engine, and then only where such an engine has a separate identity from the original engine.

(3) Once the engine has reached its final destination, you may stop collecting records describing the engine's final disposition and how you use the engine. This does not affect the requirement to maintain the records you have already collected under 40 CFR 1068.215. This also does not affect the requirement to maintain records for new engines.

243. Section 1054.690 is amended by revising paragraphs (d), (f), and (j) to read as follows:

§ 1054.690 What bond requirements apply for certified engines?

* * * * *

(d) The minimum value of the bond is $500,000. A higher bond value may apply based on the per-engine bond values shown in Table 1 to this section and on the U.S.-directed production volume from each displacement grouping for the calendar model year. For example, if you have projected U.S.-directed production volumes of 10,000 engines with 180 cc displacement and 10,000 engines with 400 cc displacement in 2013, the appropriate bond amount is $750,000. Adjust the value of the bond as follows:

(1) If your estimated or actual U.S.-directed production volume in any later year increases beyond the level appropriate for your current bond payment, you must post additional bond to reflect the increased volume within 90 days after you change your estimate or determine the actual production volume. You may not decrease your bond.

(2) If you sell engines without aftertreatment components under the provisions of § 1054.610, you must increase the per-engine bond values for the current year by 20 percent.

TABLE 1 TO § 1054.690—PER-ENGINE BOND VALUES

For engines with displacement falling in the following ranges . . .	The per-engine bond value is . . .
Disp. < 225 cc	$25
225 ≤ Disp. < 740 cc	50
740 ≤ Disp. ≤ 1,000 cc	100
Disp. > 1,000 cc	200

* * * * *

(f) You may meet the bond requirements of this section by obtaining a bond from a third-party surety that is cited in the U.S. Department of Treasury Circular 570, ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'' (*http://www.fms.treas.gov/c570/c570.html#certified*). You must maintain this bond for every year in which you sell certified engines. The surety agent remains responsible for obligations under the bond for two years after the bond is cancelled or expires without being replaced.

* * * * *

(j) The following provisions apply if you import engines for resale when those engines have been certified by someone else (or equipment containing such engines):

(1) You and the certificate holder are each responsible for compliance with the requirements of this part and the Clean Air Act. For example, we may require you to comply with the warranty requirements in § 1054.120.

(2) You do not need to post bond if you or the certificate holder complies with the bond requirements of this section. You also do not need to post bond if the certificate holder complies with the asset requirements of this section and the repair-network provisions of § 1054.120(f)(4).

Subpart H—[Amended]

244. Section 1054.730 is amended by revising paragraph (b)(4) to read as follows:

§ 1054.730 What ABT reports must I send to EPA?

* * * * *

(b) * * *

(4) The projected and actual production volumes for the model year with a point of first retail sale in the United States, as described in § 1054.701(i). For fuel tanks, state the production volume in terms of surface area and production volume for each fuel tank configuration and state the total surface area for the emission family. If you changed an FEL during the model year, identify the actual production volume associated with each FEL.

* * * * *

Subpart I—[Amended]

245. Section 1054.801 is amended by revising the definitions for ''Oxides of nitrogen'' and ''Total hydrocarbon equivalent'' and adding a definition for ''Point of first retail sale'' in alphabetical order to read as follows:

* * * * *

Oxides of nitrogen has the meaning given in 40 CFR 1065.1001

* * * * *

Point of first retail sale means the location at which the initial retail sale occurs. This generally means an equipment dealership, but may also include an engine seller or distributor in cases where loose engines are sold to the general public for uses such as replacement engines.

* * * * *

Total hydrocarbon equivalent has the meaning given in 40 CFR 1065.1001. This generally means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as exhaust hydrocarbon from petroleum-fueled engines. The hydrogen-to-carbon mass ratio of the equivalent hydrocarbon is 1.85:1.

* * * * *

PART 1060—CONTROL OF EVAPORATIVE EMISSIONS FROM NEW AND IN-USE NONROAD AND STATIONARY EQUIPMENT

246. The authority citation for part 1060 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

247. Section 1060.103 is amended by revising paragraph (e) to read as follows:

§ 1060.103 What permeation emission control requirements apply for fuel tanks?

* * * * *

(e) Fuel caps may be certified separately relative to the permeation emission standard in paragraph (b) of this section using the test procedures specified in § 1060.521. Fuel caps certified alone do not need to meet the emission standard. Rather, fuel caps would be certified with a Family Emission Limit, which is used for demonstrating that fuel tanks meet the emission standard as described in § 1060.520(b)(5). For the purposes of this paragraph (e), gaskets or O-rings that are produced as part of an assembly with the fuel cap are considered part of the fuel cap.

* * * * *

248. Section 1060.135 is amended by revising paragraph (a)(5) to read as follows:

§ 1060.135 How must I label and identify the engines and equipment I produce?

* * * * *

(a) * * *

(5) Readily visible in the final installation. It may be under a hinged door or other readily opened cover. It may not be hidden by any cover attached with screws or any similar designs. Labels on marine vessels (except personal watercraft) must be visible from the helm.

* * * * *

249. Section 1060.137 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 1060.137 How must I label and identify the fuel-system components I produce?

* * * * *

(a) * * *

(4) Fuel caps, as described in this paragraph (a)(4). Fuel caps must be labeled if they are separately certified

under § 1060.103 or if the diurnal control system requires that the fuel tank hold pressure. Fuel caps must also be labeled if they are mounted directly on the fuel tank, unless the fuel tank is certified based on a worst-case fuel cap.

(5) Replaceable pressure-relief assemblies. This does not apply if the component is integral to the fuel tank or fuel cap. If the assembly is too small to be properly labeled, you may omit the label, provided that you identify the part numbers in your maintenance and installation instructions.

* * * * *

Subpart F—[Amended]

250. Section 1060.515 is amended by revising paragraph (c) to read as follows:

§ 1060.515 How do I test EPA Nonroad Fuel Lines and EPA Cold-Weather Fuel Lines for permeation emissions?

* * * * *

(c) Measure fuel line permeation emissions using the equipment and procedures for weight-loss testing specified in SAE J30 or SAE J1527 (incorporated by reference in § 1060.810). Start the measurement procedure within 8 hours after draining and refilling the fuel line. Perform the emission test over a sampling period of 14 days. Determine your final emission result based on the highest measured valued over the 14-day period.

* * * * *

251. Section 1060.520 is amended as follows:

a. By adding paragraph (a)(4).

b. By removing and reserving paragraph (b)(3).

c. By revising paragraphs (b)(5)(ii)(B), (d)(8), and (d)(10).

§ 1060.520 How do I test fuel tanks for permeation emissions?

* * * * *

(a) * * *

(4) Perform durability cycles on fuel caps intended for use with handheld equipment by putting the fuel cap on and taking it off 300 times. Tighten the fuel cap each time in a way that represents the typical in-use experience.

(b) * * *

(3) [Reserved]

* * * * *

(5) * * *

(ii) * * *

(B) You may seal the fuel inlet with a nonpermeable covering if you separately account for permeation emissions from the fuel cap. This may involve a separate measurement of permeation emissions from a worst-case fuel cap as described in § 1060.521. This may also involve specifying a worst-case Family Emission Limit based on separately certified fuel caps as described in § 1060.103(e).

* * * * *

(d) * * *

(8) Measure weight loss daily by retaring the balance using the reference tank and weighing the sealed test tank. Calculate the cumulative weight loss in grams for each measurement. Calculate the coefficient of determination, r^2, based on a linear plot of cumulative weight loss vs. test days. Use the equation in 40 CFR 1065.602(k), with cumulative weight loss represented by y_i and cumulative time represented by y_{ref}. The daily measurements must be at approximately the same time each day. You may omit up to two daily measurements in any seven-day period. Test for ten full days, then determine when to stop testing as follows:

(i) You may stop testing after the measurement on the tenth day if r^2 is at or above 0.95 or if the measured value is less than 50 percent of the applicable standard. (Note that if a Family Emission Limit applies for the family, it is considered to be the applicable standard for that family.) This means that if you stop testing with an r^2 below 0.95, you may not use the data to show compliance with a Family Emission Limit less than twice the measured value.

(ii) If after ten days of testing your r^2 value is below 0.95 and your measured value is more than 50 percent of the applicable standard, continue testing for a total of 20 days or until r^2 is at or above 0.95. If r^2 is not at or above 0.95 within 20 days of testing, discontinue the test and precondition the fuel tank further until it has stabilized emission levels, then repeat the testing.

* * * * *

(10) Determine your final emission result based on the cumulative weight loss measured on the final day of testing. Round this result to the same number of decimal places as the emission standard.

* * * * *

Subpart G—[Amended]

252. Section 1060.601 is amended by adding paragraph (h) to read as follows:

§ 1060.601 How do the prohibitions of 40 CFR 1068.101 apply with respect to the requirements of this part?

* * * * *

(h) If equipment manufacturers hold certificates of conformity for their equipment but they use only fuel-system components that have been certified by other companies, they may satisfy their defect-reporting obligations by tracking the information described in 40 CFR 1068.501(b)(1) related to possible defects, reporting this information to the appropriate component manufacturers, and keeping these records for eight years. Such equipment manufacturers will not be considered in violation of 40 CFR 1068.101(b)(6) for failing to perform investigations, make calculations, or submit reports to EPA as specified in 40 CFR 1068.501. See § 1060.5(a).

Subpart I—[Amended]

253. Section 1060.801 is amended by revising the definitions for ''Detachable fuel line'' and ''Sealed'' and adding definitions for ''Installed marine fuel line'' and ''Portable marine fuel line'' to read as follows:

§ 1060.801 What definitions apply to this part?

* * * * *

Detachable fuel line means a fuel line or fuel line assembly intended to be used with a portable nonroad fuel tank and which is connected by special fittings to the fuel tank and/or engine for easy disassembly. Fuel lines that require a wrench or other tools to disconnect are not considered detachable fuel lines. Fuel lines that are labeled or marketed as USCG Type B1 fuel line as specified in 33 CFR 183.540 are not considered detachable fuel lines if they are sold to the ultimate purchaser without quick-connect fittings or similar hardware.

* * * * *

Installed marine fuel line means a fuel line designed for delivering fuel to a Marine SI engine, excluding portable marine fuel line.

* * * * *

Portable marine fuel line means a detachable fuel line that is used or intended to be used to supply fuel to a marine engine during operation. This also includes any fuel line labeled or marketed at USCG Type B1 fuel line as specified in 33 CFR 183.540, whether or not it includes detachable connecting hardware; this is often called universal fuel line.

* * * * *

Sealed means lacking openings to the atmosphere that would allow a measurable amount of liquid or vapor to leak out under normal operating pressures or other pressures specified in this part. For example, you may generally establish a maximum value for operating pressures based on the highest pressure you would observe from an installed fuel tank during continuous equipment operation on a sunny day with ambient temperatures of 35°C. A fuel system may be considered to have

no measurable leak if it does not release bubbles when held underwater at the identified pressure for 60 seconds. This determination presumes the use of good engineering judgment; for example, it would not be appropriate to test the fuel tank such that small leaks would avoid detection by collecting in a cavity created by holding the tank with a certain orientation. Sealed fuel systems may have openings for emission controls or for fuel lines needed to route fuel to the engine.

* * * * *

PART 1065—ENGINE–TESTING PROCEDURES

254. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A— [Revised]

255. Section 1065.1 is amended by revising paragraph (d) to read as follows:

§ 1065.1 Applicability.

* * * * *

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines. In this part, we refer to each of these other parts generically as the ''standard-setting part.'' For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Note that while 40 CFR part 86 is the standard-setting part for heavy-duty highway engines, this refers specifically to 40 CFR part 86, subpart A, and to certain portions of 40 CFR part 86, subpart N, as described in 40 CFR 86.1301.

* * * * *

256. Section 1065.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1065.2 Submitting information to EPA under this part.

(a) You are responsible for statements and information in your applications for certification, requests for approved procedures, selective enforcement audits, laboratory audits, production-line test reports, field test reports, or any other statements you make to us related to this part 1065. If you provide statements or information to someone for submission to EPA, you are responsible for these statements and information as if you had submitted them to EPA yourself.

(b) In the standard-setting part and in 40 CFR 1068.101, we describe your obligation to report truthful and complete information and the consequences of failing to meet this obligation. See also 18 U.S.C. 1001 and 42 U.S.C. 7413(c)(2). This obligation applies whether you submit this information directly to EPA or through someone else.

* * * * *

257. Section 1065.10 is amended by revising paragraphs (c)(2) and (c)(7) to read as follows:

§ 1065.10 Other procedures.

* * * * *

(c) * * *

(2) You may request to use special procedures if your engine cannot be tested using the specified procedures. For example, this may apply if your engine cannot operate on the specified duty cycle. In this case, tell us in writing why you cannot satisfactorily test your engine using this part's procedures and ask to use a different approach. We will approve your request if we determine that it would produce emission measurements that represent in-use operation and we determine that it can be used to show compliance with the requirements of the standard-setting part. Where we approve special procedures that differ substantially from the specified procedures, we may preclude you from participating in averaging, banking, and trading with the affected engine families.

* * * * *

(7) You may request to use alternate procedures that are equivalent to the allowed procedures, or procedures that are more accurate or more precise than the allowed procedures. The following provisions apply to requests for alternate procedures:

(i) Applications. Follow the instructions in § 1065.12.

(ii) Submission. Submit requests in writing to the Designated Compliance Officer.

(iii) Notification. We may approve your request by telling you directly, or we may issue guidance announcing our approval of a specific alternate procedure, which would make additional requests for approval unnecessary.

* * * * *

258. Section 1065.15 is amended by revising paragraph (c) to read as follows:

§ 1065.15 Overview of procedures for laboratory and field testing.

* * * * *

(c) We generally set brake-specific emission standards over test intervals and/or duty cycles, as follows:

(1) *Engine operation.* Testing may involve measuring emissions and work in a laboratory-type environment or in the field, as described in paragraph (f) of this section. For most laboratory testing, the engine is operated over one or more duty cycles specified in the standard-setting part. However, laboratory testing may also include non-duty cycle testing (such as simulation of field testing in a laboratory). For field testing, the engine is operated under normal in-use operation. The standard-setting part specifies how test intervals are defined for field testing. Refer to the definitions of ''duty cycle'' and ''test interval'' in § 1065.1001. Note that a single duty cycle may have multiple test intervals and require weighting of results from multiple test intervals to calculate a composite brake-specific emissions value to compare to the standard.

(2) *Constituent determination.* Determine the total mass of each constituent over a test interval by selecting from the following methods:

(i) *Continuous sampling.* In continuous sampling, measure the constituent's concentration continuously from raw or dilute exhaust. Multiply this concentration by the continuous (raw or dilute) flow rate at the emission sampling location to determine the constituent's flow rate. Sum the constituent's flow rate continuously over the test interval. This sum is the total mass of the emitted constituent.

(ii) *Batch sampling.* In batch sampling, continuously extract and store a sample of raw or dilute exhaust for later measurement. Extract a sample proportional to the raw or dilute exhaust flow rate. You may extract and store a proportional sample of exhaust in an appropriate container, such as a bag, and then measure HC, CO, and NO_X concentrations in the container after the test interval. You may deposit PM from proportionally extracted exhaust onto an appropriate substrate, such as a filter. In this case, divide the PM by the amount of filtered exhaust to calculate the PM concentration. Multiply batch sampled concentrations by the total (raw or dilute) flow from which it was extracted during the test interval. This product is the total mass of the emitted constituent.

(iii) *Combined sampling.* You may use continuous and batch sampling simultaneously during a test interval, as follows:

(A) You may use continuous sampling for some constituents and batch sampling for others.

(B) You may use continuous and batch sampling for a single constituent, with one being a redundant measurement. See § 1065.201 for more information on redundant measurements.

(3) *Work determination.* Determine work over a test interval by one of the following methods:

(i) *Speed and torque.* Synchronously multiply speed and brake torque to calculate instantaneous values for engine brake power. Sum engine brake power over a test interval to determine total work.

(ii) *Fuel consumed and brake-specific fuel consumption.* Directly measure fuel consumed or calculate it with chemical balances of the fuel, intake air, and exhaust. To calculate fuel consumed by a chemical balance, you must also measure either intake-air flow rate or exhaust flow rate. Divide the fuel consumed during a test interval by the brake-specific fuel consumption to determine work over the test interval. For laboratory testing, calculate the brake-specific fuel consumption using fuel consumed and speed and torque over a test interval. For field testing, refer to the standard-setting part and § 1065.915 for selecting an appropriate value for brake-specific fuel consumption.

* * * * *

Subpart B— [Revised]

259. Section 1065.125 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1065.125 Engine intake air.

* * * * *

(c) Maintain the temperature of intake air upstream of all engine components within the range of allowable ambient temperatures (or other range specified by the standard-setting part), consistent with the provisions of § 1065.10(c)(1).

* * * * *

(e) This paragraph (e) includes provisions for simulating charge-air cooling in the laboratory. This approach is described in paragraph (e)(1) of this section. Limits on using this approach are described in paragraphs (e)(2) and (3) of this section.

(1) Use a charge-air cooling system with a total intake-air capacity that represents production engines' in-use installation. Design any laboratory charge-air cooling system to minimize accumulation of condensate. Drain any accumulated condensate and completely close all drains before starting a duty cycle. Keep the drains closed during the emission test. Maintain coolant conditions as follows:

(i) Maintain a coolant temperature of at least 20 °C at the inlet to the charge-air cooler throughout testing. We recommend maintaining a coolant temperature of 25 ± 5 °C at the inlet of the charge-air cooler.

(ii) At the engine conditions specified by the manufacturer, set the coolant flow rate to achieve an air temperature within ±5 °C of the value specified by the manufacturer after the charge-air cooler's outlet. Measure the air-outlet temperature at the location specified by the manufacturer. Use this coolant flow rate set point throughout testing. If the engine manufacturer does not specify engine conditions or the corresponding charge-air cooler air outlet temperature, set the coolant flow rate at maximum engine power to achieve a charge-air cooler air outlet temperature that represents in-use operation.

(iii) If the engine manufacturer specifies pressure-drop limits across the charge-air cooling system, ensure that the pressure drop across the charge-air cooling system at engine conditions specified by the manufacturer is within the manufacturer's specified limit(s). Measure the pressure drop at the manufacturer's specified locations.

(2) Using a constant flow rate as described in paragraph (e)(1) of this section may result in unrepresentative overcooling of the intake air. The provisions of this paragraph (e)(2) apply instead of the provisions of § 1065.10(c)(1) for this simulation. Our allowance to cool intake air as specified in this paragraph (e) does not affect your liability for field testing or for laboratory testing that is done in a way that better represents in-use operation. Where we determine that this allowance adversely affects your ability to demonstrate that your engines would comply with emission standards under in-use conditions, we may require you to use more sophisticated setpoints and controls of charge-air pressure drop, coolant temperature, and flow rate to achieve more representative results.

(3) This approach does not apply for field testing. You may not correct measured emission levels from field testing to account for any differences caused by the simulated cooling in the laboratory.

260. Section 1065.140 is amended by revising paragraphs (c)(6), (e) introductory text, and (e)(4) to read as follows:

§ 1065.140 Dilution for gaseous and PM constituents.

* * * * *

(c) * * *

(6) *Aqueous condensation.* To ensure that you measure a flow that corresponds to a measured concentration, you may either prevent aqueous condensation throughout the dilution tunnel or you may allow aqueous condensation to occur and then measure humidity at the flow meter inlet. You may heat or insulate the dilution tunnel walls, as well as the bulk stream tubing downstream of the tunnel to prevent aqueous condensation. Calculations in § 1065.645 and § 1065.650 account for either method of addressing humidity in the diluted exhaust. Note that preventing aqueous condensation involves more than keeping pure water in a vapor phase (see § 1065.1001).

* * * * *

(e) *Dilution air temperature, dilution ratio, residence time, and temperature control of PM samples.* Dilute PM samples at least once upstream of transfer lines. You may dilute PM samples upstream of a transfer line using full-flow dilution, or partial-flow dilution immediately downstream of a PM probe. In the case of partial-flow dilution, you may have up to 26 cm of insulated length between the end of the probe and the dilution stage, but we recommend that the length be as short as practical. The intent of these specifications is to minimize heat transfer to or from the emission sample before the final stage of dilution, other than the heat you may need to add to prevent aqueous condensation. This is accomplished by initially cooling the sample through dilution. Configure dilution systems as follows:

* * * * *

(4) Control sample temperature to a (47 ±5) °C tolerance, as measured anywhere within 20 cm upstream or downstream of the PM storage media (such as a filter). Measure this temperature with a bare-wire junction thermocouple with wires that are (0.500 ±0.025) mm diameter, or with another suitable instrument that has equivalent performance.

261. Section 1065.145 is revised to read as follows:

§ 1065.145 Gaseous and PM probes, transfer lines, and sampling system components.

(a) *Continuous and batch sampling.* Determine the total mass of each constituent with continuous or batch sampling, as described in § 1065.15(c)(2). Both types of sampling systems have probes, transfer lines, and other sampling system components that are described in this section.

(b) Options for engines with multiple exhaust stacks. Measure emissions from a test engine as described in this paragraph (b) if it has multiple exhaust stacks. You may choose to use different measurement procedures for different pollutants under this paragraph (b) for a given test. For purposes of this part 1065, the test engine includes all the devices related to converting the

chemical energy in the fuel to the engine's mechanical output energy. This may or may not involve vehicle- or equipment-based devices. For example, all of an engine's cylinders are considered to be part of the test engine even if the exhaust is divided into separate exhaust stacks. As another example, all the cylinders of a diesel-electric locomotive are considered to be part of the test engine even if they transmit power through separate output shafts, such as might occur with multiple engine-generator sets working in tandem. Use one of the following procedures to measure emissions with multiple exhaust stacks:

(1) Route the exhaust flow from the multiple stacks into a single flow as described in § 1065.130(c)(6). Sample and measure emissions after the exhaust streams are mixed. Calculate the emissions as a single sample from the entire engine. We recommend this as the preferred option, since it requires only a single measurement and calculation of the exhaust molar flow for the entire engine.

(2) Sample and measure emissions from each stack and calculate emissions separately for each stack. Add the mass (or mass rate) emissions from each stack to calculate the emissions from the entire engine. Testing under this paragraph (b)(2) requires measuring or calculating the exhaust molar flow for each stack separately. If the exhaust molar flow in each stack cannot be calculated from combustion air flow(s), fuel flow(s), and measured gaseous emissions, and it is impractical to measure the exhaust molar flows directly, you may alternatively proportion the engine's calculated total exhaust molar flow rate (where the flow is calculated using combustion air mass flow(s), fuel mass flow(s), and emissions concentrations) based on exhaust molar flow measurements in each stack using a less accurate, non-traceable method. For example, you may use a total pressure probe and static pressure measurement in each stack.

(3) Sample and measure emissions from one stack and repeat the duty cycle as needed to collect emissions from each stack separately. Calculate the emissions from each stack and add the separate measurements to calculate the mass (or mass rate) emissions from the entire engine. Testing under this paragraph (b)(3) requires measuring or calculating the exhaust molar flow for each stack separately. You may alternatively proportion the engine's calculated total exhaust molar flow rate based on calculation and measurement limitations as described in paragraph (b)(2) of this section. Use the average of the engine's total power or work values from the multiple test runs to calculate brake-specific emissions. Divide the total mass (or mass rate) of each emission by the average power (or work). You may alternatively use the engine power or work associated with the corresponding stack during each test run if these values can be determined for each stack separately.

(4) Sample and measure emissions from each stack separately and calculate emissions for the entire engine based on the stack with the highest concentration. Testing under this paragraph (b)(4) requires only a single exhaust flow measurement or calculation for the entire engine. You may determine which stack has the highest concentration by performing multiple test runs, reviewing the results of earlier tests, or using good engineering judgment. Note that the highest concentration of different pollutants may occur in different stacks. Note also that the stack with the highest concentration of a pollutant during a test interval for field testing may be a different stack than the one you identified based on average concentrations over a duty cycle.

(5) Sample emissions from each stack separately and combine the wet sample streams from each stack proportionally to the exhaust molar flows in each stack. Measure the emission concentrations and calculate the emissions for the entire engine based on these weighted concentrations. Testing under this paragraph (b)(5) requires measuring or calculating the exhaust molar flow for each stack separately during the test run to proportion the sample streams from each stack. If it is impractical to measure the exhaust molar flows directly, you may alternatively proportion the wet sample streams based on less accurate, non-traceable flow methods. For example, you may use a total pressure probe and static pressure measurement in each stack. The following restrictions apply for testing under this paragraph (b)(5):

(i) You must use an accurate, traceable measurement or calculation of the engine's total exhaust molar flow rate for calculating the mass of emissions from the entire engine.

(ii) You may dry the single, combined, proportional sample stream; you may not dry the sample streams from each stack separately.

(iii) You must measure and proportion the sample flows from each stack with active flow controls. For PM sampling, you must measure and proportion the diluted sample flows from each stack with active flow controls that use only smooth walls with no sudden change in cross-sectional area. For example, you may control the dilute exhaust PM sample flows using electrically conductive vinyl tubing and a control device that pinches the tube over a long enough transition length so no flow separation occurs.

(iv) For PM sampling, the transfer lines from each stack must be joined so the angle of the joining flows is 12.5° or less. Note that the exhaust manifold must meet the same specifications as the transfer line according to paragraph (d) of this section.

(6) Sample emissions from each stack separately and combine the wet sample streams from each stack equally. Measure the emission concentrations and calculate the emissions for the entire engine based on these measured concentrations. Testing under this paragraph (b)(6) assumes that the raw-exhaust and sample flows are the same for each stack. The following restrictions apply for testing under this paragraph (b)(6):

(i) You must measure and demonstrate that the sample flow from each stack is within 5% of the value from the stack with the highest sample flow. You may alternatively ensure that the stacks have equal flow rates without measuring sample flows by designing a passive sampling system that meets the following requirements:

(A) The probes and transfer line branches must be symmetrical, have equal lengths and diameters, have the same number of bends, and have no filters.

(B) If probes are designed such that they are sensitive to stack velocity, the stack velocity must be similar at each probe. For example, a static pressure probe used for gaseous sampling is not sensitive to stack velocity.

(C) The stack static pressure must be the same at each probe. You can meet this requirement by placing probes at the end of stacks that are vented to atmosphere.

(D) For PM sampling, the transfer lines from each stack must be joined so the angle of the joining flows is 12.5° or less. Note that the exhaust manifold must meet the same specifications as the transfer line according to paragraph (d) of this section.

(ii) You may use the procedure in this paragraph (b)(6) only if you perform an analysis showing that the resulting error due to imbalanced stack flows and concentrations is either at or below 2%. You may alternatively show that the resulting error does not impact your ability to demonstrate compliance with applicable standards. For example, you may use less accurate, non-traceable

measurements of emission concentrations and molar flow in each stack and demonstrate that the imbalances in flows and concentrations cause 2% or less error.

(iii) For a two-stack engine, you may use the procedure in this paragraph (b)(6) only if you can show that the stack with the higher flow has the lower average concentration for each pollutant over the duty cycle.

(iv) You must use an accurate, traceable measurement or calculation of the engine's total exhaust molar flow rate for calculating the mass of emissions from the entire engine.

(v) You may dry the single, equally combined, sample stream; you may not dry the sample streams from each stack separately.

(vi) You may determine your exhaust flow rates with a chemical balance of exhaust gas concentrations and either intake air flow or fuel flow.

(c) *Gaseous and PM sample probes.* A probe is the first fitting in a sampling system. It protrudes into a raw or diluted exhaust stream to extract a sample, such that its inside and outside surfaces are in contact with the exhaust. A sample is transported out of a probe into a transfer line, as described in paragraph (d) of this section. The following provisions apply to sample probes:

(1) *Probe design and construction.* Use sample probes with inside surfaces of 300 series stainless steel or, for raw exhaust sampling, use any nonreactive material capable of withstanding raw exhaust temperatures. Locate sample probes where constituents are mixed to their mean sample concentration. Take into account the mixing of any crankcase emissions that may be routed into the raw exhaust. Locate each probe to minimize interference with the flow to other probes. We recommend that all probes remain free from influences of boundary layers, wakes, and eddies—especially near the outlet of a raw-exhaust tailpipe where unintended dilution might occur. Make sure that purging or back-flushing of a probe does not influence another probe during testing. You may use a single probe to extract a sample of more than one constituent as long as the probe meets all the specifications for each constituent.

(2) *Gaseous sample probes.* Use either single-port or multi-port probes for sampling gaseous emissions. You may orient these probes in any direction relative to the raw or diluted exhaust flow. For some probes, you must control sample temperatures, as follows:

(i) For probes that extract NO_x from diluted exhaust, control the probe's wall temperature to prevent aqueous condensation.

(ii) For probes that extract hydrocarbons for THC or NMHC analysis from the diluted exhaust of compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, we recommend heating the probe to minimize hydrocarbon contamination consistent with good engineering judgment. If you routinely fail the contamination check in the 1065.520 pretest check, we recommend heating the probe section to approximately 190 °C to minimize contamination.

(3) *PM sample probes.* Use PM probes with a single opening at the end. Orient PM probes to face directly upstream. If you shield a PM probe's opening with a PM pre-classifier such as a hat, you may not use the preclassifier we specify in paragraph (f)(1) of this section. We recommend sizing the inside diameter of PM probes to approximate isokinetic sampling at the expected mean flow rate.

(d) *Transfer lines.* You may use transfer lines to transport an extracted sample from a probe to an analyzer, storage medium, or dilution system, noting certain restrictions for PM sampling in § 1065.140(e). Minimize the length of all transfer lines by locating analyzers, storage media, and dilution systems as close to probes as practical. We recommend that you minimize the number of bends in transfer lines and that you maximize the radius of any unavoidable bend. Avoid using 90 °elbows, tees, and cross-fittings in transfer lines. Where such connections and fittings are necessary, take steps, using good engineering judgment, to ensure that you meet the temperature tolerances in this paragraph (d). This may involve measuring temperature at various locations within transfer lines and fittings. You may use a single transfer line to transport a sample of more than one constituent, as long as the transfer line meets all the specifications for each constituent. The following construction and temperature tolerances apply to transfer lines:

(1) *Gaseous samples.* Use transfer lines with inside surfaces of 300 series stainless steel, PTFE, Viton™, or any other material that you demonstrate has better properties for emission sampling. For raw exhaust sampling, use a non-reactive material capable of withstanding raw exhaust temperatures. You may use in-line filters if they do not react with exhaust constituents and if the filter and its housing meet the same temperature requirements as the transfer lines, as follows:

(i) For NO_X transfer lines upstream of either an NO_2-to-NO converter that meets the specifications of § 1065.378 or a chiller that meets the specifications of § 1065.376, maintain a sample temperature that prevents aqueous condensation.

(ii) For THC transfer lines for testing compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, maintain a wall temperature tolerance throughout the entire line of (191 ± 11) °C. If you sample from raw exhaust, you may connect an unheated, insulated transfer line directly to a probe. Design the length and insulation of the transfer line to cool the highest expected raw exhaust temperature to no lower than 191 °C, as measured at the transfer line's outlet. For dilute sampling, you may use a transition zone between the probe and transfer line of up to 92 cm to allow your wall temperature to transition to (191 ± 11) °C.

(2) *PM samples.* We recommend heated transfer lines or a heated enclosure to minimize temperature differences between transfer lines and exhaust constituents. Use transfer lines that are inert with respect to PM and are electrically conductive on the inside surfaces. We recommend using PM transfer lines made of 300 series stainless steel. Electrically ground the inside surface of PM transfer lines.

(e) *Optional sample-conditioning components for gaseous sampling.* You may use the following sample-conditioning components to prepare gaseous samples for analysis, as long as you do not install or use them in a way that adversely affects your ability to show that your engines comply with all applicable gaseous emission standards.

(1) *NO_2-to-NO converter.* You may use an NO_2-to-NO converter that meets the efficiency-performance check specified in § 1065.378 at any point upstream of a NO_x analyzer, sample bag, or other storage medium.

(2) *Sample dryer.* You may use either type of sample dryer described in this paragraph (e)(2) to decrease the effects of water on gaseous emission measurements. You may not use a chemical dryer, or use dryers upstream of PM sample filters.

(i) *Osmotic-membrane.* You may use an osmotic-membrane dryer upstream of any gaseous analyzer or storage medium, as long as it meets the temperature specifications in paragraph (d)(1) of this section. Because osmotic-membrane dryers may deteriorate after prolonged exposure to certain exhaust constituents, consult with the membrane manufacturer regarding your application before incorporating an

osmotic-membrane dryer. Monitor the dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ downstream of an osmotic-membrane dryer. You may use continuously recorded values of T_{dew} and p_{total} in the amount of water calculations specified in § 1065.645. If you do not continuously record these values, you may use their peak values observed during a test or their alarm setpoints as constant values in the calculations specified in § 1065.645. You may also use a nominal $p_{total,}$ which you may estimate as the dryer's lowest absolute pressure expected during testing.

(ii) *Thermal chiller.* You may use a thermal chiller upstream of some gas analyzers and storage media. You may not use a thermal chiller upstream of a THC measurement system for compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW. If you use a thermal chiller upstream of an NO_2-to-NO converter or in a sampling system without an NO_2-to-NO converter, the chiller must meet the NO_2 loss-performance check specified in § 1065.376. Monitor the dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ downstream of a thermal chiller. You may use continuously recorded values of T_{dew} and p_{total} in the emission calculations specified in § 1065.650. If you do not continuously record these values, you may use the maximum temperature and minimum pressure values observed during a test or the high alarm temperature setpoint and the low alarm pressure setpoint as constant values in the amount of water calculations specified in § 1065.645. You may also use a nominal $p_{total,}$ which you may estimate as the dryer's lowest absolute pressure expected during testing. If it is valid to assume the degree of saturation in the thermal chiller, you may calculate T_{dew} based on the known chiller performance and continuous monitoring of chiller temperature, $T_{chiller.}$ If you do not continuously record values of $T_{chiller,}$ you may use its peak value observed during a test, or its alarm setpoint, as a constant value to determine a constant amount of water according to § 1065.645. If it is valid to assume that $T_{chiller}$ is equal to $T_{dew,}$ you may use $T_{chiller}$ in lieu of T_{dew} according to § 1065.645. If it is valid to assume a constant temperature offset between $T_{chiller}$ and $T_{dew,}$ due to a known and fixed amount of sample reheat between the chiller outlet and the temperature measurement location, you may factor in this assumed temperature offset value into emission calculations. If we ask for it, you must show by engineering analysis or by data the validity of any assumptions allowed by this paragraph (e)(2)(ii).

(3) *Sample pumps.* You may use sample pumps upstream of an analyzer or storage medium for any gas. Use sample pumps with inside surfaces of 300 series stainless steel, PTFE, or any other material that you demonstrate has better properties for emission sampling. For some sample pumps, you must control temperatures, as follows:

(i) If you use a NO_x sample pump upstream of either an NO_2-to-NO converter that meets § 1065.378 or a chiller that meets § 1065.376, it must be heated to prevent aqueous condensation.

(ii) For testing compression-ignition engines, 2-stroke spark-ignition engines, or 4-stroke spark-ignition engines below 19 kW, if you use a THC sample pump upstream of a THC analyzer or storage medium, its inner surfaces must be heated to a tolerance of (191 ±11) °C.

(4) *Ammonia Scrubber.* You may use ammonia scrubbers for any or all gaseous sampling systems to prevent interference with NH_3, poisoning of the NO_2-to-NO converter, and deposits in the sampling system or analyzers. Follow the ammonia scrubber manufacturer's recommendations or use good engineering judgment in applying ammonia scrubbers.

(f) *Optional sample-conditioning components for PM sampling.* You may use the following sample-conditioning components to prepare PM samples for analysis, as long as you do not install or use them in a way that adversely affects your ability to show that your engines comply with the applicable PM emission standards. You may condition PM samples to minimize positive and negative biases to PM results, as follows:

(1) *PM preclassifier.* You may use a PM preclassifier to remove large-diameter particles. The PM preclassifier may be either an inertial impactor or a cyclonic separator. It must be constructed of 300 series stainless steel. The preclassifier must be rated to remove at least 50% of PM at an aerodynamic diameter of 10 μm and no more than 1% of PM at an aerodynamic diameter of 1 μm over the range of flow rates for which you use it. Follow the preclassifier manufacturer's instructions for any periodic servicing that may be necessary to prevent a buildup of PM. Install the preclassifier in the dilution system downstream of the last dilution stage. Configure the preclassifier outlet with a means of bypassing any PM sample media so the preclassifier flow may be stabilized before starting a test. Locate PM sample media within 75 cm downstream of the preclassifier's exit. You may not use this preclassifier if you use a PM probe that already has a preclassifier. For example, if you use a hat-shaped preclassifier that is located immediately upstream of the probe in such a way that it forces the sample flow to change direction before entering the probe, you may not use any other preclassifier in your PM sampling system.

(2) *Other components.* You may request to use other PM conditioning components upstream of a PM preclassifier, such as components that condition humidity or remove gaseous-phase hydrocarbons from the diluted exhaust stream. You may use such components only if we approve them under § 1065.10.

Subpart C— [Revised]

262. Section 1065.240 is amended by revising paragraph (d) introductory text to read as follows:

§ 1065.240 Dilution air and diluted exhaust flow meters.

* * * * *

(d) *Exhaust cooling.* You may cool diluted exhaust upstream of a dilute-exhaust flow meter, as long as you observe all the following provisions:

* * * * *

Subpart D—[Revised]

263. Section 1065.303 is revised to read as follows:

§ 1065.303 Summary of required calibration and verifications

The following table summarizes the required and recommended calibrations and verifications described in this subpart and indicates when these have to be performed:

TABLE 1 OF § 1065.303–SUMMARY OF REQUIRED CALIBRATION AND VERIFICATIONS

Type of calibration or verification	Minimum frequency [a]
§ 1065.305: Accuracy, repeatability and noise	Accuracy: Not required, but recommended for initial installation. Repeatability: Not required, but recommended for initial installation. Noise: Not required, but recommended for initial installation.

TABLE 1 OF § 1065.303–SUMMARY OF REQUIRED CALIBRATION AND VERIFICATIONS—Continued

Type of calibration or verification	Minimum frequency [a]
§ 1065.307: Linearity verification	Speed: Upon initial installation, within 370 days before testing and after major maintenance. Torque: Upon initial installation, within 370 days before testing and after major maintenance. Electrical power: Upon initial installation, within 370 days before testing and after major maintenance. Fuel flow: Upon initial installation, within 370 days before testing, and after major maintenance. Clean gas and diluted exhaust flows: Upon initial installation, within 370 days before testing and after major maintenance, unless flow is verified by propane check or by carbon or oxygen balance. Raw exhaust flow: Upon initial installation, within 185 days before testing and after major maintenance, unless flow is verified by propane check or by carbon or oxygen balance. Gas dividers: Upon initial installation, within 370 days before testing, and after major maintenance. Gas analyzers: Upon initial installation, within 35 days before testing and after major maintenance. PM balance: Upon initial installation, within 370 days before testing and after major maintenance. Stand-alone pressure, temperature, and dewpoint: Upon initial installation, within 370 days before testing and after major maintenance.
§ 1065.308: Continuous gas analyzer system response and updating-recording verification—for gas analyzers not continuously compensated for other gas species.	Upon initial installation or after system modification that would affect response.
§ 1065.309: Continuous gas analyzer system-response and updating-recording verification—for gas analyzers continuously compensated for other gas species.	Upon initial installation or after system modification that would affect response.
§ 1065.310: Torque	Upon initial installation and after major maintenance.
§ 1065.315: Pressure, temperature, dewpoint	Upon initial installation and after major maintenance.
§ 1065.320: Fuel flow	Upon initial installation and after major maintenance.
§ 1065.325: Intake flow	Upon initial installation and after major maintenance.
§ 1065.330: Exhaust flow	Upon initial installation and after major maintenance.
§ 1065.340: Diluted exhaust flow (CVS)	Upon initial installation and after major maintenance.
§ 1065.341: CVS and batch sampler verification.[b]	Upon initial installation, within 35 days before testing, and after major maintenance.
§ 1065.342 Sample dryer verification	For thermal chillers; upon installation and after major maintenance. For osmotic membranes; upon installation, after major maintenance, and within 35 days of testing.
§ 1065.345: Vacuum leak	Before each laboratory test according to subpart F of this part and before each field test according to subpart J of this part.
§ 1065.350: CO_2 NDIR H_2O interference	Upon initial installation and after major maintenance.
§ 1065.355: CO NDIR CO_2 and H_2O interference	Upon initial installation and after major maintenance.
§ 1065.360: FID calibration THC FID optimization, and THC FID verification.	Calibrate all FID analyzers: upon initial installation and after major maintenance. Optimize and determine CH_4 response for THC FID analyzers: upon initial installation and after major maintenance. Verify CH_4 response for THC FID analyzers: upon initial installation, within 185 days before testing, and after major maintenance.
§ 1065.362: Raw exhaust FID O_2 interference	For all FID analyzers: upon initial installation and after major maintenance. For THC FID analyzers: upon initial installation after major maintenance, and after FID optimization according to § 1065.360.
§ 1065.365: Nonmethane cutter penetration	Upon initial installation, within 185 days before testing, and after major maintenance.
§ 1065.370: CLD CO_2 and H_2O quench	Upon initial installation and after major maintenance.
§ 1065.372: NDUV HC and H_2O interference	Upon initial installation and after major maintenance.
§ 1065.376: Chiller NO_2 penetration	Upon initial installation and after major maintenance.
§ 1065.378: NO_2-to-NO converter conversion	Upon initial installation, within 35 days before testing, and after major maintenance.
§ 1065.390: PM balance and weighing	Independent verification: upon initial installation, within 370 days before testing, and after major maintenance. Zero, span, and reference sample verifications: within 12 hours of weighing and after major maintenance.
§ 1065.395: Inertial PM balance and weighing	Independent verification: upon initial installation, within 370 days before testing, and after major maintenance. Other verifications: upon initial installation and after major maintenance.

[a] Perform calibrations and verifications more frequently, according to measurement system manufacturer instructions and good engineering judgment.

[b] The CVS verification described in § 1065.341 is not required for systems that agree within ± 2% based on a chemical balance of carbon or oxygen of the intake air, fuel, and diluted exhaust.

264. Section 1065.307 is amended by revising paragraphs (c)(6), (d), and (e)(3)(ii) and Table 1 to read as follows:

§ 1065.307 Linearity verification.

* * * * *

(c) * * *

(6) For all measured quantities, use instrument manufacturer recommendations and good engineering judgment to select reference values, $y_{refi,}$ that cover a range of values that you expect would prevent extrapolation beyond these values during emission testing. We recommend selecting a zero reference signal as one of the reference values of the linearity verification. For stand-alone pressure, temperature, and dewpoint linearity verifications, we recommend at least three reference values. For all other linearity verifications select at least ten reference values.

* * * * *

(d) *Reference signals*. This paragraph (d) describes recommended methods for generating reference values for the linearity-verification protocol in paragraph (c) of this section. Use reference values that simulate actual values, or introduce an actual value and measure it with a reference-measurement system. In the latter case, the reference value is the value reported by the reference-measurement system. Reference values and reference-measurement systems must be NIST-traceable. We recommend using calibration reference quantities that are NIST-traceable within 0.5% uncertainty, if not specified otherwise in other sections of this part 1065. Use the following recommended methods to generate reference values or use good engineering judgment to select a different reference:

(1) *Speed*. Run the engine or dynamometer at a series of steady-state speeds and use a strobe, a photo tachometer, or a laser tachometer to record reference speeds.

(2) *Torque*. Use a series of calibration weights and a calibration lever arm to simulate engine torque. You may instead use the engine or dynamometer itself to generate a nominal torque that is measured by a reference load cell or proving ring in series with the torque-measurement system. In this case use the reference load cell measurement as the reference value. Refer to § 1065.310 for a torque-calibration procedure similar to the linearity verification in this section.

(3) *Electrical power*. Use a controlled source of current and a watt-hour standard reference meter. Complete calibration systems that contain a current source and a reference watt-hour meter are commonly used in the electrical power distribution industry and are therefore commercially available.

* * * * *

(e) * * *

(3) * * *

(ii) For linearity verification of torque on the engine's primary output shaft, T_{max} refers to the manufacturer's specified engine torque peak value of the lowest torque engine to be tested.

* * * * *

Table 1 of §1065.307–Measurement systems that require linearity verifications

Measurement system	Quantity	Minimum verification frequency	Linearity criteria			
			$\lvert x_{min}(a_1-1)+a_0 \rvert$	a_1	*SEE*	r^2
Speed	f_n	Within 370 days before testing	$\leq 0.05\ \% \cdot f_{nmax}$	0.98-1.02	$\leq 2\ \% \cdot f_{nmax}$	≥ 0.990
Torque	T	Within 370 days before testing	$\leq 1\ \% \cdot T_{max}$	0.98-1.02	$\leq 2\ \% \cdot T_{max}$	≥ 0.990
Electrical power	P	Within 370 days before testing	$\leq 1\ \% \cdot P_{max}$	0.98-1.02	$\leq 2\ \% \cdot P_{max}$	≥ 0.990
Fuel flow rate	$\dot{m}$	Within 370 days before testing[d]	$\leq 1\ \% \cdot \dot{m}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{m}_{max}$	≥ 0.990
Intake-air flow rate	$\dot{n}$	Within 370 days before testing	$\leq 1\ \% \cdot \dot{n}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{n}_{max}$	≥ 0.990
Dilution air flow rate	$\dot{n}$	Within 370 days before testing	$\leq 1\ \% \cdot \dot{n}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{n}_{max}$	≥ 0.990
Diluted exhaust flow rate	$\dot{n}$	Within 370 days before testing	$\leq 1\ \% \cdot \dot{n}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{n}_{max}$	≥ 0.990
Raw exhaust flow rate	$\dot{n}$	Within 185 days before testing	$\leq 1\ \% \cdot \dot{n}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{n}_{max}$	≥ 0.990
Batch sampler flow rates	$\dot{n}$	Within 370 days before testing	$\leq 1\ \% \cdot \dot{n}_{max}$	0.98-1.02	$\leq 2\ \% \cdot \dot{n}_{max}$	≥ 0.990
Gas dividers	x/x_{span}	Within 370 days before testing	$\leq 0.5\ \% \cdot x_{max}$	0.98-1.02	$\leq 2\ \% \cdot x_{max}$	≥ 0.990
Gas analyzers for laboratory testing	x	Within 35 days before testing	$\leq 0.5\ \% \cdot x_{max}$	0.99-1.01	$\leq 1\ \% \cdot x_{max}$	≥ 0.998
Gas analyzers for field testing	x	Within 35 days before testing	$\leq 1\ \% \cdot x_{max}$	0.99-1.01	$\leq 1\ \% \cdot x_{max}$	≥ 0.998
PM balance	m	Within 370 days before testing	$\leq 1\ \% \cdot m_{max}$	0.99-1.01	$\leq 1\ \% \cdot m_{max}$	≥ 0.998
Stand-alone pressures	p	Within 370 days before testing	$\leq 1\ \% \cdot p_{max}$	0.99-1.01	$\leq 1\ \% \cdot p_{max}$	≥ 0.998
Dewpoint	T_{dew}	Within 370 days before testing	$\leq 1\ \% \cdot T_{dewmax}$	0.99-1.01	$\leq 1\ \% \cdot T_{dewmax}$	≥ 0.998
Analog-to-digital conversion of stand-alone temperature signals	T	Within 370 days before testing	$\leq 1\ \% \cdot T_{max}$	0.99-1.01	$\leq 1\ \% \cdot T_{max}$	≥ 0.998

265. Section 1065.309 is amended by revising paragraph (d)(2) to read as follows:

§ 1065.309 Continuous gas analyzer system-response and updating-recording verification—for gas analyzers continuously compensated for other gas species.

* * * * *

(d) * * *

(2) *Equipment setup.* We recommend using minimal lengths of gas transfer lines between all connections and fast-acting three-way valves (2 inlets, 1 outlet) to control the flow of zero and blended span gases to the sample system's probe inlet or a tee near the outlet of the probe. Normally the gas flow rate is higher than the probe sample flow rate and the excess is overflowed out the inlet of the probe. If the gas flow rate is lower than the probe flow rate, the gas concentrations must be adjusted to account for the dilution from ambient air drawn into the probe. Select span gases for the species being continuously combined, other than H_2O. Select concentrations of compensating species that will yield concentrations of these species at the analyzer inlet that covers the range of concentrations expected during testing. You may use binary or multi-gas span gases. You may use a gas blending or mixing device to blend span gases. A gas blending or mixing device is recommended when blending span gases diluted in N_2 with span gases diluted in air. You may use a multi-gas span gas, such as NO–CO–CO_2–C_3H_8–CH_4, to verify multiple

analyzers at the same time. In designing your experimental setup, avoid pressure pulsations due to stopping the flow through the gas blending device. If H_2O correction is applicable, then span gases must be humidified before entering the analyzer; however, you may not humidify NO_2 span gas by passing it through a sealed humidification vessel that contains water. You must humidify NO_2 span gas with another moist gas stream. We recommend humidifying your NO–CO–CO_2–C_3H_8–CH_4, balance N_2 blended gas by flowing the gas mixture through a sealed vessel that humidifies the gas by bubbling it through distilled water and then mixing the gas with dry NO_2 gas, balance purified synthetic air. If your system does not use a sample dryer to remove water from the sample gas, you must humidify your span gas to the highest sample H_2O content that you estimate during emission sampling. If your system uses a sample dryer during testing, it must pass the sample dryer verification check in § 1065.342, and you must humidify your span gas to an H_2O content greater than or equal to the level determined in § 1065.145(e)(2). If you are humidifying span gases without NO_2, use good engineering judgment to ensure that the wall temperatures in the transfer lines, fittings, and valves from the humidifying system to the probe are above the dewpoint required for the target H_2O content. If you are humidifying span gases with NO_2, use good engineering judgment to ensure that there is no condensation in the transfer lines, fittings, or valves from the point where humidified gas is mixed with NO_2 span gas to the probe. We recommend that you design your setup so that the wall temperatures in the transfer lines, fittings, and valves from the humidifying system to the probe are at least 5 °C above the local sample gas dewpoint. Operate the measurement and sample handling system as you do for emission testing. Make no modifications to the sample handling system to reduce the risk of condensation. Flow humidified gas through the sampling system before this check to allow stabilization of the measurement system's sampling handling system to occur, as it would for an emission test.

* * * * *

266. Section 1065.342 is amended by revising paragraph (a), (c), (d)(4), and (d)(7) to read as follows:

§ 1065.342 Sample dryer verification.

(a) *Scope and frequency.* If you use a sample dryer as allowed in § 1065.145(e)(2) to remove water from the sample gas, verify the performance upon installation, after major maintenance, for thermal chiller. For osmotic membrane dryers, verify the performance upon installation, after major maintenance, and within 35 days of testing.

* * * * *

(c) *System requirements.* The sample dryer must meet the specifications as determined in § 1065.145(e)(2) for dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ downstream of the osmotic-membrane dryer or thermal chiller.

(d) * * *

(4) Maintain the sample lines, fittings, and valves from the location where the humidified gas water content is measured to the inlet of the sampling system at a temperature at least 5 °C above the local humidified gas dewpoint. For dryers used in NO_X sample systems, verify the sample system components used in this verification to prevent aqueous condensation as required in § 1065.145(d)(1)(i). We recommend that the sample system components be maintained at least 5 °C above the local humidified gas dewpoint to prevent aqueous condensation.

* * * * *

(7) The sample dryer meets the verification if the dewpoint at the sample dryer pressure as measured in paragraph (d)(6) of this section is less than the dewpoint corresponding to the sample dryer specifications as determined in § 1065.145(e)(2) plus 2 °C or if the mole fraction of water as measured in (d)(6) is less than the corresponding sample dryer specifications plus 0.002 mol/mol.

* * * * *

267. Section 1065.345 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 1065.345 Vacuum-side leak verification.

* * * * *

(e) * * *

(1) * * *

(iii) Close a leak-tight valve located in the sample transfer line within 92 cm of the probe.

* * * * *

268. Section 1065.350 is amended by revising paragraph (d) to read as follows:

§ 1065.350 H_2O interference verification for CO_2 NDIR analyzers.

* * * * *

(d) *Procedure.* Perform the interference verification as follows:

(1) Start, operate, zero, and span the CO_2 NDIR analyzer as you would before an emission test. If the sample is passed through a dryer during emission testing, you may run this verification test with the dryer if it meets the requirements of § 1065.342. Operate the dryer at the same conditions as you will for an emission test. You may also run this verification test without the sample dryer.

(2) Create a humidified test gas by bubbling zero gas that meets the specifications in § 1065.750 through distilled water in a sealed vessel. If the sample is not passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the maximum expected during emission testing. If the sample is passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2) for that dryer.

(3) Introduce the humidified test gas into the sample system. You may introduce it downstream of any sample dryer, if one is used during testing.

(4) If the sample is not passed through a dryer during this verification test, measure the water mole fraction, $x_{H2O,}$ of the humidified test gas, as close as possible to the inlet of the analyzer. For example, measure dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ to calculate $x_{H2O.}$ Verify that the water content meets the requirement in paragraph (d)(2) of this section. If the sample is passed through a dryer during this verification test, you must verify that the water content of the humidified test gas downstream of the vessel meets the requirement in paragraph (d)(2) of this section based on either direct measurement of the water content (*e.g.,* dewpoint and pressure) or an estimate based on the vessel pressure and temperature. Use good engineering judgment to estimate the water content. For example, you may use previous direct measurements of water content to verify the vessel's level of saturation.

(5) If a sample dryer is not used in this verification test, use good engineering judgment to prevent condensation in the transfer lines, fittings, or valves from the point where x_{H2O} is measured to the analyzer. We recommend that you design your system so the wall temperatures in the transfer lines, fittings, and valves from the point where x_{H2O} is measured to the analyzer are at least 5 °C above the local sample gas dewpoint.

* * * * *

269. Section 1065.355 is amended by revising paragraph (d) to read as follows:

§ 1065.355 H_2O and CO_2 interference verification for CO NDIR analyzers.

* * * * *

(d) *Procedure.* Perform the interference verification as follows:

(1) Start, operate, zero, and span the CO NDIR analyzer as you would before an emission test. If the sample is passed through a dryer during emission testing, you may run this verification test with the dryer if it meets the requirements of § 1065.342. Operate the dryer at the same conditions as you will for an emission test. You may also run this verification test without the sample dryer.

(2) Create a humidified CO_2 test gas by bubbling a CO_2 span gas that meets the specifications in § 1065.750 through distilled water in a sealed vessel. If the sample is not passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the maximum expected during emission testing. If the sample is passed through a dryer during emission testing, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2) for that dryer. Use a CO_2 span gas concentration at least as high as the maximum expected during testing.

(3) Introduce the humidified CO_2 test gas into the sample system. You may introduce it downstream of any sample dryer, if one is used during testing.

(4) If the sample is not passed through a dryer during this verification test, measure the water mole fraction, $x_{H2O,}$ of the humidified CO_2 test gas as close as possible to the inlet of the analyzer. For example, measure dewpoint, $T_{dew,}$ and absolute pressure, $p_{total,}$ to calculate $x_{H2O.}$ Verify that the water content meets the requirement in paragraph (d)(2) of this section. If the sample is passed through a dryer during this verification test, you must verify that the water content of the humidified test gas downstream of the vessel meets the requirement in paragraph (d)(2) of this section based on either direct measurement of the water content (*e.g.,* dewpoint and pressure) or an estimate based on the vessel pressure and temperature. Use good engineering judgment to estimate the water content. For example, you may use previous direct measurements of water content to verify the vessel's level of saturation.

(5) If a sample dryer is not used in this verification test, use good engineering judgment to prevent condensation in the transfer lines, fittings, or valves from the point where x_{H2O} is measured to the analyzer. We recommend that you design your system so that the wall temperatures in the transfer lines, fittings, and valves from the point where x_{H2O} is measured to the analyzer are at least 5 °C above the local sample gas dewpoint.

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270. Section 1065.370 is amended by revising paragraph (e)(5) to read as follows:

§ 1065.370 CLD CO_2 and H_2O quench verification.

* * * * *

(e) * * *

(5) Humidify the NO span gas by bubbling it through distilled water in a sealed vessel. If the humidified NO span gas sample does not pass through a sample dryer for this verification test, control the vessel temperature to generate an H_2O level approximately equal to the maximum mole fraction of H_2O expected during emission testing. If the humidified NO span gas sample does not pass through a sample dryer, the quench verification calculations in § 1065.675 scale the measured H_2O quench to the highest mole fraction of H_2O expected during emission testing. If the humidified NO span gas sample passes through a dryer for this verification test, control the vessel temperature to generate an H_2O level at least as high as the level determined in § 1065.145(e)(2). For this case, the quench verification calculations in § 1065.675 do not scale the measured H_2O quench.

* * * * *

Subpart F— [Revised]

271. Section 1065.501 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 1065.501 Overview.

* * * * *

(b) * * *

(2) * * *

(i) *Discrete-mode cycles.* Before emission sampling, stabilize an engine at the first discrete mode. Sample emissions and other parameters for that mode in the same manner as a transient cycle, with the exception that reference speed and torque values are constant. Record mean values for that mode, and then stabilize the engine at the next mode. Continue to sample each mode discretely as separate test intervals and calculate weighted emission results according to the standard-setting part.

(ii) *Ramped-modal cycles.* Perform ramped-modal cycles similar to the way you would perform transient cycles, except that ramped-modal cycles involve mostly steady-state engine operation. Generate a ramped-modal duty cycle as a sequence of second-by-second (1 Hz) reference speed and torque points. Run the ramped-modal duty cycle in the same manner as a transient cycle and use the 1 Hz reference speed and torque values to validate the cycle, even for cycles with % power. Proportionally sample emissions and other parameters during the cycle and use the calculations in subpart G of this part to calculate emissions.

* * * * *

272. Section 1065.510 is amended by revising paragraph (b)(5) to read as follows:

§ 1065.510 Engine mapping.

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(b) * * *

(5) Perform one of the following:

(i) For any engine subject only to steady-state duty cycles (*i.e.,* discrete-mode or ramped-modal), you may perform an engine map by using discrete speeds. Select at least 20 evenly spaced setpoints between warm idle speed and the endpoint. At each setpoint, stabilize speed and allow torque to stabilize. Record the mean speed and torque at each setpoint. We recommend that you stabilize an engine for at least 15 seconds at each setpoint and record the mean feedback speed and torque of the last (4 to 6) seconds. Use linear interpolation to determine intermediate speeds and torques. Use this series of speeds and torques to generate the power map as described in paragraph (e) of this section.

(ii) For any variable-speed engine, you may perform an engine map by using a continuous sweep of speed by continuing to record the mean feedback speed and torque at 1 Hz or more frequently and increasing speed at a constant rate such that it takes (4 to 6) min to sweep from 95% of warm idle speed to the endpoint. Stop recording after you complete the sweep. From the series of mean speed and maximum torque values, use linear interpolation to determine intermediate values. Use this series of speeds and torques to generate the power map as described in paragraph (e) of this section.

(iii) Determine the endpoint of the map using one of the following methods:

(A) You may use as your endpoint the highest speed above maximum power at which (50±5) % of maximum power occurs.

(B) You may use as your endpoint any speed higher than that specified in paragraph (b)(5)(iii)(A) of this section. If you determine your endpoint for a continuous sweep according to this paragraph (b)(5)(iii)(B), you may base your compliance with the (4 to 6) min specification in paragraph (b)(5)(ii) of this section on the time it takes you to

reach the speed specified in paragraph (b)(5)(iii)(A) of this section.

(C) If the speed specified in paragraph (b)(5)(iii)(A) of this section is unsafe (e.g, for ungoverned engines), use good engineering judgment to map up to the maximum safe speed. If the engine is equipped with a governor that prevents the engine from operating at the speeds specified in paragraph (b)(5)(iii)(A) of this section, you may use the highest achievable speed as the endpoint. Note that under § 1065.10(c)(1) we may allow you to disregard portions of the map when selecting maximum test speed if the specified procedure would result in a duty cycle that does not represent in-use operation.

* * * * *

273. Section 1065.520 is amended by revising paragraph (b)(1) to read as follows:

§ 1065.520 Pre-test verification procedures and pre-test data collection.

* * * * *

(b) * * *

(1) Ambient temperature of (20 to 30) °C. However, testing may occur at higher ambient temperatures without EPA approval if it is not practical to achieve an ambient temperature at or below 30 °C. See § 1065.125 for requirements related to intake air temperature.

* * * * *

274. Section 1065.530 is amended by revising paragraph (g)(3)(iv) to read as follows:

§ 1065.530 Emission test sequence.

* * * * *

(g) * * *

(3) * * *

(iv) Analyze non-conventional gaseous batch samples, such as ethanol (NMHCE) as soon as practical using good engineering judgment.

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275. Section 1065.545 is amended by revising the section heading and removing paragraph (d) to read as follows:

§ 1065.545 Validation of proportional flow control for batch sampling.

* * * * *

276. A new § 1065.546 is added to subpart F to read as follows:

§ 1065.546 Validation of minimum dilution ratio for PM batch sampling.

Use continuous flows and/or tracer gas concentrations for transient and ramped modal cycles to validate the minimum dilution ratios for PM batch sampling as specified in § 1065.140(e)(2) over the test interval. You may use mode-average values instead of continuous measurements for discrete mode steady-state duty cycles. Determine the minimum primary and minimum overall dilution ratios using one of the following methods (you may use a different method for each stage of dilution):

(a) Determine minimum dilution ratio based on molar flow data. This involves determination of at least two of the following three quantities: raw exhaust flow (or previously diluted flow), dilution air flow, and dilute exhaust flow. You may determine the raw exhaust flow rate based on the measured intake air molar flow rate and the chemical balance terms in § 1065.655. You may alternatively estimate the molar raw exhaust flow rate based on intake air, fuel rate measurements, and fuel properties, consistent with good engineering judgment.

(b) Determine minimum dilution ratio based on tracer gas (*e.g.,* CO_2) concentrations in the raw (or previously diluted) and dilute exhaust corrected for any removed water.

(c) Use good engineering judgment to develop your own method of determining dilution ratios.

277. Section 1065.550 is amended by revising paragraph (b) to read as follows:

§ 1065.550 Gas analyzer range validation, drift validation, and drift correction.

* * * * *

(b) *Drift validation and drift correction.* Calculate two sets of brake-specific emission results for each test interval. Calculate one set using the data before drift correction and calculate the other set after correcting all the data for drift according to § 1065.672. Use the two sets of brake-specific emission results to validate the duty cycle for drift as follows:

(1) The duty cycle is validated for drift if you satisfy one of the following criteria:

(i) For each test interval of the duty cycle and for each regulated pollutant, the difference between the uncorrected and the corrected brake-specific emission values over the test interval is within ±4% of the uncorrected value or applicable emission standard, whichever is greater.

(ii) For the entire duty cycle and for each regulated pollutant, the difference between the uncorrected and corrected composite brake-specific emission values over the entire duty cycle is within ±4% of the uncorrected value or the applicable emission standard, whichever is greater. Note that for purposes of drift validation using composite brake-specific emission values over the entire duty cycle, leave unaltered any negative emission results over a given test interval (*i.e.,* do not set them to zero). A third calculation of composite brake-specific emission values is required for final reporting. This calculation uses drift-corrected mass (or mass rate) values from each test interval and sets any negative mass (or mass rate) values to zero before calculating the composite brake-specific emission values over the entire duty cycle.

(2) For standards consisting of multiple emission mass measurements (such as NMHC+NO_X or separate NO and NO_2 measurements to comply with a NO_X standard), the duty cycle shall be validated for drift if you satisfy one of the following:

(i) For each test interval of the duty cycle and for each individual mass, the difference between the uncorrected and the corrected brake-specific emission values over the test interval is within ±4% of the uncorrected value; or

(ii) For the entire duty cycle the difference between the combined (*e.g.* NMHC + NO_X) uncorrected and combined (*e.g.* NMHC + NO_X) corrected composite brake-specific emissions values over the entire duty cycle is within ±4% of the uncorrected value or the applicable emissions standard, whichever is greater.

(3) If the test is not validated for drift, you may consider the test results for the duty cycle to be valid only if, using good engineering judgment, the observed drift does not affect your ability to demonstrate compliance with the applicable emission standards. For example, if the drift-corrected value is less than the standard by at least two times the absolute difference between the uncorrected and corrected values, you may consider the data to be valid for demonstrating compliance with the applicable standard.

Subpart G—[Revised]

278. Section 1065.602 is amended by revising paragraphs (e) and (l)(1)(iii) to read as follows:

§ 1065.602 Statistics.

* * * * *

(e) *Accuracy.* Determine accuracy as described in this paragraph (e). Make multiple measurements of a standard quantity to create a set of observed values, y_i, and compare each observed value to the known value of the standard quantity. The standard quantity may have a single known value, such as a gas standard, or a set of known values of negligible range, such as a known applied pressure produced by a calibration device during repeated applications. The known value

of the standard quantity is represented by y_{ref_i}. If you use a standard quantity with a single value y_{ref_i} would be constant. Calculate an accuracy value as follows:

$$accuracy = \left| \frac{1}{N} \sum_{i=1}^{N} \left(y_1 - y_{ref_i} \right) \right| \qquad \text{Eq. 1065.602-4}$$

Example:
$y_{ref} = 1800.0$
$N = 3$
$y_1 = 1806.4$
$y_2 = 1803.1$
$y_3 = 1798.9$

$$accuracy = \left| \frac{1}{3} ((1806.4 - 1800.0) + (1803.1 - 1800.0) + (1798.9 - 1800.0)) \right|$$

$$accuracy = \left| \frac{1}{3} ((6.4) + (3.1) + (-1.1)) \right|$$

$accuracy = 2.8$

* * * * *

(l) * * *

(1) * * *

(iii) Use your estimated values as described in the following example calculation:

$$\overline{x}_{exp} = \frac{e_{std} \cdot W_{ref}}{M \cdot \dot{n}_{exhmax} \cdot \Delta t_{duty\ cycle} \cdot \left(\frac{\overline{P}_{ref} + \left(\overline{P}_{frict} \cdot P_{max} \right)}{P_{max}} \right)} \qquad \text{Eq. 1065.602-13}$$

$$\dot{n}_{exhmax} = \frac{p_{max} \cdot V_{disp} \cdot f_{nmax} \cdot \frac{2}{N_{stroke}} \cdot \eta_V}{R \cdot T_{max}} \qquad \text{Eq. 1065.602-14}$$

Example:
$e_{NOx} = 2.5$ g/(kW hr)
$W_{ref} = 11.883$ kW hr
$M_{NOx} = 46.0055$ g/mol = 46.0055 10^{-6} g/µmol
$\Delta t_{dutycycle} = 20$ min = 1200 s
= 35.65 kW
= 15%
$P_{max} = 125$ kW
$p_{max} = 300$ kPa = 300000 Pa
$V_{disp} = 3.0$ L = 0.0030 m^3
$f_{nmax} = 2800$ rev/min = 46.67 rev/s
$N_{stroke} = 4$ 1/rev
$\eta_V = 0.9$
$R = 8.314472$ J/(mol·K)
$T_{max} = 348.15$ K

$$\dot{n}_{exhmax} = \frac{300000 \cdot 0.0030 \cdot 46.67 \cdot \frac{2}{4} \cdot 0.9}{8.314472 \cdot 348.15}$$

= 6.53 mol/s

$$\overline{x}_{exp} = \frac{2.5 \cdot 11.883}{46.0055 \cdot 10^{-6} \cdot 6.53 \cdot 1200 \cdot \left(\frac{35.65 + (0.15 \cdot 125)}{125} \right)}$$

= 189.4 µmol/mol

* * * * *

279. Section 1065.610 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 1065.610 Duty cycle generation.

* * * * *

(c) * * *

(3) *Intermediate speed.* If your normalized duty cycle specifies a speed as ''intermediate speed,'' use your torque-versus-speed curve to determine the speed at which maximum torque occurs. This is peak torque speed. If maximum torque occurs in a flat region of the torque-versus-speed curve, your peak torque speed is the midpoint between the lowest and highest speeds at which the trace reaches the flat region. For purposes of this paragraph (c)(3), a flat region is one in which measured torque values are within 2.0% of the maximum recorded value. Identify your reference intermediate speed as one of the following values:

* * * * *

280. Section 1065.640 is amended by revising paragraph (b)(1) and adding paragraph (c)(3)(iii) to read as follows:

§ 1065.640 Flow meter calibration calculations.

* * * * *

(b) * * *

(1) PDP volume pumped per revolution, V_{rev} (m^3/rev):

$$V_{rev} = \frac{\bar{\dot{n}}_{ref} \cdot R \cdot \bar{T}_{in}}{\bar{P}_{in} \cdot \bar{f}_{nPDP}} \qquad \text{Eq. 1065.640-2}$$

Example:

$\dot{n}_{ref}$ = 25.096 mol/s
R = 8.314472 J/(mol·K)
$\bar{T}_{in}$ = 299.5 K
$\bar{P}_{in}$ = 98290 Pa
$\bar{f}_{nPDP}$ = 1205.1 rev/min = 20.085 rev/s

$$V_{rev} = \frac{25.096 \cdot 8.314472 \cdot 299.5}{98290 \cdot 20.085}$$

V_{rev} = 0.03166 m³/rev

* * * * *

(c) * * *

(3) * * *

(iii) For CFV systems measuring dilute flow only, you may calculate r_{CFV} using Equation 1065.640–13 instead of Equation 1065.640–8.

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281. Section 1065.642 is amended by revising paragraph (a) to read as follows:

§ 1065.642 SSV, CFV, and PDP molar flow rate calculations.

* * * * *

(a) *PDP molar flow rate.* Based upon the speed at which you operate the PDP for a test interval, select the corresponding slope, a_1, and intercept, a_0, as calculated in § 1065.640, to calculate molar flow rate, $\dot{n}$, as follows:

$$\dot{n} = f_{nPDP} \cdot \frac{p_{in} \cdot V_{rev}}{R \cdot T_{in}} \qquad \text{Eq. 1065.642-1}$$

Where:

$$V_{rev} = \frac{a_1}{f_{nPDP}} \cdot \sqrt{\frac{p_{out} = p_{in}}{p_{out}}} + a_0 \qquad \text{Eq.. 1065.642-2}$$

Example:

a_1 = 50.43
____ = 755.0 rev/min = 12.58 rev/s
p_{out} = 99950 Pa
p_{in} = 98575 Pa
a_0 = 0.056
R = 8.314472 J/(mol·K)
T_{in} = 323.5 K
C_p = 1000 (J/m³)/kPa
C_t = 60 s/min

$$V_{rev} = \frac{50.43}{12.58} \cdot \sqrt{\frac{99950 - 98575}{99950}} + 0.056$$

V_{rev} = 0.52618 m³/rev

$$\dot{n} = 12.58 \cdot \frac{98575 \cdot 0.52618}{8.314472 \cdot 323.5}$$

= 242.592 mol/s

* * * * *

282. Section 1065.645 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 1065.645 Amount of water in an ideal gas.

* * * * *

(a) * * *

(2) For humidity measurements over ice at ambient temperatures from (−100 to 0) °C, use the following equation:

$$\log_{10}(p_{sat}) = -9.096853 \cdot \left(\frac{273.16}{T_{sat}} - 1\right) - 3.566506 \cdot \log_{10}\left(\frac{273.16}{T_{sat}}\right) + 0.876812 \cdot \left(1 - \frac{T_{sat}}{273.16}\right) - 0.2138602 \qquad \text{Eq. 1065.645-2}$$

Example:

T_{ice} = −15.4 °C

T_{ice} = −15.4+ 273.15 = 257.75 K

$$\log_{10}(p_{sat}) = -9.096853 \cdot \left(\frac{273.16}{257.75} - 1\right) - 3.566506 \cdot \log_{10}\left(\frac{273.16}{257.75}\right) + 0.876812 \cdot \left(1 - \frac{257.75}{273.16}\right) - 0.2138602$$

$\log_{10}(p_{H2O})$ =- 0.798207
$p_{H2O} = 10^{0.79821}$ = 0.159145 kPa

* * * * *

(c) *Relative humidity.* If you measure humidity as a relative humidity, *RH* %, determine the amount of water in an ideal gas, $x_{H2O,}$ as follows:

$$x_{H2O} = \frac{RH\% \cdot p_{H2O}}{p_{abs}} \qquad \text{Eq. 1065.645-4}$$

Where:

x_{H20} = amount of water in an ideal gas.
RH % = relative humidity.
p_{H20} = water vapor pressure at 100% relative humidity at the location of your relative humidity measurement,, $T_{sat} = T_{amb.}$
p_{abs} = wet static absolute pressure at the location of your relative humidity measurement.

Example:

RH % = 50.77%
p_{abs} = 99.980 kPa
$T_{sat\ =\ Tamb}$ = 20 °C
Using Eq. 1065.645–1,
p_{H20} = 2.3371 kPa
x_{H2O} = (50.77%· 2.3371)/99.980
x_{H2O} = 0.011868 mol/mol

283. Section 1065.650 is amended by revising paragraphs (a), (b), (c) introductory text, (d) introductory text, (d)(7), (e)(2), (f)(4), (g) and (h) to read as follows:

§ 1065.650 Emission calculations.

(a) *General.* Calculate brake-specific emissions over each applicable duty cycle or test interval. For test intervals with zero work (or power), calculate the emission mass (or mass rate), but not brake-specific emissions. For duty cycles with multiple test intervals, refer to the standard-setting part for calculations you need to determine a composite result, such as a calculation that weights and sums the results of individual test intervals in a duty cycle. If the standard-setting part does not include those calculations, use the equations in paragraph (g) of this section. This section is written based on rectangular integration, where each indexed value (*i.e.*, ''$_i$'') represents (or approximates) the mean value of the parameter for its respective time interval, delta-t. You may also integrate continuous signals using trapezoidal integration consistent with good engineering judgment.

(b) *Brake-specific emissions over a test interval.* We specify three alternative ways to calculate brake-

specific emissions over a test interval, as follows:

(1) For any testing, you may calculate the total mass of emissions, as described in paragraph (c) of this section, and divide it by the total work generated over the test interval, as described in paragraph (d) of this section, using the following equation:

$$e = \frac{m}{W} \qquad \text{Eq. 1065.650-1}$$

Example:

m_{NOx} = 64.975 g
W = 25.783 kW·hr
e_{NOx} = 64.975/25.783
e_{NOx} = 2.520 g/(kW·hr)

(2) For discrete-mode steady-state testing, you may calculate the brake-specific emissions over a test interval using the ratio of emission mass rate to power, as described in paragraph (e) of this section, using the following equation:

$$e = \frac{\overline{\dot{m}}}{\overline{P}} \qquad \text{Eq. 1065.650-2}$$

(3) For field testing, you may calculate the ratio of total mass to total work, where these individual values are determined as described in paragraph (f) of this section. You may also use this approach for laboratory testing, consistent with good engineering judgment. Good engineering judgment dictates that this method not be used if there are any work flow paths described in § 1065.210 that cross the system boundary, other than the primary output shaft (crankshaft). This is a special case in which you use a signal linearly proportional to raw exhaust molar flow rate to determine a value proportional to total emissions. You then use the same linearly proportional signal to determine total work using a chemical balance of fuel, intake air, and exhaust as described in § 1065.655, plus information about your engine's brake-specific fuel consumption. Under this method, flow meters need not meet accuracy specifications, but they must meet the applicable linearity and repeatability specifications in subpart D or subpart J of this part. The result is a brake-specific emission value calculated as follows:

$$e = \frac{\tilde{m}}{\tilde{W}} \qquad \text{Eq. 1065.650-3}$$

Example:

= 805.5 g
= 52.102 kW·hr
e_{CO} = 805.5/52.102
e_{CO} = 2.520 g/(kW·hr)

(c) *Total mass of emissions over a test interval.* To calculate the total mass of an emission, multiply a concentration by its respective flow. For all systems, make preliminary calculations as described in paragraph (c)(1) of this section, then use the method in paragraphs (c)(2) through (4) of this section that is appropriate for your system. Calculate the total mass of emissions as follows:

* * * * *

(d) *Total work over a test interval.* To calculate the total work from the engine over a test interval, add the total work from all the work paths described in § 1065.210 that cross the system boundary including electrical energy/work, mechanical shaft work, and fluid pumping work. For all work paths, except the engine's primary output shaft (crankshaft), the total work for the path over the test interval is the integration of the net work flow rate (power) out of the system boundary. When energy/work flows into the system boundary, this work flow rate signal becomes negative; in this case, include these negative work rate values in the integration to calculate total work from that work path. Some work paths may result in a negative total work. Include negative total work values from any work path in the calculated total work from the engine rather than setting the values to zero. The rest of this paragraph (d) describes how to calculate total work from the engine's primary output shaft over a test interval. Before integrating power on the engine's primary output shaft, adjust the speed and torque data for the time alignment used in § 1065.514(c). Any advance or delay used on the feedback signals for cycle validation must also be used for calculating work. Account for work of accessories according to § 1065.110. Exclude any work during cranking and starting. Exclude work during actual motoring operation (negative feedback torques), unless the engine was connected to one or more energy storage devices. Examples of such energy storage devices include hybrid powertrain batteries and hydraulic accumulators, like the ones illustrated in Figure 1 of § 1065.210. Exclude any work during reference zero-load idle periods (0% speed or idle speed with 0 N·m reference torque). Note, that there must be two consecutive reference zero load idle points to establish a period where this applies. Include work during idle points with simulated minimum torque such as Curb Idle Transmissions Torque (CITT) for automatic transmissions in ''drive''. The work calculation method described in paragraphs (b)(1) though (7) of this section meets these requirements using rectangular integration. You may use other logic that gives equivalent results. For example, you may use a trapezoidal integration method as described in paragraph (b)(8) of this section.

* * * * *

(7) Integrate the resulting values for power over the test interval. Calculate total work as follows:

$$W = \sum_{i=1}^{N} P_i \cdot \Delta t \qquad \text{Eq. 1065.650-10}$$

Where:

W = total work from the primary output shaft
P_i = instantaneous power from the primary output shaft over an interval *i.*

$P_i = f_{ni} \cdot T_i$

Eq. 1065.650–11

Example:

N = 9000
f_{n1} = 1800.2 rev/min
f_{n2} = 1805.8 rev/min
T_1 = 177.23 N·m
T_2 = 175.00 N·m
$C_{rev} = 2 \cdot \pi$ rad/rev
C_{t1} = 60 s/min
C_p = 1000 (N·m·rad/s)/kW
f_{record} = 5 Hz
C_{t2} = 3600 s/hr

$$P_1 = \frac{1800.2 \cdot 177.23 \cdot 2 \cdot 3.14159}{60 \cdot 1000}$$

P_1 = 33.41 kW
P_2 = 33.09 kW
Using Eq. 1065.650–5,
Δt = ⅕ = 0.2 s

$$W = \frac{(33.41 + 33.09 + \ldots + P_{9000}) \cdot 0.2}{3600}$$

W = 16.875 kW·hr

* * * * *

(e) * * *

(2) To calculate an engine's mean steady-state total power, $\overline{P}$, add the mean steady-state power from all the work paths described in § 1065.210 that cross the system boundary including electrical power, mechanical shaft power, and fluid pumping power. For all work paths, except the engine's primary output shaft (crankshaft), the mean steady-state power over the test interval is the integration of the net work flow rate (power) out of the system boundary divided by the period of the test interval. When power flows into the system boundary, the power/work flow rate signal becomes negative; in this case, include these negative power/work rate values in the integration to calculate the mean power from that work path. Some work paths may result in a negative mean power. Include negative mean power values from any work path in the mean total power from

the engine rather than setting these values to zero. The rest of this paragraph (e)(2) describes how to calculate the mean power from the engine's primary output shaft. Calculate using Equation 1065.650–13, noting that $\overline{P}$, $\overline{f}_n$ and $\overline{T}$ refer to mean power, mean rotational shaft frequency, and mean torque from the primary output shaft. Account for the power of simulated accessories according to § 1065.110 (reducing the mean primary output shaft power or torque by the accessory power or torque). Set the power to zero during actual motoring operation (negative feedback torques), unless the engine was connected to one or more energy storage devices. Examples of such energy storage devices include hybrid powertrain batteries and hydraulic accumulators, like the ones illustrated in Figure 1 of § 1065.210. Set the power to zero for modes with a zero reference load (0 N·m reference torque or 0 kW reference power). Include power during idle modes with simulated minimum torque or power.

$$\overline{P} = \overline{f}_n \cdot \overline{T} \qquad \text{Eq. 1065.650-13}$$

* * * * *

(f) * * *

(4) Example. The following example shows how to calculate mass of emissions using proportional values:

$N = 3000$
$f_{record} = 5$ Hz
$e_{fuel} = 285$ g/(kW·hr)
$w_{fuel} = 0.869$ g/g
$M_c = 12.0107$ g/mol = 3.922 ~mol/s = 14119.2 mol/hr
$x_{Ccombdry1} = 91.634$ mmol/mol = 0.091634 mol/mol
$x_{H2Oexh1} = 27.21$ mmol/mol = 0.02721 mol/mol
Using Eq. 1065.650–5,
$\Delta t = 0.2$ s

$$\tilde{W} = \frac{12.0107\left[\frac{3.922 \cdot 0.091634}{1+0.02721} + \frac{\tilde{\dot{n}}_2 \cdot x_{Ccombdry2}}{1+x_{H2Oexh2}} + \ldots + \frac{\tilde{\dot{n}}_{3000} \cdot x_{Ccombdry3000}}{1+x_{H2Oexh3000}}\right] \cdot 0.2}{285 \cdot 0.869}$$

= 5.09 (kW·hr)

(g) *Brake-specific emissions over a duty cycle with multiple test intervals.* The standard-setting part may specify a duty cycle with multiple test intervals, such as with discrete-mode steady-state testing. Unless we specify otherwise, calculate composite brake-specific emissions over the duty cycle as described in this paragraph (g). If a measured mass (or mass rate) is negative, set it to zero for calculating composite brake-specific emissions, but leave it unchanged for drift validation. In the case of calculating composite brake-specific emissions relative to a combined emission standard (such as a NO_X + NMHC standard), change any negative mass (or mass rate) values to zero for a particular pollutant before combining the values for the different pollutants.

(1) Use the following equation to calculate composite brake-specific emissions for duty cycles with multiple test intervals all with prescribed durations, such as cold-start and hot-start transient cycles:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot m_i}{\sum_{i=1}^{N} WF_i \cdot W_i} \qquad \text{Eq. 1065.650-17}$$

Where:
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
m = mass of emissions over the test interval as determined in paragraph (c) of this section.
W = total work from the engine over the test interval as determined in paragraph (d) of this section.

Example:
$N = 2$
$WF_1 = 0.1428$
$WF_2 = 0.8572$
$m_1 = 70.125$ g
$m_2 = 64.975$ g
$W_1 = 25.783$ kW·hr
$W_2 = 25.783$ kW·hr

$$e_{NO_x composite} = \frac{(0.1428 \cdot 70.125) + (0.8572 \cdot 64.975)}{(0.1428 \cdot 25.783) + (0.8572 \cdot 25.783)}$$

$e_{NOxcomposite} = 2.548$ g/kW·hr

(2) Calculate composite brake-specific emissions for duty cycles with multiple test intervals that allow use of varying duration, such as discrete-mode steady-state duty cycles, as follows:

(i) Use the following equation if you calculate brake-specific emissions over test intervals based on total mass and total work as described in paragraph (b)(1) of this section:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot \frac{m_i}{t_i}}{\sum_{i=1}^{N} WF_i \cdot \frac{W_i}{t_i}} \qquad \text{Eq. 1065.650-18}$$

Where
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
m = mass of emissions over the test interval as determined in paragraph (c) of this section.
W = total work from the engine over the test interval as determined in paragraph (d) of this section.
t = duration of the test interval.
Example:

$N = 2$
$WF_1 = 0.85$
$WF_2 = 0.15$
$m_1 = 1.3753$ g
$m_2 = 0.4135$ g
$t_1 = 120$ s
$t_2 = 200$ s
$W_1 = 2.8375$ kW·hr
$W_2 = 0.0$ kW·hr

$$e_{NO_x\,composite} = \frac{\left(0.85 \cdot \frac{1.3753}{120}\right) + \left(0.15 \cdot \frac{0.4135}{200}\right)}{\left(0.85 \cdot \frac{2.8375}{120}\right) + \left(0.15 \cdot \frac{0.0}{200}\right)}$$

$e_{NOxcomposite} = 0.5001$ g/kW·hr

(ii) Use the following equation if you calculate brake-specific emissions over test intervals based on the ratio of mass rate to power as described in paragraph (b)(2) of this section:

$$e_{composite} = \frac{\sum_{i=1}^{N} WF_i \cdot \dot{\bar{m}}_i}{\sum_{i=1}^{N} WF_i \cdot \bar{P}_i} \qquad \text{Eq. 1065.650-19}$$

Where
i = test interval number.
N = number of test intervals.
WF = weighting factor for the test interval as defined in the standard-setting part.
$\dot{\bar{m}}$ = mean steady-state mass rate of emissions over the test interval as determined in paragraph (e) of this section.
$\bar{P}$ is the mean steady-state power over the test interval as described in paragraph (e) of this section.
Example:
$N = 2$
$WF_1 = 0.85$
$WF_2 = 0.15$
$\dot{\bar{m}}_1 = 2.25842$ g/hr
$\dot{\bar{m}}_2 = 0.063443$ g/hr
$\bar{P}_1 = 4.5383$ kW
$\bar{P}_2 = 0.0$ kW

$$e_{NO_x composite} = \frac{(0.85 \cdot 2.25842) + (0.15 \cdot 0.063443)}{(0.85 \cdot 4.5383) + (0.15 \cdot 0.0)}$$

$e_{NOxcomposite} = 0.5001$ g/kW·hr

(h) *Rounding.* Round the final brake-specific emission values to be compared to the applicable standard only after all calculations are complete (including any drift correction, applicable deterioration factors, adjustment factors, and allowances) and the result is in g/(kW·hr) or units equivalent to the units of the standard, such as g/(hp·hr). See the definition of ''Round'' in § 1065.1001.

284. Section 1065.655 is amended by revising paragraphs (c) introductory text, (c)(3), (c)(4), (c)(5), and (d) to read as follows:

§ 1065.655 Chemical balances of fuel, intake air, and exhaust.

* * * * *

(c) *Chemical balance procedure.* The calculations for a chemical balance involve a system of equations that require iteration. We recommend using a computer to solve this system of equations. You must guess the initial values of up to three quantities: the amount of water in the measured flow, x_{H2Oexh}, fraction of dilution air in diluted exhaust, $x_{dil/exh}$, and the amount of products on a C_1 basis per dry mole of dry measured flow, $x_{Ccombdry}$. You may use time-weighted mean values of combustion air humidity and dilution air humidity in the chemical balance; as long as your combustion air and dilution air humidities remain within tolerances of ±0.0025 mol/mol of their respective mean values over the test interval. For each emission concentration, *x,* and amount of water, x_{H2Oexh}, you must determine their completely dry concentrations, x_{dry} and $x_{H2Oexhdry}$. You must also use your fuel's atomic hydrogen-to-carbon ratio, α, oxygen-to-carbon ratio, β, sulfur-to-carbon ratio, γ, and nitrogen-to-carbon ratio, δ. You may measure α, β, γ, and δ or you may use default values for a given fuel as described in § 1065.655(d). Use the following steps to complete a chemical balance:

* * * * *

(3) Use the following symbols and subscripts in the equations for this paragraph (c):

$x_{dil/exh}$ = amount of dilution gas or excess air per mole of exhaust.
x_{H2Oexh} = amount of water in exhaust per mole of exhaust.
$x_{Ccombdry}$ = amount of carbon from fuel in the exhaust per mole of dry exhaust.
x_{H2dry} = amount of H_2 in exhaust per amount of dry exhaust.
K_{H2Ogas} = water-gas reaction equilibrium coefficient. You may use 3.5 or calculate your own value using good engineering judgment.
$x_{H2Oexhdry}$ = amount of water in exhaust per dry mole of dry exhaust.
$x_{prod/intdry}$ = amount of dry stoichiometric products per dry mole of intake air.
$x_{dil/exhdry}$ = amount of dilution gas and/or excess air per mole of dry exhaust.
$x_{int/exhdry}$ = amount of intake air required to produce actual combustion products per mole of dry (raw or diluted) exhaust.
$x_{raw/exhdry}$ = amount of undiluted exhaust, without excess air, per mole of dry (raw or diluted) exhaust.
x_{O2int} = amount of intake air O_2 per mole of intake air.
$x_{CO2intdry}$ = amount of intake air CO_2 per mole of dry intake air. You may use $x_{CO2intdry}$ = 375 μmol/mol, but we recommend measuring the actual concentration in the intake air.
$x_{H2Ointdry}$ = amount of intake air H_2O per mole of dry intake air.
x_{CO2int} = amount of intake air CO_2 per mole of intake air.
x_{CO2dil} = amount of dilution gas CO_2 per mole of dilution gas.
$x_{CO2dildry}$ = amount of dilution gas CO_2 per mole of dry dilution gas. If you use air as diluent, you may use $x_{CO2dildry}$ = 375

μmol/mol, but we recommend measuring the actual concentration in the intake air.

$x_{H2Odildry}$ = amount of dilution gas H_2O per mole of dry dilution gas.

x_{H2Odil} = amount of dilution gas H_2O per mole of dilution gas.

$x_{[emission]meas}$ = amount of measured emission in the sample at the respective gas analyzer.

$x_{[emission]dry}$ = amount of emission per dry mole of dry sample.

$x_{H2O[emission]meas}$ = amount of water in sample at emission-detection location. Measure or estimate these values according to § 1065.145(e)(2).

x_{H2Oint} = amount of water in the intake air, based on a humidity measurement of intake air.

α = atomic hydrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

β = atomic oxygen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

γ = atomic sulfur-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

δ = atomic nitrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.

(4) Use the following equations to iteratively solve for $x_{dil/exh,\ xH2Oexh,}$ and $x_{Ccombdry}$:

$$x_{dil/exh} = 1 - \frac{x_{raw/exhdry}}{1 + x_{H2Oexhdry}} \qquad \text{Eq. 1065.655-1}$$

$$x_{H2Oexh} = \frac{x_{H2Oexhdry}}{1 + x_{H2Oexhdry}} \qquad \text{Eq. 1065.655-2}$$

$$x_{Ccombdry} = x_{CO2dry} + x_{COdry} + x_{THCdry} - x_{CO2dry} \cdot x_{dil/exhdry} - x_{CO2int} \cdot x_{int/exhdry} \qquad \text{Eq. 1065.655-3}$$

$$x_{H2dry} = \frac{x_{COdry} \cdot \left(x_{H2Oexhdry} - x_{H2Odil} \cdot x_{dil/exhdry}\right)}{K_{H2O\text{-}gas} \cdot \left(x_{CO2dry} - x_{CO2dil} \cdot x_{dil/exhdry}\right)} \qquad \text{Eq. 1065.655-4}$$

$$x_{H2Oexhdry} = \frac{\alpha}{2}\left(x_{Ccombdry} - x_{THCdry}\right) + x_{H2Odil} \cdot x_{dil/exhdry} + x_{H2Oint} \cdot x_{int/exhdry} - x_{H2dry} \qquad \text{Eq. 1065.655-5}$$

$$x_{dil/exhdry} = \frac{x_{dil/exh}}{1 - x_{H2Oexh}} \qquad \text{Eq. 1065.655-6}$$

$$x_{int/exhdry} = \frac{1}{2 \cdot x_{O2int}}\left(\left(\frac{\alpha}{2} - \beta + 2 + 2\gamma\right)\left(x_{Ccombdry} - x_{THCdry}\right) - \left(x_{COdry} - x_{NOdry} - 2x_{NO2dry} + x_{H2dry}\right)\right) \qquad \text{Eq. 1065.655-7}$$

$$x_{raw/exhdry} = \frac{1}{2}\left(\left(\frac{\alpha}{2} + \beta + \delta\right)\left(x_{Ccombdry} - x_{THCdry}\right) + \left(2x_{THCdry} + x_{COdry} - x_{NO2dry} + x_{H2dry}\right)\right) + x_{int/exhdry} \qquad \text{Eq. 1065.655-8}$$

$$x_{O2int} = \frac{0.209820 - x_{CO2intdry}}{1 + x_{H2Ointdry}} \qquad \text{Eq. 1065.655-9}$$

$$x_{CO2int} = \frac{x_{CO2intdry}}{1 + x_{H2Ointdry}} \qquad \text{Eq. 1065.655-10}$$

$$x_{H2Ointdry} = \frac{x_{H2Oint}}{1 - x_{H2Oint}} \qquad \text{Eq. 1065.655-11}$$

$$x_{CO2dil} = \frac{x_{CO2dildry}}{1 + x_{H2Odildry}} \quad \text{Eq. 1065.655-12}$$

$$x_{H2Odildry} = \frac{x_{H2Odil}}{1 - x_{H2Odil}} \quad \text{Eq. 1065.655-13}$$

$$x_{COdry} = \frac{x_{COmeas}}{1 - x_{H2OCOmeas}} \quad \text{Eq. 1065.655-14}$$

$$x_{CO2dry} = \frac{x_{CO2meas}}{1 - x_{H2OCO2meas}} \quad \text{Eq. 1065.655-15}$$

$$x_{NOdry} = \frac{x_{NOmeas}}{1 - x_{H2ONOmeas}} \quad \text{Eq. 1065.655-16}$$

$$x_{NO2dry} = \frac{x_{NO2meas}}{1 - x_{H2ONO2meas}} \quad \text{Eq. 1065.655-17}$$

$$x_{THCdry} = \frac{x_{THCmeas}}{1 - x_{H2OTHCmeas}} \quad \text{Eq. 1065.655-18}$$

(5) The following example is a solution for $x_{dil/exh}$, x_{H2Oexh}, and $x_{Ccombdry}$ using the equations in paragraph (c)(4) of this section:

$$x_{dil/exh} = 1 - \frac{0.184}{1 + \frac{35.50}{1000}} = 0.822\ mol/mol$$

$$x_{H2Oexh} = \frac{35.50}{1 + \frac{35.50}{1000}} = 34.29\ mmol/mol$$

$$x_{Ccombdry} = 0.025 + \frac{29.3}{1000000} + \frac{47.6}{1000000} - \frac{0.371}{1000} \cdot 0.852 - \frac{0.369}{1000} \cdot 0.172 = 0.0249\ mol/mol$$

$$x_{H2dry} = \frac{29.3 \cdot (0.036 - 0.012 \cdot 0.852)}{3.5 \cdot \left(\frac{25.2}{1000} - \frac{0.371}{1000} \cdot 0.852 \right)} = 8.5\ \mu mol/mol$$

$$x_{H2Oexhdry} = \frac{1.8}{2}\left(0.0247 - \frac{47.6}{1000000} \right) + 0.012 \cdot 0.852 + 0.017 \cdot 0.172 - \frac{8.5}{1000000} = 0.036\ mol/mol$$

$$x_{dil/exhdry} = \frac{0.822}{1 - 0.036} = 0.852\ mol/mol$$

$$x_{int/exhdry} = \frac{1}{2 \cdot 0.206}\left(\begin{array}{l}\left(\frac{1.8}{2} - 0.050 + 2 + 2 \cdot 0.0003\right)\left(0.0249 - \frac{47.6}{1000000}\right) - \\ \left(\frac{29.3}{1000000} - \frac{50.4}{1000000} - 2 \cdot \frac{12.1}{1000000} + \frac{8.5}{1000000}\right)\end{array}\right) = 0.172\ mol/mol$$

$$x_{raw/exhdry} = \frac{1}{2}\left(\begin{array}{l}\left(\frac{1.8}{2} - 0.050 + 0.0001\right)\left(0.0249 - \frac{47.6}{1000000}\right) + \\ \left(2 \cdot \frac{47.6}{1000000} + \frac{29.3}{1000000} - \frac{12.1}{1000000} + \frac{8.5}{1000000}\right)\end{array}\right) + 0.172 = 0.184\ mol/mol$$

$$x_{O2int} = \frac{0.209820 - 0.000375}{1 + \frac{17.22}{1000}} = 0.206\ mol/mol$$

$$x_{CO2int} = \frac{0.000375 \cdot 1000}{1 + \frac{17.22}{1000}} = 0.369\ mmol/mol$$

$$x_{H2Ointdry} = \frac{16.93}{1 - \frac{16.93}{1000}} = 17.22\ mmol/mol$$

$$x_{CO2dry} = \frac{24.98}{1 - \frac{8.601}{1000}} = 25.2\ mmol/mol$$

$$x_{CO2dil} = \frac{0.375}{1 + \frac{12.01}{1000}} = 0.371\ mmol/mol$$

$$x_{NOdry} = \frac{50.0}{1 - \frac{8.601}{1000}} = 50.4\ mmol/mol$$

$$x_{H2Odildry} = \frac{11.87}{1 - \frac{11.87}{1000}} = 12.01\ mmol/mol$$

$$x_{NO2dry} = \frac{12.0}{1 - \frac{8.601}{1000}} = 12.1\ mmol/mol$$

$$x_{COdry} = \frac{29.0}{1 - \frac{8.601}{1000}} = 29.3\ mmol/mol$$

$$x_{THCdry} = \frac{46}{1 - \frac{33.98}{1000}} = 47.6\ mmol/mol$$

$\alpha = 1.8$
$\beta = 0.05$
$\gamma = 0.0003$
$\delta = 0.0001$

(d) *Carbon mass fraction.* Determine carbon mass fraction of fuel, $w_{c,}$ using one of the following methods:

(1) You may calculate w_c as described in this paragraph (d)(1) based on measured fuel properties. To do so, you must determine values for α and β in all cases, but you may set γ and δ to zero if the default value listed in Table 1 of this section is zero. Calculate w_c using the following equation:

$$w_C = \frac{1 \cdot M_C}{1 \cdot M_C + \alpha \cdot M_H + \beta \cdot M_O + \gamma \cdot M_S + \delta \cdot M_N} \qquad \text{Eq. 1065.655-19}$$

Where:

W_C = carbon mass fraction of fuel.
M_C = molar mass of carbon.
α = atomic hydrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_H = molar mass of hydrogen.
β = atomic oxygen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_O = molar mass of oxygen.
γ = atomic sulfur-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_S = molar mass of sulfur.
δ = atomic nitrogen-to-carbon ratio of the mixture of fuel(s) being combusted, weighted by molar consumption.
M_N = molar mass of nitrogen.

$\alpha = 1.8$
$\beta = 0.05$
$\gamma = 0.0003$
$\delta = 0.0001$
$_C = 12.0107$
$M_H = 1.01$
$M_O = 15.9994$
$M_S = 32.0655$
$M_N = 14.0067$

$$w_C = \frac{1 \cdot 12.0107}{1 \cdot 12.0107 + 1.8 \cdot 1.01 + 0.05 \cdot 15.9994 + 0.0003 \cdot 32.0655 + 0.0001 \cdot 14.0067}$$

$W_C = 0.8205$

(2) You may use the default values in the following table to determine w_c for a given fuel:

TABLE 1 OF § 1065.655–DEFAULT VALUES OF α, β, γ, δ, AND w_C, FOR VARIOUS FUELS

Fuel	Atomic hydrogen, oxygen, sulfur, and nitrogen-to-carbon ratios $CH_\alpha O_\beta S_\gamma N_\delta$	Carbon mass fraction, w_C g/g
Gasoline	$CH_{1.85}O_0S_0N_0$	0.866
#2 Diesel	$CH_{1.80}O_0S_0N_0$	0.869
#1 Diesel	$CH_{1.93}O_0S_0N_0$	0.861
Liquefied Petroleum Gas	$CH_{2.64}O_0S_0N_0$	0.819
Natural gas	$CH_{3.78}O_{0.016}S_0N_0$	0.747
Ethanol	$CH_3O_{0.5}S_0N_0$	0.521
Methanol	$CH_4O_1S_0N_0$	0.375
Residual fuel blends	Must be determined by measured fuel properties as described in paragraph (d)(1) of this section.	

285. Section 1065.670 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1065.670 NO_X intake-air humidity and temperature corrections.

* * * * *

(a) For compression-ignition engines, correct for intake-air humidity using the following equation:

$x_{NOxcor} = x_{NOxuncor} \cdot (9.953 \cdot x_{H2O} + 0.832)$ Eq. 1065.670–1

Example:

$x_{NOxuncor}$ = 700.5 µmol/mol
x_{H2O} = 0.022 mol/mol
$x_{NOxcor} = 700.5 \cdot (9.953 \cdot 0.022 + 0.832)$
x_{NOxcor} = 736.2 µmol/mol

(b) For spark-ignition engines, correct for intake-air humidity using the following equation:

$$x_{NOxcor} = x_{NOxuncor} \cdot (18.840 \cdot x_{H2O} + 0.68094) \qquad \text{Eq. 1065.670-2}$$

$x_{NOxuncor}$ = 154.7 µmol/mol
x_{H2O} = 0.022 mol/mol
$x_{NOxcor} = 154.7 \cdot (18.840 \cdot 0.022 + 0.68094)$
x_{NOxcor} = 169.5 µmol/mol

(c) Develop your own correction, based on good engineering judgment.

286. Section 1065.690 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1065.690 Buoyancy correction for PM sample media.

* * * * *

(c) *Air density.* Because a PM balance environment must be tightly controlled to an ambient temperature of (22 ±1) °C and humidity has an insignificant effect on buoyancy correction, air density is primarily a function of atmospheric pressure. We therefore specify a buoyancy correction that is only a function of atmospheric pressure. Using good engineering judgment, you may develop and use your own buoyancy correction that includes the effects of temperature and dewpoint on density in addition to the effect of atmospheric pressure.

* * * * *

(e) *Correction calculation.* Correct the PM sample media for buoyancy using the following equations:

$$m_{cor} = m_{uncor} \cdot \left[\frac{1 - \frac{\rho_{air}}{\rho_{weight}}}{1 - \frac{\rho_{air}}{\rho_{media}}} \right] \qquad \text{Eq. 1065.690-1}$$

Where:

m_{cor} = PM mass corrected for buoyancy.
m_{uncor} = PM mass uncorrected for buoyancy.
ρ_{air} = density of air in balance environment.
ρ_{weight} = density of calibration weight used to span balance.
ρ_{media} = density of PM sample media, such as a filter.

$$\rho_{air} = \frac{p_{abs} \cdot M_{mix}}{R \cdot T_{amb}} \qquad \text{Eq. 1065.690-2}$$

Where:

p_{abs} = absolute pressure in balance environment.
M_{mix} = molar mass of air in balance environment.
R = molar gas constant.
T_{amb} = absolute ambient temperature of balance environment.

Example:

p_{abs} = 99.980 kPa
$T_{sat} = T_{dew}$ = 9.5 °C
Using Eq. 1065.645–1,
p_{H20} = 1.1866 kPa
Using Eq. 1065.645–3,
x_{H2O} = 0.011868 mol/mol
Using Eq. 1065.640–9,
M_{mix} = 28.83563 g/mol
R = 8.314472 J/(mol·K)
T_{amb} = 20 °C

$$\rho_{air} = \frac{99.980 \cdot 28.83563}{8.314472 \cdot 293.15}$$

p_{air} = 1.18282 kg/m^3
m_{uncorr} = 100.0000 mg
p_{weight} = 8000 kg/m^3
p_{media} = 920 kg/m^3

$$m_{cor} = 100.0000 \cdot \left[\frac{1 - \frac{1.18282}{8000}}{1 - \frac{1.18282}{920}} \right]$$

m_{cor} = 100.1139 mg

Subpart H—[Revised]

287. Section 1065.701 is amended by revising paragraph (f) to read as follows:

§ 1065.701 General requirements for test fuels.

* * * * *

(f) *Service accumulation and field testing fuels.* If we do not specify a service-accumulation or field-testing fuel in the standard-setting part, use an appropriate commercially available fuel such as those meeting minimum specifications from the following table:

TABLE 1 OF § 1065.701—EXAMPLES OF SERVICE-ACCUMULATION AND FIELD-TESTING FUELS

Fuel category	Subcategory	Reference procedure[1]
Diesel	Light distillate and light blends with residual	ASTM D975–07b
	Middle distillate	ASTM D6985–04a
	Biodiesel (B100)	ASTM D6751–07b
Intermediate and residual fuel	All	See § 1065.705
Gasoline	Motor vehicle gasoline	ASTM D4814–07a
	Minor oxygenated gasoline blends	ASTM D4814–07a
Alcohol	Ethanol (Ed75–85)	ASTM D5798–07
	Methanol (M70–M85)	ASTM D5797–07
Aviation fuel	Aviation gasoline	ASTM D910–07
	Gas turbine	ASTM D1655–07e01
	Jet B wide cut	ASTM D6615–06
Gas turbine fuel	General	ASTM D2880–03

[1] ASTM specifications are incorporated by reference in § 1065.1010.

288. Section 1065.703 is amended by revising Table 1 to read as follows:

§ 1065.703 Distillate diesel fuel.

* * * * *

TABLE 1 OF § 1065.703—TEST FUEL SPECIFICATIONS FOR DISTILLATE DIESEL FUEL

Item	Units	Ultra low sulfur	Low sulfur	High sulfur	Reference procedure [1]
Cetane Number	.....	40–50	40–50	40–50	ASTM D613–05.
Distillation range:	°C.				
Initial boiling point	.....	171–204	171–204	171–204	ASTM D86–07a.
10 pct. point	.....	204–238	204–238	204–238	
50 pct. point	.....	243–282	243–282	243–282	
90 pct. point	.....	293–332	293–332	293–332	
Endpoint	.....	321–366	321–366	321–366	
Gravity	°API	32–37	32–37	32–37	ASTM D4052–96e01.
Total sulfur, ultra low sulfur	mg/kg	7–15	.....	.....	See 40 CFR 80.580.
Total sulfur, low and high sulfur	mg/kg	.....	300–500	800–2500	ASTM D2622–07 or alternates as allowed under 40 CFR 80.580.
Aromatics, min. (Remainder shall be paraffins, naphthalenes, and olefins).	g/kg	100	100	100	ASTM D5186–03.
Flashpoint, min.	°C	54	54	54	ASTM D93–07.
Kinematic Viscosity	cSt	2.0–3.2	2.0–3.2	2.0–3.2	ASTM D445–06.

[1] ASTM procedures are incorporated by reference in § 1065.1010. See § 1065.701(d) for other allowed procedures.

Subpart K—[Revised]

289. Section 1065.1001 is amended by revising the definitions for ''Duty cycle'' and ''Percent'' to read as follows:

§ 1065.1001 Definitions.

* * * * *

Duty cycle means one of the following:

(1) A series of speed and torque values (or power values) that an engine must follow during a laboratory test. Duty cycles are specified in the standard-setting part. A single duty cycle may consist of one or more test intervals. A series of speed and torque values meeting the definition of this paragraph (1) may also be considered a test cycle. For example, a duty cycle may be a ramped-modal cycle, which has one test interval; a cold-start plus hot-start transient cycle, which has two test intervals; or a discrete-mode cycle, which has one test interval for each mode.

(2) A set of weighting factors and the corresponding speed and torque values, where the weighting factors are used to combine the results of multiple test intervals into a composite result.

* * * * *

Percent (%) means a representation of exactly 0.01 (with infinite precision). Significant digits for the product of % and another value, or the expression of any other value as a percentage, are defined as follows:

(1) Where we specify some percentage of a total value (such as tolerances), the calculated value has the same number of

significant digits as the total value. The specified percentage by which the total value is multiplied has infinite precision. Note that not all displayed or recorded digits are significant. For example, 2% of a span value where the span value is 101.3302 is 2.026604. However, where the span value has limited precision such that only one digit to the right of the decimal is significant (*i.e.,* the actual value is 101.3), 2% of the span value is 2.026.

(2) In other cases (such as some expressions of CO_2 concentrations), determine the number of significant digits using the same method as you would use for determining the number of significant digits of any calculated value. For example, a calculated value of 0.0321, where the last three digits are significant, is equivalent to 3.21%.

* * * * *

290. Section 1065.1005 is amended by revising paragraph (f)(2) to read as follows:

§ 1065.1005 Symbols, abbreviations, acronyms, and units of measure.

* * * * *

(f) * * *

(2) This part uses the following molar masses or effective molar masses of chemical species:

Symbol	Quantity	g/mol (10^{-3}kg·mol^{-1})
M_{air}	molar mass of dry air 1	28.96559
M_{Ar}	molar mass of argon	39.948
M_{C}	molar mass of carbon	12.0107
M_{CO}	molar mass of carbon monoxide	28.0101
M_{CO2}	molar mass of carbon dioxide	44.0095
M_{H}	molar mass of atomic hydrogen	1.00794
M_{H2}	molar mass of molecular hydrogen	2.01588
M_{H2O}	molar mass of water	18.01528
M_{He}	molar mass of helium	4.002602
M_{N}	molar mass of atomic nitrogen	14.0067
M_{N2}	molar mass of molecular nitrogen	28.0134
M_{NMHC}	effective molar mass of nonmethane hydrocarbon[2]	13.875389
M_{NMHCE}	effective molar mass of nonmethane equivalent hydrocarbon[2]	13.875389
M_{NOx}	effective molar mass of oxides of nitrogen[3]	46.0055
M_{O}	molar mass of atomic oxygen	15.9994
M_{O2}	molar mass of molecular oxygen	31.9988
M_{C3H8}	molar mass of propane	44.09562
M_{S}	molar mass of sulfur	32.0655
M_{THC}	effective molar mass of total hydrocarbon[2]	13.875389
M_{THCE}	effective molar mass of total hydrocarbon equivalent[2]	13.875389

[1] See paragraph (f)(1) of this section for the composition of dry air.
[2] The effective molar masses of THC, THCE, NMHC, and NMHCE are defined by an atomic hydrogen-to-carbon ratio, α, of 1.85.
[3] The effective molar mass of NO_X is defined by the molar mass of nitrogen dioxide, NO_2.

* * * * *

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR ENGINE PROGRAMS

292. The heading for part 1068 is revised as set forth above.

293. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

294. Section 1068.25 is amended by adding paragraph (c) to read as follows:

§ 1068.25 What information must I give to EPA?

* * * * *

(c) You are responsible for statements and information in your applications for certification or any other requests or reports. If you provide statements or information to someone for submission to EPA, you are responsible for these statements and information as if you had submitted them to EPA yourself. For example, knowingly submitting false information to someone else for inclusion in an application for certification would be deemed to be a submission of false information to the U.S. Government in violation of 18 U.S.C. 1001.

295. Section 1068.30 is amended as follows:

a. By revising the introductory text of the definition for ''Engine''.

b. By revising the definition for ''Ultimate purchaser''.

c. By adding a definition for ''Gas turbine engine'' in alphabetical order.

§ 1068.30 What definitions apply to this part?

* * * * *

Engine means an engine block with an installed crankshaft, or a gas turbine engine. The term engine does not include engine blocks without an installed crankshaft, nor does it include any assembly of reciprocating engine components that does not include the engine block. (Note: For purposes of this definition, any component that is the primary means of converting an engine's energy into usable work is considered a crankshaft, whether or not it is known commercially as a crankshaft.) This includes complete and partially complete engines as follows:

* * * * *

Gas turbine engine means anything commercially known as a gas turbine engine or any collection of assembled engine components that is substantially similar to engines commercially known as gas turbine engines. For example, a jet engine is a gas turbine engine. Gas turbine engines may be complete or partially complete. Turbines that rely on external combustion such as steam engines are not gas turbine engines.

* * * * *

Ultimate purchaser means the first person who in good faith purchases a new engine or new piece of equipment for purposes other than resale.

* * * * *

296. Section 1068.31 is amended by revising paragraph (d) to read as follows:

§ 1068.31 What provisions apply to nonroad or stationary engines that change their status?

* * * * *

(d) Changing the status of a nonroad engine to be a new stationary engine as

described in paragraph (e) of this section is a violation of § 1068.101(a)(1) unless the engine complies with all the requirements of this chapter for new stationary engines of the same type (for example, a compression-ignition engine rated at 40 kW) and model year. For a new stationary engine that is required to be certified under 40 CFR part 60, the engine must have been certified to be compliant with all the requirements that apply to new stationary engines of the same type and model year, and must be in its certified configuration. Note that the definitions of ''model year'' in the standard-setting part generally identifies the engine's original date of manufacture as the basis for determining which standards apply if it becomes a stationary engine after it is no longer new. For example, see 40 CFR 60.4219 and 60.4248.

* * * * *

297. Section 1068.45 is amended by revising paragraph (c) introductory text to read as follows:

§ 1068.45 General labeling provisions.

* * * * *

(c) *Labels on packaging.* Unless we specify otherwise, where we require engine/equipment labels that may be removable, you may instead label the packaging if the engines/equipment are packaged together as described in this paragraph (c). For example, this may involve packaging engines together by attaching them to a rack, binding them together on a pallet, or enclosing them in a box. The provisions of this paragraph (c) also apply for engines/equipment boxed individually where you do not apply labels directly to the engines/equipment. The following provisions apply if you label the packaging instead of labeling engines/equipment individually:

* * * * *

298. Section 1068.101 is revised to read as follows:

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation in accordance with 42 U.S.C. 7522 and 7524. The maximum penalty values listed in paragraphs (a) and (b) of this section apply as of January 12, 2009. As described in paragraph (h) of this section, these maximum penalty limits are different for earlier violations and they may be adjusted as set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines, manufacturers of equipment containing these engines, and manufacturers of new equipment, except as described in subparts C and D of this part:

(1) *Introduction into commerce.* You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(i) For purposes of this paragraph (a)(1), a valid certificate of conformity is one that applies for the same model year as the model year of the equipment (except as allowed by § 1068.105(a)), covers the appropriate category of engines/equipment (such as locomotive or Marine SI), and conforms to all requirements specified for equipment in the standard-setting part. Engines/equipment are considered not covered by a certificate unless they are in a configuration described in the application for certification.

(ii) The requirements of this paragraph (a)(1) also cover new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.240.

(iii) For engines used in equipment subject to equipment-based standards, you may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. See the standard-setting part for more information about how this prohibition applies.

(2) *Reporting and recordkeeping.* This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to your records or the ability to copy your records if we have the authority to see or copy them. Also, you must give us complete and accurate reports and information without delay as required under this chapter. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to $37,500 for each day you are in violation. In addition, knowingly submitting false information is a violation of 18 U.S.C. 1001, which may involve criminal penalties and up to five years imprisonment.

(3) *Testing and access to facilities.* You may not keep us from entering your facility to test engines/equipment or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to $37,500 for each day you are in violation.

(b) The following prohibitions apply to everyone with respect to the engines and equipment to which this part applies:

(1) *Tampering.* You may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. This includes, for example, operating an engine without a supply of appropriate quality urea if the emissions control system relies on urea to reduce NOx emissions or the use of incorrect fuel or engine oil that renders the emissions control system inoperative. Section 1068.120 describes how this applies to rebuilding engines. See the standard-setting part, which may include additional provisions regarding actions prohibited by this requirement. For a manufacturer or dealer, we may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation. For anyone else, we may assess a civil penalty up to $3,750 for each day an engine or piece of equipment is operated in violation. This prohibition does not apply in any of the following situations:

(i) You need to repair the engine/equipment and you restore it to proper functioning when the repair is complete.

(ii) You need to modify the engine/equipment to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify new engines/equipment that another manufacturer has already certified to meet emission standards and recertify them under your own family. In this case you must tell the original manufacturer not to include the modified engines/equipment in the original family.

(2) *Defeat devices.* You may not knowingly manufacture, sell, offer to sell, or install, any part that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant, except as explicitly allowed by the standard-setting part. We may assess a civil penalty up to $3,750 for each part in violation.

(3) *Stationary engines.* For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.30. Anyone violating this paragraph (b)(3) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each day you are in violation.

(4) *Competition engines/equipment.* For uncertified engines/equipment that are excluded or exempted from any requirements of this chapter because they are to be used solely for competition, you may not use any of them in a manner that is inconsistent with use solely for competition. Anyone violating this paragraph (b)(4) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each day you are in violation.

(5) *Importation.* You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part with a model year for which emission standards applied. Anyone violating this paragraph (b)(5) is deemed to be a manufacturer in violation of paragraph (a)(1) of this section. We may assess a civil penalty up to $37,500 for each day you are in violation. Note the following:

(i) The definition of new is broad for imported engines/equipment; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Used engines/equipment that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(6) *Warranty, recall, and maintenance instructions.* You must meet your obligation to honor your emission-related warranty under § 1068.115, including any commitments you identify in your application for certification. You must also fulfill all applicable requirements under subpart F of this part related to emission-related defects and recalls. You must also provide emission-related installation and maintenance instructions as described in the standard-setting part. Failure to meet these obligations is prohibited. Also, except as specifically provided by regulation, you are prohibited from directly or indirectly communicating to the ultimate purchaser or a later purchaser that the emission-related warranty is valid only if the owner has service performed at authorized facilities or only if the owner uses authorized parts, components, or systems. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

(7) *Labeling.* (i) You may not remove or alter an emission control information label or other required permanent label except as specified in this paragraph (b)(7) or otherwise allowed by this chapter. Removing or altering an emission control information label is a violation of paragraph (b)(1) of this section. However, it is not a violation to remove a label in the following circumstances:

(A) The engine is destroyed, is permanently disassembled, or otherwise loses its identity such that the original title to the engine is no longer valid.

(B) The regulations specifically direct you to remove the label. For example, see § 1068.235.

(C) The part on which the label is mounted needs to be replaced. In this case, you must have a replacement part with a duplicate of the original label installed by the certifying manufacturer or an authorized agent, except that the replacement label may omit the date of manufacture if applicable. We generally require labels to be permanently attached to parts that will not normally be replaced, but this provision allows for replacements in unusual circumstances, such as damage in a collision or other accident.

(D) The original label is incorrect, provided that it is replaced with the correct label from the certifying manufacturer or an authorized agent. This allowance to replace incorrect labels does not affect whether the application of an incorrect original label is a violation.

(ii) Removing or altering a temporary or removable label contrary to the provisions of this paragraph (b)(7)(ii) is a violation of paragraph (b)(1) of this section.

(A) For labels identifying temporary exemptions, you may not remove or alter the label while the engine/equipment is in an exempt status. The exemption is automatically revoked for each engine/equipment for which the label has been removed.

(B) For temporary or removable consumer information labels, only the ultimate purchaser may remove the label.

(iii) You may not apply a false emission control information label. You also may not manufacture, sell, or offer to sell false labels. The application, manufacture, sale, or offer for sale of false labels is a violation of this section (such as paragraph (a)(1) or (b)(2) of this section). Note that applying an otherwise valid emission control information label to the wrong engine is considered to be applying a false label.

(c) If you cause someone to commit a prohibited act in paragraph (a) or (b) of this section, you are in violation of that prohibition.

(d) Exemptions from these prohibitions are described in subparts C and D of this part and in the standard-setting part.

(e) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(f) The specification of prohibitions and penalties in this part does not limit the prohibitions and penalties described in the Clean Air Act. Additionally, a single act may trigger multiple violations under this section and the Act. We may pursue all available administrative, civil, or criminal remedies for those violations even if the regulation references only a single prohibited act in this section.

(g) [Reserved]

(h) The maximum penalty values listed in paragraphs (a) and (b) of this section apply as of January 12, 2009. Maximum penalty values for earlier violations are published in 40 CFR part 19. Maximum penalty limits may be adjusted after January 12, 2009 based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority (42 U.S.C. 7524)
§ 1068.101(a)(1)	Introduction into U.S. commerce of an uncertified source	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(a)(2)	Failure to provide information	42 U.S.C. 7522(a)(2).
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2).
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer ..... Tampering with emission controls by someone other than a manufacturer or dealer.	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3).
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(4)	Noncompetitive use of uncertified engines/equipment that is exempted for competition.	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(5)	Importation of an uncertified source	42 U.S.C. 7522(a)(1) and (a)(4).
§ 1068.101(b)(6)	Recall and warranty	42 U.S.C. 7522(a)(4).
§ 1068.101(b)(7)	Removing labels	42 U.S.C. 7522(a)(3).

299. Section 1068.103 is amended by revising paragraph (a) to read as follows:

§ 1068.103 What are the provisions related to the duration and applicability of certificates of conformity?

(a) Engines/equipment covered by a certificate of conformity are limited to those that are produced during the period specified in the certificate and conform to the specifications described in the certificate and the associated application for certification. For the purposes of this paragraph (a), specifications includes any conditions or limitations identified by the manufacturer or EPA, but does not include any information provided in the application that is not relevant to a demonstration of compliance with applicable regulations. For example, if the application for certification specifies certain engine configurations, the certificate does not cover any configurations that are not specified. However, your certificate would not be conditioned upon your actual U.S.-directed production volumes matching the volumes you projected in your application.

* * * * *

300. Section 1068.105 is amended by revising paragraph (a) to read as follows:

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

* * * * *

(a) *Transitioning to new engine-based standards.* If new engine-based emission standards apply in a given model year, your equipment in that calendar year must have engines that are certified to the new standards, except that you may continue to use up your normal inventory of earlier engines that were built before the date of the new or changed standards. (Note: This paragraph (a) does not apply in the case of new remanufacturing standards.) For example, if your normal inventory practice is to keep on hand a one-month supply of engines based on your upcoming production schedules, and a new tier of standards starts to apply for the 2015 model year, you may order engines consistent with your normal inventory requirements late in the engine manufacturer's 2014 model year and install those engines in your equipment, regardless of the date of installation. Also, if your model year starts before the end of the calendar year preceding new standards, you may use engines from the previous model year for those units you produce before January 1 of the year that new standards apply. If emission standards for the engine do not change in a given model year, you may continue to install engines from the previous model year without restriction (or any earlier model year for which the same standards apply). You may not circumvent the provisions of § 1068.101(a)(1) by stockpiling engines that were built before new or changed standards take effect. Note that this allowance does not apply for equipment subject to equipment-based standards. See 40 CFR 1060.601 for similar provisions that apply for equipment subject to evaporative emission standards.

* * * * *

301. Section 1068.120 is amended by revising paragraph (e) to read as follows:

§ 1068.120 What requirements must I follow to rebuild engines?

* * * * *

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration, except as allowed by this paragraph (e). You may rebuild it to a different certified configuration of the same or later model year. You may also rebuild it to a certified configuration from an earlier model year as long as the earlier configuration is as clean or cleaner than the original configuration. For purposes of this paragraph (e), ''as clean or cleaner'' means one of the following:

(1) For engines not certified with a Family Emission Limit for calculating credits for a particular pollutant, this means that the same emission standard applied for both model years. This includes supplemental standards such as Not-to-Exceed standards.

(2) For engines certified with a Family Emission Limit for a particular pollutant, this means that the configuration to which the engine is being rebuilt has a Family Emission Limit for that pollutant that is at or below the standard that applied to the engine originally, and is at or below the original Family Emission Limit.

* * * * *

302. Section 1068.125 is amended by revising paragraph (b) introductory text to read as follows:

§ 1068.125 What happens if I violate the regulations?

* * * * *

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than *$295,000* against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that a greater administrative penalty assessment is appropriate, or if the limit is adjusted under 40 CFR part 19. No court may review this determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

* * * * *

Subpart C—[Amended]

303. Section 1068.215 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1068.215 What are the provisions for exempting manufacturer-owned engines/equipment?

(a) You are eligible for the exemption for manufacturer-owned engines/equipment only if you are a certificate holder. Any engine for which you meet all applicable requirements under this section is exempt without request.

(b) Engines/equipment may be exempt without a request if they are nonconforming engines/equipment under your ownership, possession, and control and you do not operate them for purposes other than to develop products, assess production methods, or promote your engines/equipment in the marketplace, or other purposes we approve. You may not loan, lease, sell, or use the engine/equipment to generate revenue, either by itself or for an engine installed in a piece of equipment, except as allowed by § 1068.201(i). Note that this paragraph (b) does not prevent the sale or shipment of a partially complete engine to a secondary engine manufacturer that will meet the requirements of this paragraph (b). See § 1068.262 for provisions related to shipping partially complete engines to secondary engine manufacturers.

* * * * *

304. Section 1068.240 is amended by revising paragraphs (b)(6), (c) introductory text, (d), (e), and (g)(2) to read as follows:

§ 1068.240 What are the provisions for exempting new replacement engines?

* * * * *

(b) * * *

(6) You add a permanent label, consistent with § 1068.45, with your corporate name and trademark and the following additional information:

(i) Add the following statement if the engine being replaced was not subject to any emission standards under this chapter:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE AN ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earliest tier of standards began to apply to engines of that size and type] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(ii) Add the following statement if the engine being replaced was subject to emission standards:

THIS ENGINE COMPLIES WITH U.S. EPA EMISSION REQUIREMENTS FOR [Identify the appropriate emission standards (by model year, tier, or emission levels) for the replaced engine] ENGINES UNDER 40 CFR 1068.240. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A [Identify the appropriate emission standards for the replaced engine, by model year(s), tier(s), or emission levels)] ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(c) *Previous-tier replacement engines without tracking.* You may produce a limited number of new replacement engines that are not from a currently certified engine family under the provisions of this paragraph (c). If you produce new engines under this paragraph (c) to replace engines subject to emission standards, the new replacement engine must be in a configuration identical in all material respects to the old engine and meet the requirements of § 1068.265. This would apply, for example, for engine configurations that were certified in an earlier model year but are no longer covered by a certificate of conformity. You must comply with the requirements of paragraph (b) of this section for any number of replacement engines you produce in excess of what we allow under this paragraph (c). The following provisions apply to engines exempted under this paragraph (c):

* * * * *

(d) *Partially complete engines.* The following requirements apply if you ship a partially complete replacement engine under paragraph (b) or (c) of this section:

(1) Include installation instructions specifying how to complete the engine assembly such that the resulting engine conforms to the applicable certificate of conformity or the specifications of § 1068.265. Where a partially complete engine can be built into multiple different configurations, you must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes. Your installation instructions must make clear how the final assembler can determine which configurations are appropriate for the engine they receive.

(2) You must label the engine as follows:

(i) If you have a reasonable basis to believe that the fully assembled engine will include the original emission control information label, you may add a removable label to the engine with your corporate name and trademark and the statement: ''This replacement engine is exempt under 40 CFR 1068.240(b) [or 40 CFR 1068.240(c) if appropriate].'' This would generally apply if all the engine models that are compatible with the replacement engine were covered by a certificate of conformity and they were labeled in a position on the engine or equipment that is not included as part of the partially complete engine being shipped for replacement purposes. Removable labels must meet the requirements specified in § 1068.45.

(ii) If you do not qualify for using a removable label in paragraph (d)(1) of this section, you must add a permanent label in a readily visible location, though it may be obscured after installation in a piece of equipment. Include on the permanent label your corporate name and trademark, the engine's part number (or other identifying information), and the statement: ''This replacement engine is exempt under 40 CFR 1068.240(b) [or 40 CFR 1068.240(c) if appropriate].'' If there is not enough space for this statement, you may alternatively add: ''REPLACEMENT'' or ''SERVICE ENGINE''. For purposes of this paragraph (d)(2), engine part numbers permanently stamped or engraved on the engine are considered to be included on the label.

(e) *Partially complete current-tier replacement engines.* The provisions of paragraph (d) of this section apply for partially complete engines you produce from a current line of certified engines or vehicles, except that the appropriate regulatory cite on the label is 40 CFR 1068.240(e). This applies for engine-based and equipment-based standards as follows:

(1) Where engine-based standards apply, you may introduce into U.S. commerce short blocks or other partially complete engines from a currently certified engine family as replacement components for in-use equipment powered by engines you originally produced. You must be able to identify all the engine models and model years for which the partially complete engine may properly be used for replacement purposes.

(2) Where equipment-based standards apply, you may introduce into U.S. commerce engines that are identical to engines covered by a current certificate of conformity by demonstrating compliance with currently applicable standards where the engines will be installed as replacement engines. These engines might be fully assembled, but we would consider them to be partially

complete engines because they are not yet installed in the equipment.

* * * * *

(g) * * *

(2) Anyone installing or completing assembly of an exempted new replacement engine is deemed to be a manufacturer of a new engine with respect to the prohibitions of § 1068.101(a)(1). This applies to all engines exempted under this section.

* * * * *

§ 1068.261—[Amended]

305. Section 1068.261 is amended by removing and reserving paragraph (c)(5).

Subpart D—[Amended]

306. Section 1068.325 is amended by revising paragraph (g) to read as follows:

§ 1068.325 What are the temporary exemptions for imported engines/equipment?

* * * * *

(g) You may import an engine if another company already has a certificate of conformity and will be modifying the engine to be in its final certified configuration or a final exempt configuration under the provisions of § 1068.262. You may also import a partially complete engine by shipping it from one of your facilities to another under the provisions of § 1068.260(c). If you are importing a used engine that becomes new as a result of importation, you must meet all the requirements that apply to original engine manufacturers under § 1068.262.

* * * * *

Subpart E—[Amended]

307. Section 1068.415 is amended by revising paragraph (c) to read as follows:

§ 1068.415 How do I test my engines/equipment?

* * * * *

(c) Test at least two engines/equipment in each 24-hour period (including void tests). However, if your projected U.S.-directed production volume is less than 7,500 engines/equipment for the year, you may test a minimum of one per 24-hour period. If you request and justify it, we may approve a lower testing rate.

* * * * *

Subpart F—[Amended]

308. Section 1068.501 is amended by revising paragraphs (a)(5), (e), and (f) to read as follows:

§ 1068.501 How do I report emission-related defects?

* * * * *

(a) * * *

(5) You must track the information specified in paragraph (b)(1) of this section. You must assess this data at least every three months to evaluate whether you exceed the thresholds specified in paragraphs (e) and (f) of this section. Where thresholds are based on a percentage of engines/equipment in the family, use actual U.S.-directed production volumes for the whole model year when they become available. Use projected production figures until the actual production figures become available. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching a threshold for an investigation specified in paragraph (e) of this section.

* * * * *

(e) *Thresholds for conducting a defect investigation.* You must begin a defect investigation based on the following number of engines/equipment that may have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 500 units: 50 or more engines/equipment.

(ii) For families with annual production from 500 to 50,000 units: more than 10.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

Investigation threshold = 5,000 + (Production units $-50{,}000) \times 0.04$

(iv) For families with annual production above 550,000 units: 25,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 250 units: 25 or more engines/equipment.

(ii) For families with annual production at or above 250 units: more than 10.0 percent of the total number of engines/equipment in the family.

(f) *Thresholds for filing a defect report.* You must send a defect report based on the following number of engines/equipment that have the defect:

(1) For engines/equipment with maximum engine power at or below 560 kW:

(i) For families with annual production below 1,000 units: 20 or more engines/equipment.

(ii) For families with annual production from 1,000 to 50,000 units: more than 2.0 percent of the total number of engines/equipment in the family.

(iii) For families with annual production from 50,000 to 550,000 units: more than the total number of engines/equipment represented by the following equation:

Reporting threshold = 1,000 + (Production units $-50{,}000) \times 0.01$

(iv) For families with annual production above 550,000 units: 6,000 or more engines/equipment.

(2) For engines/equipment with maximum engine power greater than 560 kW:

(i) For families with annual production below 150 units: 10 or more engines/equipment.

(ii) For families with annual production from 150 to 750 units: 15 or more engines/equipment.

(iii) For families with annual production above 750 units: more than 2.0 percent of the total number of engines/equipment in the family.

* * * * *

[FR Doc. E9–19187 Filed 8–27–09; 8:45 am]

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Federal Register

Friday,
August 28, 2009

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and 60 other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., Suite 1, San Antonio, TX 78226; (210) 925–3047; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20314; (202) 475–5609; COE: Ms. Kim Shelton, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, NW., Washington, DC 20314; (202) 761–7696; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: August 20, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/28/2009

Suitable/Available Properties

Building

California

Facility 1
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830012
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830014
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830015
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830016
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830017
Status: Unutilized

Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830018
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830019
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Maine

Bldgs. 1, 2, 3, 4
OTH–B Radar Site
Columbia Falls ME
Landholding Agency: Air Force
Property Number: 18200840009
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility

South Carolina

256 Housing Units
Charleston AFB
South Side Housing
Charleston SC
Landholding Agency: Air Force
Property Number: 18200920001
Status: Excess
Comments: various sq. ft., presence of asbestos/lead paint, off-site use only

Land

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force
Property Number: 18200820034
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Missouri

Communications Site
County Road 424
Dexter Co: Stoddard MO
Landholding Agency: Air Force
Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

North Carolina

0.14 acres
Pope AFB
Pope AFB NC
Landholding Agency: Air Force
Property Number: 18200810001
Status: Excess
Comments: most recent use—middle marker, easement for entry

Texas

0.13 acres
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810002
Status: Unutilized
Comments: most recent use—middle marker, access limitation

Washington

6798 sq. ft. land
Navy Region Northwest
Bremerton WA
Landholding Agency: Navy
Property Number: 77200830024
Status: Unutilized
Comments: vacant land

Suitable/Unavailable Properties

Building

Hawaii

Bldg. 2652
Navy Aloha Center
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710039
Status: Underutilized
Comments: 9125 sq. ft., most recent use—office

Washington

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 1425 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Land

Hawaii

6 Parcels
Naval Station
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77200840012
Status: Unutilized
Comments: various acres; encumbered by substantial improvements owned by a private navy tenant

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comments: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comments: 121 acres, bentonite layer in soil, causes movement

Unsuitable Properties

Building

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force
Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Bldg. 3224
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1437, 1190, 2375
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830002
Status: Unutilized
Directions: 3300, 3301, 3315, 3347, 3383
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830003
Status: Unutilized
Directions: 4040, 4332, 4333, 4480
Reasons: Secured Area, Extensive deterioration

Bldgs. 6122, 6205
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8128
Elmendorf AFB
Elmendorf AK 99506
Landholding Agency: Air Force
Property Number: 18200830005
Status: Underutilized
Reasons: Secured Area

Bldgs. 8130, 8132, 17637
Elmendorf AFB
Anchorage AK 99506
Landholding Agency: Air Force
Property Number: 18200920002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7111
Elmendorf AFB
Anchorage AK
Landholding Agency: Air Force
Property Number: 18200920014
Status: Unutilized
Reasons: Secured Area

Bldgs. 615, 617, 751, 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18200920015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Radar Tower
Potato Point Comm Site
Valdez AK
Landholding Agency: Coast Guard
Property Number: 88200710001
Status: Excess
Reasons: Not accessible by road, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12B
Integrated Support Command
Kodiak AK
Landholding Agency: Coast Guard
Property Number: 88200810003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 554
Integrated Support Command
Kodiak AK
Landholding Agency: Coast Guard
Property Number: 88200810004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. B02
USCG DGPS
Annette Island AK 99926
Landholding Agency: Coast Guard
Property Number: 88200820001
Status: Excess
Reasons: Secured Area

Bldg. B02
USCG DGPS
Gustavus AK 99826
Landholding Agency: Coast Guard
Property Number: 88200820002
Status: Excess
Reasons: Secured Area

Bldg. 10
LORAN Station
Carroll Inlet AK
Landholding Agency: Coast Guard
Property Number: 88200840001
Status: Excess
Reasons: Extensive deterioration, Not accessible by road

Transmitter Bldg. B4A
Loran Station
St. Paul AK 99660
Landholding Agency: Coast Guard
Property Number: 88200920001
Status: Excess
Reasons: Contamination

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

California

Bldgs. 5001 thru 5082 Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200730003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force

Property Number: 18200740002
Status: Unutilized
Reason: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 1952, 1953, 1957, 1958 Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Extensive deterioration, Secured Area

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 601 thru 610
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820026
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 300, 387
Pt Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 700, 707, 796, 797
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 748, 838
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820033
Status: Unutilized
Reasons: Secured Area

Bldgs. 1412, 2422, 3514
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200840001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 417
Fort MacArthur
Fort MacArthur CA
Landholding Agency: Air Force
Property Number: 18200920003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930001
Status: Unutilized
Directions: 355, 421, 1062, 1088, 1250, 1280
Reasons: Extensive deterioration

7 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930002
Status: Unutilized
Directions: 2160, 2171, 2340, 2432, 2491, 2560, 5800
Reasons: Extensive deterioration

5 Bldgs.
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200930003
Status: Unutilized
Directions: 3505, 601, 225, 4700, 4222
Reasons: Secured Area

Bldgs. M03, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reasons: Extensive deterioration

Bldgs. C920, C921, C922
Sandia Natl Laboratories
Livermore Co: Alameda CA 94551
Landholding Agency: Energy
Property Number: 41200540001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 175
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Trailer 1403
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630003
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Trailer 3703
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 363
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710001
Status: Excess
Reasons: Secured Area

Bldgs. 436, 446
National Laboratory
Livermore CA

Landholding Agency: Energy
Property Number: 41200710002
Status: Excess
Reasons: Secured Area

Bldg. 3520
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4182, 4184, 4187
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 5974
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710005
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 194A, 198
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720007
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 213, 280
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 312, 345
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2177, 2178
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2687, 3777
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 263, 419
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720012
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 1401, 1402, 1404
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720013
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 1405, 1406, 1407
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720014
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 1408, 1413, 1456
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720015
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 2684
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720016
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. CM46A
Sandia Natl Lab
Livermore CA 94551
Landholding Agency: Energy
Property Number: 41200730005
Status: Excess
Reasons: Secured Area

Bldgs. 445, 534
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740001
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
Lawrence Livermore Natl Lab
802A, 811, 830, 854A
Livermore CA
Landholding Agency: Energy
Property Number: 41200740002
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 8806, 8710, 8711
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740003
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 1492, 1526, 1579
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740005
Status: Excess
Reasons: Secured Area

Bldgs. 1601, 1632
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740006
Status: Excess
Reasons: Secured Area

Bldgs. 2552, 2685, 2728
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740007
Status: Excess
Reasons: Secured Area

Bldgs. 2801, 2802
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740008
Status: Excess
Reasons: Secured Area

Bldgs. 3175, 3751, 3775
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740009
Status: Excess
Reasons: Secured Area

4 Bldgs.
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740010
Status: Excess
Directions: 4161, 4316, 4384, 4388
Reasons: Secured Area

Bldgs. 4406, 4475
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740011
Status: Excess
Reasons: Secured Area

Bldgs. 4905, 4906, 4926
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740012
Status: Excess
Reasons: Secured Area

Bldg. 5425
Lawrence Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740013
Status: Excess
Reasons: Secured Area

10 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200830002
Status: Excess
Directions: 2127, 4302, 4377, 4378, 4383, 5225, 5976, 5979, 5980, 6203
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

5 Bldgs.
Lawrence Livermore Natl Lab
1481, 1527, 1884, 1885, 1927
Livermore CA
Landholding Agency: Energy
Property Number: 41200840001
Status: Excess
Reasons: Extensive deterioration

Bldgs. 3577, 3982, 4128
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840002
Status: Excess
Reasons: Secured Area

Bldgs. 328, 367, 376
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 5125
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840009
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840010
Status: Excess
Directions: 1407, 1408, 1413, 1492, 1526, 1579
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840011
Status: Excess
Directions: 3775, 4161, 4316, 4388, 4905, 4906
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 8710, 8711, 8806
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840012
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200920005
Status: Excess
Directions: 1541, 1878, 2727, 3180, 4107, 5477
Reasons: Secured Area

Bldg. 2533
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520005
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 13111
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520006
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 53325, 53326
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520007
Status: Excess
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
Marine Corps Base
53421, 53424 thru 53427
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520008
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 61311, 61313, 61314
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520009
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 61320–61324, 61326
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520010
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 62711 thru 62717
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200520011
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 4
Naval Submarine Base
Point Loma CA
Landholding Agency: Navy
Property Number: 77200520014
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 8915, 8931
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77200530004
Status: Excess
Reasons: Extensive deterioration

Bldgs. 11, 112
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77200530005
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 805
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77200530006
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 810 thru 823
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77200530007
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 851, 859, 864
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77200530008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1146
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200530009
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1370, 1371, 1372
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200530011
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 115
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200530012
Status: Excess
Reasons: Extensive deterioration

Bldg. 1674
Marine Corps Base
Camp Pendletoon CA 92055
Landholding Agency: Navy
Property Number: 77200530027
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 2636, 2651, 2658
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200530028
Status: Excess
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200530029
Status: Excess
Directions: 26053, 26054, 26056, 26059
Reasons: Secured Area, Extensive deterioration

Bldgs. 53333, 53334
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200530030
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 53507, 53569
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200530031
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 170111

Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200530032
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. PM4–3
Naval Base
Oxnard Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200530033
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1781
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200540001
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 398, 399, 404
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200540003
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 388, 389, 390, 391
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200540004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 16
Naval Submarine Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200540017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 325
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200610001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone

Bldgs. 1647, 1648
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610010
Status: Excess
Reasons: Extensive deterioration

Bldg. 1713
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610011
Status: Excess
Reasons: Extensive deterioration

Bldg. 220189
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610014
Status: Excess
Reasons: Extensive deterioration

Bldg. 2295
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610015
Status: Excess
Reasons: Extensive deterioration

Bldgs. 22115, 22116, 22117
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610016
Status: Excess
Reasons: Extensive deterioration

Bldg. 143
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610017
Status: Excess
Reasons: Extensive deterioration

Bldgs. 213, 243, 273
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610018
Status: Excess
Reasons: Extensive deterioration

Bldg. 303
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610019
Status: Excess
Reasons: Extensive deterioration

Bldg. 471
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610020
Status: Excess
Reasons: Extensive deterioration

Bldgs. 979, 928, 930
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610021
Status: Excess
Reasons: Extensive deterioration

Bldgs. 999, 1000
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200610022
Status: Excess
Reasons: Extensive deterioration

Bldgs. 305, 353
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200610023
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 358, 359, 360, 361
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200610024
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 581
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200610026
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. A25, A27
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200610027
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 31926, 31927, 31928
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610058
Status: Excess
Reasons: Extensive deterioration

Bldg. 41326
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610059
Status: Excess
Reasons: Extensive deterioration

Bldg. 41816
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200610060
Status: Excess
Reasons: Extensive deterioration

Bldgs. 1468, 1469
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630002
Status: Unutilized
Reasons: Secured Area

Bldg. 30869
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200630005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2–8, 3–10
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630009
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 6–11, 6–12, 6–819
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 85
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630011
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 120, 123
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy

Property Number: 77200630012
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 724
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 764
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630014
Status: Unutilized
Reasons: Secured Area

Bldg. 115
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 323
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 488
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630017
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 842
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630018
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 927
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 1150
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630020
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 1361
Naval Base
Port Hueneme Co: Ventura CA 93042
Landholding Agency: Navy
Property Number: 77200630021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PH546
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200640027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. PH425
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200710001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PM 134
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200710023
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. PH837, PH1372
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200710024
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 523107
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710025
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710026
Status: Excess
Directions: 523112, 523113, 523114, 523115, 523116, 523117
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710027
Status: Excess
Directions: 523122, 523123, 523124, 523125, 523126, 523127
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710028
Status: Excess
Directions: 523132, 523133, 523134, 523135, 523136, 523137
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710029
Status: Excess
Directions: 523142, 523143, 523144, 523145, 523146, 523147
Reasons: Extensive deterioration

Bldgs. 523156, 523157
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710030
Status: Excess
Reasons: Extensive deterioration

Bldg. 30726
Naval Air Weapons
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200710047
Status: Excess
Reasons: Secured Area

Bldgs. PH284, PH339
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. PH805, PH1179
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. PH1207, PH1264, PH1288
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. PM 3–53, PM129, PM402
Naval Base
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. LP908
Naval Base
Laguna Peak
Port Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PM790
Naval Base
Oxnard CA 93043
Landholding Agency: Navy
Property Number: 77200720006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 53402
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200720007
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 307
Naval Base

San Diego CA
Landholding Agency: Navy
Property Number: 77200720009
Status: Excess
Reasons: Secured Area

Bldg. 3135
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200720010
Status: Excess
Reasons: Secured Area

Bldgs. 30727, 31409
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200720011
Status: Excess
Reasons: Secured Area

Bldgs. 60142, 60158
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720012
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldgs. 60160, 60162, 60164
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720013
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 60203, 60210, 60211
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720014
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 60214, 60215
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720015
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 60227, 60243, 60250
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720016
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 60313
Naval Base Coronado
San Clemente Island CA
Landholding Agency: Navy
Property Number: 77200720017
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 404
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200720032
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 3267
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200720039
Status: Unutilized
Reasons: Secured Area

Bldgs. 11090, 98033
Naval Air Weapons
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200720054
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 41314, 41362
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200720055
Status: Excess
Reasons: Extensive deterioration

Bldgs. 192, 193, 410
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200720063
Status: Excess
Reasons: Secured Area

Bldg. 415
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200730013
Status: Unutilized
Reasons: Secured Area

Bldgs. 3363, 3364
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200730014
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Naval Base
3185D, 3222, 3251, 3309
San Diego CA
Landholding Agency: Navy
Property Number: 77200730015
Status: Unutilized
Reasons: Secured Area

Portion/Bldg. T17
Naval Base Point Loma
San Diego CA
Landholding Agency: Navy
Property Number: 77200730016
Status: Underutilized
Reasons: Secured Area

Bldg. 297 Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200730017
Status: Unutilized
Reasons: Secured Area

Bldgs. 13, 87
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730022
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 243
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730023
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 381
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730024
Status: Excess
Reasons: Secured Area

4 Bldgs.
Naval Air Station
493, 663, 682, 784
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730025
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 809
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730026
Status: Excess
Reasons: Secured Area

Bldg. 983
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730027
Status: Excess
Reasons: Secured Area

Bldg. 1459
Naval Air Station
Coronado Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200730028
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 334
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200730029
Status: Excess
Reasons: Secured Area

Bldgs. 124, 148
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200740002
Status: Excess
Reasons: Secured Area

Bldgs. 314, 341, 636
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200740003
Status: Excess
Reasons: Secured Area

Bldgs. 710, 802, 826
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200740004
Status: Excess
Reasons: Secured Area

Bldgs. 60139, 60180
Naval Air Station
San Clemente CA
Landholding Agency: Navy
Property Number: 77200740005
Status: Excess
Reasons: Secured Area

Bldgs. 41313, 41314

Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740006
Status: Excess
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Marine Corps Base
41359, 41362, 41365, 41366
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740007
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 43976
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740008
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 53440, 53831
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740009
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 410365
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740010
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 259
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200740015
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 41356
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200740017
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 84
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200740018
Status: Excess
Reasons: Secured Area

4 Bldgs.
Marine Corps Base
41312, 53426, 53427, 53430
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200810008
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2537, 2538
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200810009
Status: Excess
Reasons: Extensive deterioration

Bldgs. 43286, 43287
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200810010
Status: Excess
Reasons: Extensive deterioration

Bldg. 33007
Naval Air Weapons Station
China Lake CA
Landholding Agency: Navy
Property Number: 77200810011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 22176, 62507, 410363
Marine Corps Base
Camp Pendleton CA
Landholding Agency: Navy
Property Number: 77200810021
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 25261, 41342, 41344
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200810026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 105
Naval Base
Point Loma Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200820005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. PH1230
Naval Base
Port Hueneme CA 93043
Landholding Agency: Navy
Property Number: 77200820021
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 17, 37, 130
Naval Base
San Diego CA 92136
Landholding Agency: Navy
Property Number: 77200820023
Status: Excess
Reasons: Secured Area

Bldgs. 3053, 3328
Naval Base
San Diego CA 92136
Landholding Agency: Navy
Property Number: 77200820025
Status: Excess
Reasons: Secured Area

Bldgs. 3368, 3370
Naval Base
San Diego CA 92136
Landholding Agency: Navy
Property Number: 77200820026
Status: Excess
Reasons: Secured Area

Bldgs. 3591, 3592
Naval Base
San Diego CA 92136
Landholding Agency: Navy
Property Number: 77200820027
Status: Excess
Reasons: Secured Area

Bldg. 3603
Naval Base
San Diego CA 92136
Landholding Agency: Navy
Property Number: 77200820028
Status: Excess
Reasons: Secured Area, Floodway

Bldg. PH1230
Naval Base
Port Hueneme CA 93043
Landholding Agency: Navy
Property Number: 77200820029
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PM28
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77200820030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. PH5295, PH5297
Naval Base
Oxnard CA 93042
Landholding Agency: Navy
Property Number: 77200820031
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Naval Base
Oxnard CA 93042
Landholding Agency: Navy
Property Number: 77200820032
Status: Unutilized
Directions: PH5303, PH5315, PH5318, PH5319
Reasons: Extensive deterioration, Secured Area

Bldgs. PH5323, PH5329
Naval Base
Oxnard CA 93042
Landholding Agency: Navy
Property Number: 77200820033
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 60180, 60139
San Clemente Island
Naval Base
Coronado CA
Landholding Agency: Navy
Property Number: 77200830001
Status: Excess
Reasons: Secured Area

Bldg. 148
Naval Amphibious Base
Coronado CA
Landholding Agency: Navy
Property Number: 77200830002
Status: Excess
Reasons: Secured Area

Bldgs. 13, 87, 124, 243
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830003

Status: Excess
Reasons: Secured Area

5 Bldgs.
Naval Air Station
307, 311, 314, 341, 381
North Island CA
Landholding Agency: Navy
Property Number: 77200830004
Status: Excess
Reasons: Secured Area

Bldgs. 493
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830005
Status: Excess
Reasons: Secured Area

Bldgs. 636, 663, 682
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830006
Status: Excess
Reasons: Secured Area

Bldgs. 710, 784
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830007
Status: Excess
Reasons: Secured Area

Bldgs. 802, 809, 826
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830008
Status: Excess
Reasons: Secured Area

Bldgs. 983, 1459
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200830009
Status: Excess
Reasons: Secured Area

Bldg. 33005
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200830011
Status: Excess
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 2, 10, 59
Naval Base
Point Loma CA
Landholding Agency: Navy
Property Number: 77200830012
Status: Unutilized
Reasons: Secured Area

Bldgs. 25152, 41321, 41406
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200830022
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 1391
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200830025
Status: Excess
Reasons: Extensive deterioration

Bldgs. 1211, 1213, 1214, 1216
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200830026
Status: Excess
Reasons: Extensive deterioration

Bldgs. 52654, 52655
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200830027
Status: Excess
Reasons: Extensive deterioration

Bldgs. 453, 454, 508, 509
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200840003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 950, 952, 994
Naval Air Station
Lemoore CA
Landholding Agency: Navy
Property Number: 77200840004
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Marine Corps Base
14113, 14114, 14126, 21401
Camp Pendleton CA
Landholding Agency: Navy
Property Number: 77200840010
Status: Excess
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200910001
Status: Excess
Directions: 41350, 51916T, 62357T, 62367
Reasons: Extensive deterioration, Secured Area

6 Bldgs.
Naval Air Station
North Island CA
Landholding Agency: Navy
Property Number: 77200910002
Status: Excess
Directions: C38, C47, C85, C93B, C101, C102
Reasons: Secured Area, Extensive deterioration

Bldgs. 78, 126
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200910003
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 3493
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200920001
Status: Unutilized
Reasons: Secured Area

Bldgs. 2245, 2513T, 5509
Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77200920002
Status: Excess
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920003
Status: Excess
Directions: 1255, 1490, 14121, 14122, 14125, 14127, 62432, 140135
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200920004
Status: Excess
Directions: 02702, 02703, 02704, 02705
Reasons: Secured Area, Extensive deterioration

Bldgs. PM3–4, PM153
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Naval Base
San Nicholas Island Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920006
Status: Unutilized
Directions: SNI11, 16, 22, 45, 49, 71, 72, 141, 202, 213, 229
Reasons: Extensive deterioration, Secured Area

Bldgs. PM126, 327, 327–A
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920007
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. PH 462
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

14 Bldgs.
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200920009
Status: Unutilized
Directions: PM4–4, 4–27, 4–30, 6–817, 37, 42, 223, 401, 733, 793, 803, 841, 842, 855
Reasons: Secured Area, Extensive deterioration

Bldgs. PH274, 462, 808, 837
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy

Property Number: 77200920010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 22172
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920020
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. SNI258
Naval Base
San Nicolas Island CA 93043
Landholding Agency: Navy
Property Number: 77200920021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

6 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77200920022
Status: Unutilized
Directions: PM1823A&B, 1825A&B, 1827A&B
Reasons: Secured Area

9 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77200920023
Status: Unutilized
Directions: PM1936, 1937, 1938, 1939, 1959, 1961, 1963, 1965, 1967
Reasons: Secured Area

Bldgs. 22172, 62432
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 14123
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920031
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 3302
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200920032
Status: Unutilized
Reasons: Secured Area

Bldg. 1680
Naval Base Coronado
Warner Springs CA
Landholding Agency: Navy
Property Number: 77200920033
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. PH–11
Naval Base
Port Hueneme CA 93043
Landholding Agency: Navy
Property Number: 77200920034
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 19
USCG Integrated Sup Comm
San Pedro CA 90731
Landholding Agency: Coast Guard
Property Number: 88200820004
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldg. 9038
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200920004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1166, 1435
Peterson AFB
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18200930004
Status: Unutilized
Reasons: Secured Area

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reasons: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reasons: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reasons: Extensive deterioration

District of Columbia

Bldg. 396
Naval Support Facility
Anacostia Annex DC 20373
Landholding Agency: Navy
Property Number: 77200630008
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. W22
Washington Navy Yard
Washington DC 20374
Landholding Agency: Navy
Property Number: 77200820035
Status: Underutilized
Reasons: Secured Area

Bldgs. 29, 57, 92
Naval Annex
Anacostia DC
Landholding Agency: Navy
Property Number: 77200930012
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Florida

Bldg. 01248
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740003
Status: Unutilized
Reasons: Secured Area

Bldg. 44426
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740004
Status: Unutilized
Reasons: Secured Area

Bldg. 85406
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740005
Status: Unutilized
Reasons: Secured Area

Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Secured Area, Contamination

Bldg. 202
Avon Park AF Range
Polk FL 33825
Landholding Agency: Air Force
Property Number: 18200930005
Status: Unutilized
Reasons: Extensive deterioration

Bldg. U–150
Naval Air Station
Key West Co: Monroe FL 33040
Landholding Agency: Navy
Property Number: 77200520044
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. V1221 A
Naval Air Station
Sigsbee Park
Key West Co: Monroe FL 33040
Landholding Agency: Navy
Property Number: 77200530013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 969
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200540014
Status: Unutilized
Reasons: Secured Area

Bldgs. 1759, 1760
Naval Air Station
Jacksonville Co: Duval FL
Landholding Agency: Navy
Property Number: 77200540015
Status: Unutilized
Reasons: Secured Area

Bldg. 1917
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200540016
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2
Naval Station

Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540018
Status: Excess
Reasons: Floodway
Extensive deterioration, Secured Area

Bldg. 24
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540019
Status: Excess
Reasons: Floodway, Extensive deterioration, Secured Area

Bldg. 66
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540020
Status: Excess
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 216
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540021
Status: Excess
Reasons: Extensive deterioration Floodway, Secured Area

Bldgs. 437, 450
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540022
Status: Excess
Reasons: Floodway, Secured Area, Extensive deterioration

Bldgs. 1234, 1235
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200540023
Status: Excess
Reasons: Secured Area, Floodway, Extensive deterioration

Bldg. 212
Naval Station
Mayport Co: Duval FL 32228
Landholding Agency: Navy
Property Number: 77200620011
Status: Unutilized
Reasons: Floodway, Extensive deterioration, Secured Area

Bldg. 508
Naval Station
Mayport FL 32228
Landholding Agency: Navy
Property Number: 77200620035
Status: Unutilized
Reasons: Secured Area, Floodway

Bldg. 834
Naval Air Station
Pensacola Co: Escambia FL 32508
Landholding Agency: Navy
Property Number: 77200630022
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 2658
Naval Air Station
Pensacola Co: Escambia FL 32508
Landholding Agency: Navy
Property Number: 77200630023
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 3483
Naval Air Station
Pensacola Co: Escambia FL 32508
Landholding Agency: Navy
Property Number: 77200630024
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 6144
Naval Air Station
Pensacola Co: Escambia FL 32508
Landholding Agency: Navy
Property Number: 77200630025
Status: Unutilized
Reasons: Extensive deterioration

Bldg. F11
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. A225, A409
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630027
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. A515
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. A635
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630029
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. A993, A994
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. A1068
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630031
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. A4021
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4080
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200630033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

88 Facilities
Saufley Field
Pensacola FL 32508
Landholding Agency: Navy
Property Number: 77200740016
Status: Unutilized
Reasons: Within airport runway clear zone

Bldgs. C5, A329
Naval Air Station
Key West FL 33040
Landholding Agency: Navy
Property Number: 77200810007
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2, 5, 24, 26
Naval Air Station
Jacksonville Co: Duval FL
Landholding Agency: Navy
Property Number: 77200820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 104A, 136, 159
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200820007
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

6 Bldgs.
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200820008
Status: Unutilized
Directions: 323, 324, 338, 339, 347, 348
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200820009
Status: Unutilized
Directions: 607, 612, 614B, 674, 675
Reasons: Extensive deterioration, Secured Area

Bldgs. 820, 890
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200820010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 1756, 1937
Naval Air Station
Jacksonville Co: Duval FL 32212
Landholding Agency: Navy
Property Number: 77200820011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Georgia

6 Cabins
QSRG Grassy Pond Rec Annex
Lake Park GA 31636

Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized
Reasons: Secured Area

Bldg. 205
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 104, 118, 739, 742, 973
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5101
Naval Submarine Base
Kings Bay Co: Camden GA 31547
Landholding Agency: Navy
Property Number: 77200520004
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 0038
Naval Submarine Base
Kings Bay GA 31547
Landholding Agency: Navy
Property Number: 77200620036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
Marine Logistics Base
Albany GA
Landholding Agency: Navy
Property Number: 77200720040
Status: Excess
Directions: 7100, 7106, 7108, 7110, 5584, 7964, 7966
Reasons: Secured Area

Guam

Bldg. 1094
AAFB Yigo
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200830007
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Andersen AFB
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200920006
Status: Excess
Reasons: Secured Area

Bldgs. 72, 73, 74
Andersen AFB
Mount Santa Rosa GU
Landholding Agency: Air Force
Property Number: 18200920017
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 101, 102
Andersen AFB
Pots Junction GU
Landholding Agency: Air Force
Property Number: 18200920018
Status: Excess
Reasons: Extensive deterioration

Bldg. B–32
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520023
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 76, 77, 79
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520024
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Naval Forces
261, 262, 263, 269
Marianas GU
Landholding Agency: Navy
Property Number: 77200520025
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 404NM
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520026
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 3150, 3268
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520030
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 5409, 5412, 5413
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520031
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 5500
Naval Forces
Marianas GU
Landholding Agency: Navy
Property Number: 77200520032
Status: Unutilized
Reasons: Extensive deterioration

73 Bldgs.
Naval Computer Station
Marianas GU
Landholding Agency: Navy
Property Number: 77200520045
Status: Excess
Directions: A700–A716, A725, A728, A735, A741–A784, A803–A805, A811–A813, A829–A831
Reasons: Extensive deterioration, Secured Area

Bldgs. 2006, 2009
Naval Ship Repair Facility
Marianas GU
Landholding Agency: Navy
Property Number: 77200520048
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 2014, 2916
Naval Ship Repair Facility
Marianas GU
Landholding Agency: Navy
Property Number: 77200520049
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 277, 308
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610028
Status: Excess
Reasons: Secured Area

Bldgs. 1686, 1689, 1690
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610029
Status: Excess
Reasons: Secured Area

Bldgs. 1714, 1767, 1768
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610030
Status: Excess
Reasons: Secured Area

Bldgs. 1771, 1772, 1773
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610031
Status: Excess
Reasons: Secured Area

Bldgs. 1791, 1792
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610032
Status: Excess
Reasons: Secured Area

Bldgs. 3000, 3001
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610033
Status: Excess

Reasons: Secured Area

Bldgs. 3002, 3004, 3005
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610034
Status: Excess
Reasons: Secured Area

Bldgs. 3006, 3007
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610035
Status: Excess
Reasons: Secured Area

Steam Plant
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200610036
Status: Excess
Reasons: Secured Area

Bldgs. 403, 404
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620013
Status: Unutilized
Reasons: Secured Area

Bldgs. 464, 729
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620014
Status: Unutilized
Reasons: Secured Area

Bldgs. 836, 837
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 11XC7
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 23YC1, 23YC2, 23YC3
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620017
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 23YC4, 23YC5
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620018
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 24YC7, 24YC8
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 26YC3, 26YC5
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620020
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Old Bus Stop
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

2 Guard Houses
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

9 Magazines
Marianas Support Activity
Santa Rita Co: Naval Magazine GU
Landholding Agency: Navy
Property Number: 77200620023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 151, 152, 153
Naval Forces Marianas
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200630001
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 4
Naval Base
Barrigada GU
Landholding Agency: Navy
Property Number: 77200710002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. C115
Naval Base
Barrigada GU
Landholding Agency: Navy
Property Number: 77200710003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 160
Naval Base
Barrigada GU
Landholding Agency: Navy
Property Number: 77200710004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 176
Naval Base
Barrigada GU
Landholding Agency: Navy
Property Number: 77200710005
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 33
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710006
Status: Excess
Reasons: Extensive deterioration

Bldg. 219
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710007
Status: Excess
Reasons: Extensive deterioration

Bldg. 950
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710008
Status: Excess
Reasons: Extensive deterioration

Bldg. 1769
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710009
Status: Excess
Reasons: Extensive deterioration

Bldgs. 3186, 3187, 3188
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710010
Status: Excess
Reasons: Extensive deterioration

Bldgs. 4408, 4409
Naval Base
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710011
Status: Excess
Reasons: Extensive deterioration

Hazmat Storage
Naval Base
Polaris Point
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710012
Status: Excess
Reasons: Extensive deterioration

Storage Bldg.
Naval Base
Polaris Point
Santa Rita Co: Apra Harbor GU
Landholding Agency: Navy
Property Number: 77200710013
Status: Excess
Reasons: Extensive deterioration

10 Bldgs.
Naval Base
North Tipalao
Santa Rita GU
Landholding Agency: Navy
Property Number: 77200920035
Status: Unutilized
Directions: 802, 803, 804, 811, 812, 813, 814, 821, 822, 823
Reasons: Secured Area

5 Bldgs.
Naval Base
North Tipalao
Santa Rita GU
Landholding Agency: Navy
Property Number: 77200920036
Status: Unutilized
Directions: 809, 810, 819, 820, 824
Reasons: Secured Area

10 Bldgs.
Naval Base

North Tipalao
Santa Rita GU
Landholding Agency: Navy
Property Number: 77200920037
Status: Unutilized
Directions: 972, 974, 975, 982, 971, 973, 970, 976, 978, 980
Reasons: Secured Area

Bldgs. 59, 70, 71
Naval Base
Barrigada GU
Landholding Agency: Navy
Property Number: 77200920038
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

13 Bldgs.
Naval Base, NCTS
Dededo GU
Landholding Agency: Navy
Property Number: 77200920039
Status: Unutilized
Directions: 174, 176, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 491
Reasons: Secured Area

Bldg. 367 & Storage Bldg.
Naval Base
Main Base
Dededo GU
Landholding Agency: Navy
Property Number: 77200920040
Status: Unutilized
Reasons: Secured Area

Bldg. 575
Naval Base
Camp Covington
Dededo GU
Landholding Agency: Navy
Property Number: 77200920041
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Naval Base
Former FAA Compound
Dededo GU
Landholding Agency: Navy
Property Number: 77200920042
Status: Unutilized
Directions: 1880, 1881, 1882, 1883, 1884, 1885
Reasons: Extensive deterioration

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Bldg. 1713
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200830008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1843
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200920019
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 346
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200610002
Status: Excess
Reasons: Extensive deterioration

Bank
Marine Corps Base
Kaneohe Bay HI 96863
Landholding Agency: Navy
Property Number: 77200830019
Status: Unutilized
Reasons: Secured Area

Bldgs. S378, 469
Naval Station
Ford Island
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200910005
Status: Underutilized
Reasons: Secured Area

Bldg. 3
Opana Reg. Relay Facility
Kahuku HI 96731
Landholding Agency: Navy
Property Number: 77200920014
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 29
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200920043
Status: Excess
Reasons: Extensive deterioration, Secured Area

Idaho

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reasons: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reasons: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reasons: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reasons: Secured Area

Bldgs. CPP638, CPP642
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410014
Status: Excess
Reasons: Secured Area

Bldg. CPP 743
Idaho Natl Eng Lab
Scoville Co: Butte ID 83–415
Landholding Agency: Energy
Property Number: 41200410020
Status: Excess
Reasons: Secured Area

Bldgs. CPP1647, 1653
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410022
Status: Excess
Reasons: Secured Area

Bldg. CPP1677
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410023
Status: Excess
Reasons: Secured Area

Bldg. 694
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410034
Status: Excess
Reasons: Secured Area

Bldgs. CPP1604–CPP1608
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reasons: Secured Area

Bldgs. CPP1617–CPP1619
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430072

Status: Excess
Reasons: Secured Area

6 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Directions: CPP1631, CPP1634, CPP1635, CPP1636, CPP1637, CPP1638
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Directions: CPP1642, CPP1643, CPP1644, CPP1646, CPP1649
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Directions: CPP1650, CPP1651, CPP1656
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Directions: CPP1662, CPP1663, CPP1671, CPP1673, CPP1674
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Directions: CPP1678, CPP1682, CPP1683, CPP1684, CPP1686
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Directions: CPP1713, CPP1749, CPP1750, CPP1767, CPP1769
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Directions: CPP1770, CPP1771, CPP1772, CPP1774, CPP1776
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess
Directions: CPP1789, CPP1790, CPP1792, CPP1794
Reasons: Secured Area

Bldgs. CPP2701, CPP2706
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430089
Status: Excess
Directions: TRA603, TRA604, TRA610
Reasons: Secured Area

Bldg. TAN611
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430090
Status: Excess
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430091
Status: Excess
Directions: TRA626, TRA635, TRA642, TRA648, TRA654
Reasons: Secured Area

Bldg. TAN655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430092
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430093
Status: Excess
Directions: TRA657, TRA661, TRA668
Reasons: Secured Area

Bldg. TAN711
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430094
Status: Excess
Reasons: Secured Area

6 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430095
Status: Excess
Directions: CPP602–CPP606, CPP609
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430096
Status: Excess
Directions: CPP611–CPP614, CPP616
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430097
Status: Excess
Directions: CPP621, CPP626, CPP630, CPP639
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430098
Status: Excess
Directions: CPP641, CPP644, CPP645, CPP649
Reasons: Secured Area

Bldgs. CPP651–CPP655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430099
Status: Excess
Reasons: Secured Area

Bldgs. CPP659–CPP663
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440001
Status: Excess
Reasons: Secured Area

Bldgs. CPP666, CPP668
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440002
Status: Excess
Reasons: Secured Area

1 Bldg.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440004
Status: Excess
Directions: CPP684
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440005
Status: Excess
Directions: CPP692, CPP694, CPP697–CPP699
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440006
Status: Excess
Directions: CPP701, CPP701A, CPP708
Reasons: Secured Area

Bldgs. 711, 719A
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440007
Status: Excess
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440008
Status: Excess
Directions: CPP724–CPP726, CPP728
Reasons: Secured Area

Bldg. CPP729/741

Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440012
Status: Excess
Reasons: Secured Area

Bldgs. CPP733, CPP736
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440013
Status: Excess
Reasons: Secured Area

Bldgs. CPP740, CPP742
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440014
Status: Excess
Reasons: Secured Area

Bldgs. CPP746, CPP748
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440015
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP750, CPP751, CPP752
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440016
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP753, CPP753A, CPP754
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440017
Status: Excess
Reasons: Secured Area

Bldgs. CPP760, CPP763
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440018
Status: Excess
Reasons: Secured Area

Bldgs. CPP764, CPP765
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440019
Status: Excess
Reasons: Secured Area

Bldgs. CPP767, CPP768
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440020
Status: Excess
Reasons: Secured Area

Bldgs. CPP791, CPP795
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440021
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP796, CPP797, CPP799
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440022
Status: Excess
Reasons: Secured Area

Bldgs. CPP701B, CPP719
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440023
Status: Excess
Reasons: Secured Area

Bldgs. CPP720A, CPP720B
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440024
Status: Excess
Reasons: Secured Area

Bldg. CPP1781
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440025
Status: Excess
Reasons: Secured Area

2 Bldgs.
Idaho National Eng Lab
CPP0000VES–UTI–111, VES–UTI–112
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440026
Status: Excess
Reasons: Secured Area

Bldgs. TAN704, TAN733
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440028
Status: Excess
Reasons: Secured Area

Bldgs. TAN1611, TAN1614
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440029
Status: Excess
Reasons: Secured Area

Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess
Reasons: Extensive deterioration

Bldgs. B23–602, B27–601
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820003
Status: Unutilized
Reasons: Secured Area

Bldgs. CF–635, CF–650
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820005
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. CF–662, CF–692
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

Bldgs. 306A, B, C, TR–5
Argonne National Lab
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41200720017
Status: Excess
Reasons: Secured Area

Bldgs. 310, 330
Argonne National Lab
DuPage IL 60439
Landholding Agency: Energy
Property Number: 41200920007
Status: Excess
Reasons: Secured Area, Contamination

Louisiana

Barksdale Middle Marker
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 37, 89, 122
Naval Air Station
New Orleans LA 70143
Landholding Agency: Navy
Property Number: 77200810024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 159, 418, 902
Naval Air Station
New Orleans LA 70143
Landholding Agency: Navy
Property Number: 77200810025
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 11
Naval Support Activity
New Orleans LA 70142
Landholding Agency: Navy
Property Number: 77200810027
Status: Excess
Reasons: Extensive deterioration, Secured Area

6 Bldgs.
Naval Air Station
Joint Reserve Base
New Orleans LA 70143
Landholding Agency: Navy
Property Number: 77200920044
Status: Excess
Directions: 37, 89, 122, 159, 418, 902
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Maine

Facilities 1, 2, 3, 4
OTH–B Site
Moscow ME 04920
Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Maryland

Bldg. 2075
Naval Surface Warfare

Indian Head MD
Landholding Agency: Navy
Property Number: 77200630043
Status: Excess
Reasons: Extensive deterioration

9 Bldgs
National Naval Medical Ctr
Bethesda MD 20889
Landholding Agency: Navy
Property Number: 77200920028
Status: Unutilized
Directions: 17, 18, 21, 49, 69, 141, 146, 150, 174
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
National Naval Medical Ctr
Bethesda MD
Landholding Agency: Navy
Property Number: 77200920030
Status: Unutilized
Directions: 23, 29, 139, 176, 219
Reasons: Secured Area

Massachusetts

Bldg. 5202
USCG Air Station
Bourne MA 02540
Landholding Agency: Coast Guard
Property Number: 88200810002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

3 Sheds
USCG Sector Southeastern
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88200910001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
USCG Air Station
3434, 3435, 3436, 5424, 5451
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88200920002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Michigan

Admin. Bldg.
Station Saginaw River
Essexville Co: Bay MI 48732
Landholding Agency: Coast Guard
Property Number: 88200510001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 001
USCG Sector
Sault Ste Marie MI 49783
Landholding Agency: Coast Guard
Property Number: 88200920003
Status: Unutilized
Reasons: Secured Area

Bldg. 022
US Coast Guard Station
Marquette MI 49855
Landholding Agency: Coast Guard
Property Number: 88200920004
Status: Excess
Reasons: Secured Area

Mississippi

Bldg. 9
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 22, 27, 41
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610040
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 108, 181, 183
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610041
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 201
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 270, 270A–1, 270A–2
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 375, 420
Construction Battalion Center
Gulfport MS
Landholding Agency: Navy
Property Number: 77200610044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 95, 96
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200720046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Within airport runway clear zone

Bldg. 167
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200720047
Status: Unutilized
Reasons: Secured Area

Bldgs. 212, 228
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200720048
Status: Unutilized
Reasons: Secured Area

Bldgs. 266, 267
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200720049
Status: Unutilized
Reasons: Secured Area

Bldgs. 351, 445
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200720050
Status: Unutilized
Reasons: Secured Area

Bldgs. 182, 183
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200810014
Status: Unutilized
Reasons: Secured Area

Bldgs. 222, 230, 326
Naval Air Station
Meridian MS 39309
Landholding Agency: Navy
Property Number: 77200810015
Status: Unutilized
Reasons: Secured Area

Montana

Bldgs. 1600, 1601
Malmstrom AFB
Cascade MT 59402
Landholding Agency: Air Force
Property Number: 18200920020
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Nevada

Bldg. 33400
Ely
Ely NV 89301
Landholding Agency: Air Force
Property Number: 18200820014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Other—contamination, Secured Area

31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reasons: Secured Area

42 Bldgs.
Nellis Air Force Base
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200410029
Status: Unutilized
Directions: 49–01, NM104, NM105, 03–35A–H, 03–35J–N, 03–36A–C, 03–36E–H, 03–36J–N, 03–36R, 03–37, 15036, 03–44A–D, 03–46, 03–47, 03–49, 03–88, 03–89, 03–90
Reasons: Secured Area

241 Bldgs.

Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

10 Bldgs.
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200610003
Status: Excess
Reasons: Secured Area

3 Bldgs.
Nevada Test Site
23–790, 06–CP50, 26–2107
Mercury Co: Nye NV 89023
Landholding Agency: Navy
Property Number: 77200510025
Status: Excess
Reasons: Secured Area, Other—contamination

Units 501–521
Naval Air Station
Fallon NV
Landholding Agency: Navy
Property Number: 77200710017
Status: Excess
Reasons: Secured Area

New Hampshire

Bldg. 152
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200920007
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 16
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200930006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

New Jersey

Bldgs. 105, 111, 266
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 464, 480
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 539, 560, 565
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 3N, 4N, 57
Naval Weapons Station
Colts Neck NJ 07722
Landholding Agency: Navy
Property Number: 77200930008
Status: Unutilized
Reasons: Secured Area

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Cannon AFB
Curry NM 88102
Landholding Agency: Air Force
Property Number: 18200830009
Status: Underutilized
Directions: 1156, 1160, 1245, 1256, 1258, 1260
Reasons: Secured Area

Bldgs. 20612, 29071, 37505
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200830010
Status: Unutilized
Reasons: Secured Area

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200920008
Status: Unutilized
Directions: 71, 1187, 1200, 1284, 1285
Reasons: Secured Area

6 Bldgs.
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930007
Status: Unutilized
Directions: 920, 921, 922, 923, 924, 930
Reasons: Secured Area

Bldgs. 1113, 1127
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930008
Status: Unutilized
Reasons: Secured Area

Bldg. 30143
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200930009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reasons: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reasons: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reasons: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reasons: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reasons: Secured Area

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 31
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reasons: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reasons: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reasons: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reasons: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reasons: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reasons: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reasons: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reasons: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reasons: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reasons: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reasons: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 51, TA–9
Los Alamos National Lab

Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reasons: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reasons: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reasons: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reasons: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reasons: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reasons: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reasons: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reasons: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reasons: Secured Area

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
41200220032
Status: Excess
Reasons: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
41200220033
Status: Excess
Reasons: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
41200220034
Status: Excess
Reasons: Extensive deterioration

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reasons: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reasons: Secured Area

Bldg. 116, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reasons: Secured Area

Bldgs. 447, 1483
Los Alamos Natl Laboratory
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200410002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 99650
Sandia National Laboratory
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41200510004
Status: Unutilized
Reasons: Secured Area

Bldgs. 807, 6017 CAMU2&CAMU3
Sandia Natl Laboratories
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 6502
Sandia National Lab
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200810002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 6596
Sandia National Labs
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200920001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
Los Alamos National Lab
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200920006
Status: Excess
Directions: 08–0026, 08–0030, 08–0065, 16–0193, 16–0242, 16–0244, 16–0897, 16–1489, 55–0107
Reasons: Secured Area

2 Bldgs.
Los Alamos National Lab
18–0257, 18–0258
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200920008
Status: Excess
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200920009
Status: Excess
Directions: 53–0401, 53–0403, 53–0409, 53–0456, 53–0514, 53–0525, 53–0535, 53–0544, 53–0675
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200920010
Status: Excess
Directions: 54–0117, 54–0185, 54–210, 54–211, 54–221, 54–221, 60–0282
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200920011
Status: Excess
Directions: 21–0155, 21–0209, 21–0213, 21–0227, 21–0229, 21–0257
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200920012
Status: Excess
Directions: 54–0226, 63–0001, 63–0002, 63–0003, 63–0004, 63–0077, 63–0078, 63–0093
Reasons: Extensive deterioration, Secured Area

7 Bldgs.
Los Alamos National Lab
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200930001
Status: Unutilized

Directions: 16–0421, 18–0005, 18–0026, 18–0129, 18–0141, 18–0147, 18–0189
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
Los Alamos National Lab
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200930002
Status: Unutilized
Directions: 52–0035, 52–0036, 52–0105, 52–0123, 60–0045, 69–0002, 69–0005
Reasons: Extensive deterioration, Secured Area

Tract 01–108
Carlsbad Caverns Natl Park
Carlsbad NM 88220
Landholding Agency: Interior
Property Number: 61200930003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

New York

Bldg. 0096
Brookhaven National Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200730004
Status: Unutilized
Reasons: Extensive deterioration Secured Area

Bldg. 913T
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200830001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 680B, 680C
Brookhaven Natl Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200920002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldg. 85
Tract 01–109
Brooklyn NY 11234
Landholding Agency: Interior
Property Number: 61200930004
Status: Excess
Reasons: Extensive deterioration

Bldg. 13
USCG Staten Island
Suffolk NY 10305
Landholding Agency: Coast Guard
Property Number: 88200910002
Status: Excess
Reasons: Extensive deterioration Secured Area

Boat House
USCG Station Eaton's Neck
Northport NY 11768
Landholding Agency: Coast Guard
Property Number: 88200920005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Carolina

5 Bldgs.
Natural Park
Wilkesboro NC 28697
Landholding Agency: COE
Property Number: 31200930012
Status: Unutilized
Directions: WC–A01, WC–AC01, WC–AW01, WC–FR01, WC–FC01
Reasons: Extensive deterioration

3 Bldgs.
Natural Park
Wilkesboro NC 28697
Landholding Agency: COE
Property Number: 31200930013
Status: Unutilized
Directions: BM–W01, BR–R02, RM–M06
Reasons: Extensive deterioration

Bldg. 82
Marine Corps Air Station
Cherry Point Co: Craven NC 28533
Landholding Agency: Navy
Property Number: 77200510009
Status: Underutilized
Reasons: Secured Area

Bldg. 4314
Marine Corps Air Station
Cherry Point Co: Craven NC 28533
Landholding Agency: Navy
Property Number: 77200510010
Status: Underutilized
Reasons: Secured Area

Bldg. 124
Marine Corps Air Station
Cherry Point Co: Craven NC 28533
Landholding Agency: Navy
Property Number: 77200510023
Status: Underutilized
Reasons: Secured Area

Bldgs. 73, 95, 1018
Marine Corps Air Station
Cherry Point NC
Landholding Agency: Navy
Property Number: 77200620003
Status: Unutilized
Reasons: Secured Area

Bldg. 499
Marine Corps Air Station
Cherry Point NC
Landholding Agency: Navy
Property Number: 77200620038
Status: Unutilized
Reasons: Secured Area

Bldgs. 3177, 3885
Marine Corps Air Station
Cherry Point NC
Landholding Agency: Navy
Property Number: 77200620039
Status: Unutilized
Reasons: Secured Area

Bldg. 4473
Marine Corps Air Station
Cherry Point NC
Landholding Agency: Navy
Property Number: 77200620040
Status: Unutilized
Reasons: Secured Area

Bldg. 4523
Marine Corps Air Station
Cherry Point NC
Landholding Agency: Navy
Property Number: 77200620041
Status: Unutilized
Reasons: Secured Area

RPFN 0S1
Group Cape Hatteras
Buxton Co: Dare NC 27902
Landholding Agency: Coast Guard
Property Number: 88200540001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

RPFN 053
Sector N.C.
Atlantic Beach Co: Carteret NC 28512
Landholding Agency: Coast Guard
Property Number: 88200540002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Equip. Bldg.
Coast Guard Station
11101 Station St.
Emerald Isle NC
Landholding Agency: Coast Guard
Property Number: 88200630001
Status: Unutilized
Reasons: Secured Area

Sewage Treatment Facility
USCG Cape Hatteras
Buxton NC 27902
Landholding Agency: Coast Guard
Property Number: 88200920006
Status: Unutilized
Reasons: Secured Area

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Ohio

Naval Reserve Center
Cleveland OH 44114
Landholding Agency: Coast Guard
Property Number: 88200740002
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material, Secured Area

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Paint Locker
USCG Elect. Sup. Detmt.
Coos Bay OR
Landholding Agency: Coast Guard
Property Number: 88200920007
Status: Unutilized
Reasons: Secured Area

Pennsylvania

Z-Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reasons: Extensive deterioration

Bldgs. 13, 90, 93, 97

Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820012
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 431, 483
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820013
Status: Excess
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 530, 534, 567, 585
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820014
Status: Excess
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 618, 743
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820015
Status: Excess
Reasons: Extensive deterioration

Bldg. 37
Naval Support Activity
Philadelphia PA
Landholding Agency: Navy
Property Number: 77200930009
Status: Excess
Reasons: Secured Area

Bldgs. 619, 636, 662, 947
Naval Business Center
Philadelphia PA 19112
Landholding Agency: Navy
Property Number: 77200930010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Rhode Island

Bldg. 305CP
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200820004
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 1A–CC
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200820022
Status: Excess
Reasons: Secured Area

Bldg. 164
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200820036
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Floodway

Bldgs. 348, 85CHI
Naval Station
Newport RI
Landholding Agency: Navy
Property Number: 77200820043
Status: Unutilized
Reasons: Secured Area

Facility 670
Naval Station
Harbor Island
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200820044
Status: Excess
Reasons: Extensive deterioration, Secured Area

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200920021
Status: Unutilized
Directions: B14, B22, B31, B116, B218, B232, B343, B3403
Reasons: Secured Area

Bldg. B1626
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200930010
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 701–6G
Jackson Barricade
Jackson SC
Landholding Agency: Energy
Property Number: 41200420010
Status: Unutilized
Reasons: Secured Area

Bldg. 211–000F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420011
Status: Excess
Reasons: Secured Area

Bldg. 221–001F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420015
Status: Excess
Reasons: Secured Area

Bldg. 190–K
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420030
Status: Unutilized
Reasons: Secured Area

Bldg. 710–015N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reasons: Secured Area

Bldg. 713–000N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reasons: Secured Area

Bldgs. 80–9G, 10G
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reasons: Secured Area

Bldgs. 105–P, 105–R
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430007
Status: Excess
Reasons: Secured Area

Bldg. 183–003L
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reasons: Secured Area

Bldg. 221–016F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reasons: Secured Area

Bldgs. 221–053F, 054F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reasons: Secured Area

Bldgs. 252–003F, 005F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reasons: Secured Area

Bldg. 315–M
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430030
Status: Excess
Reasons: Secured Area

Bldg. 716–002A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430040
Status: Excess

Reasons: Secured Area

Bldgs. 221–21F, 22F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430042
Status: Excess
Reasons: Secured Area

Bldg. 221–033F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430043
Status: Excess
Reasons: Secured Area

Bldg. 254–007F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430044
Status: Excess
Reasons: Secured Area

Bldg. 281–001F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430045
Status: Excess
Reasons: Secured Area

Bldg. 281–004F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430046
Status: Excess
Reasons: Secured Area

Bldg. 281–006F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430047
Status: Excess
Reasons: Secured Area

Bldg. 703–045A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430050
Status: Excess
Reasons: Secured Area

Bldg. 703–071A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430051
Status: Excess
Reasons: Secured Area

Bldg. 754–008A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430058
Status: Excess
Reasons: Secured Area

Bldg. 186–R
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200430063
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Savannah River Site
#281–2F, 281–5F, 285–F, 285–5F
Aiken SC
Landholding Agency: Energy
Property Number: 41200430066
Status: Unutilized
Reasons: Secured Area

Bldg. 701–000M
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reasons: Secured Area

Bldg. 690–000N
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200440032
Status: Underutilized
Reasons: Secured Area

Facility 701–5G
Savannah River Site
New Ellenton SC
Landholding Agency: Energy
Property Number: 41200530003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 714–000A
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200620014
Status: Underutilized
Reasons: Secured Area

Bldg. 777–018A
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200620022
Status: Excess
Reasons: Secured Area

Bldgs. 108–1P, 108–2P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200630007
Status: Unutilized
Reasons: Secured Area

Bldg. 701–001P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640002
Status: Unutilized
Reasons: Secured Area

Bldgs. 151–1P, 151–2P
Savannah River site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640004
Status: Unutilized
Reasons: Secured Area

Bldg. 191–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640005
Status: Unutilized
Reasons: Secured Area

Bldg. 710–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640006
Status: Unutilized
Reasons: Secured Area

Bldg. 614–63G
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710006
Status: Unutilized
Reasons: Secured Area

Bldgs. 701–2G, –905–117G
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710007
Status: Unutilized
Reasons: Secured Area

Bldgs. 108–1R, 108–2R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710010
Status: Unutilized
Reasons: Secured Area

Bldgs. 717–003S, 717–010S
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710011
Status: Unutilized
Reasons: Secured Area

Facility 151–1R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200810001
Status: Underutilized
Reasons: Secured Area

Bldgs. 1000 thru 1021
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445
Landholding Agency: Navy
Property Number: 77200440018
Status: Unutilized
Reasons: Secured Area

Bldg. 102
Marine Corps Recruit Depot
Parris Island Co: Beaufort SC 29905
Landholding Agency: Navy
Property Number: 77200530017
Status: Unutilized
Reasons: Floodway, Extensive deterioration, Secured Area

21 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkely SC 29445
Landholding Agency: Navy
Property Number: 77200620034
Status: Unutilized
Directions: 4, 167C, 174, 180, 350, 383, 400, 410, 769, 790, 823, 824, 904, 930, 930A, 953, 953A, 971, 975, 2305, 3526
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 1148
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445
Landholding Agency: Navy
Property Number: 77200630044
Status: Excess
Reasons: Extensive deterioration

Bldg. 200
Marine Corps Recruit Depot
Parris Island SC 29905
Landholding Agency: Navy
Property Number: 77200720018

Status: Unutilized
Reasons: Floodway, Secured Area

Bldgs. 908, 1ATX211–1ATX220
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810029
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 40, 48, 856
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810030
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 934, 2333
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810031
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 6927
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200830011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Tennessee

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 2010
Oak Ridge Natl Laboratory
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200710009
Status: Excess
Reasons: Extensive deterioration, Secured Area

3 Bldgs.
Y–12 Natl Nuclear Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200720001
Status: Unutilized
Directions: 9104–01, 9104–02, 9104–03
Reasons: Secured Area

Bldgs. 1035, 1058, 1061
E. Tennessee Technology Park
Oak Ridge TN
Landholding Agency: Energy
Property Number: 41200730002
Status: Unutilized
Reasons: Contamination, Extensive deterioration, Secured Area

Bldgs. 1231, 1416
E. Tennessee Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730003
Status: Unutilized
Reasons: Secured Area, Contamination, Extensive deterioration

Bldgs. 413, 1059
E. TN Tech Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730006
Status: Excess
Reasons: Secured Area, Contamination

Bldgs. 1000, 1008F, 1028
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810005
Status: Excess
Reasons: Secured Area

Bldgs. 1101, 1201, 1501
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810006
Status: Excess
Reasons: Secured Area, Within airport runway clear zone

4 Bldgs.
East TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810007
Status: Excess
Directions: 1513, 1515, 1515E, 1515H
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9706–01, 9706–01A, 9711–05
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810008
Status: Unutilized
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9733–01, 9733–02, 9733–03
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810009
Status: Unutilized
Reasons: Secured Area

Bldgs. 9734, 9739
Y–12 National Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810010
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Y–12 Natl Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200910001
Status: Unutilized
Directions: 9201–05, 9622, 9769, 9983–HP
Reasons: Secured Area

13 Bldgs.
Y–12 Natl Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200920003
Status: Unutilized
Directions: 9404–02, 9404–04, 9409–04, 9409–30, 9416–18, 9416–21, 9709, 9709–19, 9720–19A, 9720–19B, 9724–01, 9766, 9983–FE
Reasons: Secured Area

Bldgs. 2, 3, 5
Naval/Marine Corps Rsv Ctr
Knoxville Co: Knox TN 37920
Landholding Agency: Navy
Property Number: 77200530018
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 9720–03, 9720–06
Y–12 Natl Nuclear Security Complex
Oak Ridge TN 37831
Landholding Agency: Navy
Property Number: 77200720038
Status: Unutilized
Reasons: Secured Area

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840005
Status: Unutilized
Directions: B–4003, 4120, B–4124, 4127, 4130
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840006
Status: Unutilized
Directions: 7225, 7226, 7227, 7313
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840007
Status: Unutilized
Directions: 8050, 8054, 8129, 8133
Reasons: Secured Area

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840008
Status: Unutilized
Directions: B–9032, 9107, 9114, B–9140, 11900
Reasons: Secured Area

Bldg. B–4228
FNWZ Dyess AFB
Taylor TX 79607
Landholding Agency: Air Force
Property Number: 18200920009
Status: Unutilized
Reasons: Secured Area

Bldgs. B–3701, B–3702

FNWZ Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920010
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4
Tethered Aerostat Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920023
Status: Excess
Reasons: Secured Area

Bldg. 154
Goodfellow AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18200920024
Status: Unutilized
Reasons: Secured Area

Bldg. FNXH 2001
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930013
Status: Unutilized
Directions: FNWZ 7235, 7312, 7405, 8045, 8120, 9113
Reasons: Secured Area

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540002
Status: Unutilized
Directions: 12–009, 12–009A, 12–R–009A, 12–R–009B
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12–011A
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12–097
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540004
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 11–54, 11–54A
Zone 11
Plantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630008
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–002B
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
12–003, 12–R–003, 12–003L
Zone 12, Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630010
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–014
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–24E
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 11–029, Zone 11
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200640007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 11–010, T09–031
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200810011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4–24, 4–27, 4–29
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 11–027
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Pantex Plant
12–0245, 12–041SS, 12–075A
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830005
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 04–024, 04–027, 04–029
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840003
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 09–013, 09–125
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840004
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

5 Bldgs.
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840005
Status: Unutilized
Directions: 09–095, 09–126, 09–132, 09–132A, 09–134
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 11–027
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840007
Status: Unutilized
Directions: 12–R–009B,12–0245, 12–041SS, 12–075A
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Pantex Plant
Amarillo TX 79121
Landholding Agency: Energy
Property Number: 41200920004
Status: Unutilized
Directions: 09–056, 11–R–016, 11–030, 12–023, 12–045, 12–047, 12–005G3
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 1732
Naval Air Station
Corpus Christi Co: Nueces TX

Landholding Agency: Navy
Property Number: 77200540007
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 243
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127
Landholding Agency: Navy
Property Number: 77200640035
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1430
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127
Landholding Agency: Navy
Property Number: 77200640036
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 1500
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127
Landholding Agency: Navy
Property Number: 77200640037
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 4151
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127
Landholding Agency: Navy
Property Number: 77200640038
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 3379, 3380
Naval Air Station
Ft. Worth Co: Tarrant TX 76127
Landholding Agency: Navy
Property Number: 77200810023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1414, 3190
Naval Air Station
Joint Reserve Base
Ft. Worth TX 76127
Landholding Agency: Navy
Property Number: 77200830031
Status: Unutilized
Reasons: Secured Area

Utah

5 Bldgs.
Naval Industrial Ordinance Plant
Magna UT 84044
Landholding Agency: Navy
Property Number: 77200720033
Status: Unutilized
Directions: 4D, 6A, 6C, 8C, 10B
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
Naval Industrial Ordinance Plant
Magna UT 84044
Landholding Agency: Navy
Property Number: 77200720034
Status: Unutilized
Directions: 11, 15, 16, 19
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 22A, 22B, 22C
Naval Industrial Ordinance Plant
Magna UT 84044
Landholding Agency: Navy
Property Number: 77200720035
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 23A, 23B, 23C
Naval Industrial Ordinance Plant
Magna UT 84044
Landholding Agency: Navy
Property Number: 77200720036
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
Naval Industrial Ordinance Plant
Magna UT 84044
Landholding Agency: Navy
Property Number: 77200720037
Status: Unutilized
Directions: 33, 45B, 45C, 46D
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Virginia

12 Bldgs
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18200920012
Status: Unutilized
Directions: 35, 36, 903, 905, 1013, 1020, 1033, 1050, 1066, 1067, 1069, 1075
Reasons: Floodway, Secured Area

5 Bldgs.
John H. Kerr Lake & Dam
Mecklenburg VA 23917
Landholding Agency: COE
Property Number: 31200930014
Status: Unutilized
Directions: JHK–15782, 17134, 17453, 17456, 18017
Reasons: Extensive deterioration

Bldgs. 500, 501
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200640012
Status: Excess
Reasons: Extensive deterioration

Bldg. 628
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200640013
Status: Excess
Reasons: Extensive deterioration

Bldg. 2398
Naval Station
Norfolk VA
Landholding Agency: Navy
Property Number: 77200730021
Status: Excess
Reasons: Secured Area

Bldgs. 375, 502, 502A
Naval Weapons Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200810002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 503, 503A, 504
Naval Weapons Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200810003
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 505, 505A
Naval Weapons Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200810004
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 1213, 1979
Naval Weapons Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200810005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2007, 2008
Naval Weapons Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200810006
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 439, 466
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820016
Status: Excess
Reasons: Secured Area

Bldgs. 760, 761
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820017
Status: Excess
Reasons: Secured Area

Bldgs. 1820, 1895
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820018
Status: Excess
Reasons: Secured Area

Bldgs. 1977, 1978, 1983
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820019
Status: Excess
Reasons: Secured Area

Bldg. CAD–RR
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820020
Status: Excess
Reasons: Secured Area

Bldg. 3186
Naval Amphibious Base
Little Creek Co: Norfolk VA
Landholding Agency: Navy
Property Number: 77200840006
Status: Unutilized
Reasons: Secured Area

Bldg. NAB757
Naval Amphibious Little Creek
Norfolk VA

Landholding Agency: Navy
Property Number: 77200840008
Status: Unutilized
Reasons: Secured Area

19 Ammunition Bunkers
Naval Weapon Station
Ammo Plant 1 & 2
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200840009
Status: Excess
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200840019
Status: Excess
Directions: 10, 11, 97, 97A, 98, 472, 526, 527, 528, 528A, 1592
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200840020
Status: Excess
Directions: 109, 110, 500A, 501A, 627, 629, 1249, 1462
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Naval Amphibious Base
Norfolk VA
Landholding Agency: Navy
Property Number: 77200840021
Status: Unutilized
Directions: 3375, 3420, 3550, 3695, 3891
Reasons: Extensive deterioration, Secured Area

Bldg. 3605
Naval Amphibious
Little Creek
Norfolk VA
Landholding Agency: Navy
Property Number: 77200910020
Status: Unutilized
Reasons: Secured Area

4 Bldgs./Land
Naval Station
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77200920045
Status: Underutilized
Directions: SDA–204, SDA–205, SDA–210, SDA–311 & 36.6 acres
Reasons: Secured Area

7 Bldgs.
Naval Station
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77200930007
Status: Excess
Directions: Q57, Q99, Q99A, SP83, SP85, SP85A, SP125
Reasons: Secured Area, Extensive deterioration

Training Bldg.
USCG Integrated Support Ctr
Portsmouth Co: Norfolk VA 43703
Landholding Agency: Coast Guard
Property Number: 88200530001
Status: Excess
Reasons: Secured Area

Bldg. 011
Integrated Support Center
Portsmouth Co: Norfolk VA 43703
Landholding Agency: Coast Guard
Property Number: 88200620002
Status: Excess
Reasons: Secured Area

9 Bldgs.
USCG Cape Charles Station
Winters Quarters
Northampton VA 23310
Landholding Agency: Coast Guard
Property Number: 88200740001
Status: Unutilized
Reasons: Extensive deterioration

Navigation Center Trailer
USCG TISCOM
Alexandria VA 22315
Landholding Agency: Coast Guard
Property Number: 88200820003
Status: Excess
Reasons: Secured Area

Washington

Defense Fuel Supply Point
18 structures/21 acres
Mukilteo WA
Landholding Agency: Air Force
Property Number: 18200910001
Status: Unutilized
Reasons: Extensive deterioration

79 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620010
Status: Excess
Directions: Infrastructure Facilities
Reasons: Secured Area

87 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99351
Landholding Agency: Energy
Property Number: 41200620011
Status: Excess
Directions: Mobile Offices
Reasons: Secured Area

139 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620012
Status: Excess
Directions: Offices Facilities
Reasons: Secured Area

122 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620013
Status: Excess
Directions: Process Facilities
Reasons: Secured Area

Bldg. 529
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040020
Status: Excess
Reasons: Secured Area

Bldg. 8
Naval Reserve Center
Spokane WA 99205
Landholding Agency: Navy
Property Number: 77200430025
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 10, 11
Naval Reserve Center
Spokane WA 99205
Landholding Agency: Navy
Property Number: 77200430026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2656–2658
Naval Air Station
Lake Hancock
Coupeville Co: Island WA 98239
Landholding Agency: Navy
Property Number: 77200430027
Status: Unutilized
Reasons: Secured Area

Bldgs. 2652, 2705
Naval Air Station
Whidbey
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440010
Status: Unutilized
Reasons: Secured Area

Bldgs. 79, 884
NAS Whidbey Island
Seaplane Base
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440011
Status: Unutilized
Reasons: Secured Area

Bldg. 121
NAS Whidbey Island
Ault Field
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440012
Status: Unutilized
Reasons: Secured Area

Bldg. 419
NAS Whidbey Island
Ault Field
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440013
Status: Unutilized
Reasons: Secured Area

Bldgs. 2609, 2610
NAS Whidbey Island
Ault Field
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440014
Status: Unutilized
Reasons: Secured Area

Bldg. 2753
NAS Whidbey Island
Ault Field
Oak Harbor WA 98277
Landholding Agency: Navy
Property Number: 77200440015
Status: Unutilized
Reasons: Secured Area

Bldg. 108
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy

Property Number: 77200510015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 351
Puget Sound Naval Shipyard
Bremerton WA 98314
Landholding Agency: Navy
Property Number: 77200530026
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 1032
Naval Base
Bangor Tower Site
Silverdale WA 98315
Landholding Agency: Navy
Property Number: 77200630045
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 71
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200640007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 82, 83
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200640008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 168, 188 Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200640009
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 729
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200640010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 910, 921
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200640011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 407, 447
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200640014
Status: Excess
Reasons: Secured Area

Bldg. 867
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200640015
Status: Excess
Reasons: Secured Area

Bldgs. 937, 975
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200640016
Status: Excess
Reasons: Secured Area

Bldg. 1449
Naval Base
Silverdale Co: Kitsap WA 98315
Landholding Agency: Navy
Property Number: 77200640017
Status: Unutilized
Reasons: Secured Area

Bldg. 1670
Naval Base
Silverdale Co: Kitsap WA 98315
Landholding Agency: Navy
Property Number: 77200640018
Status: Unutilized
Reasons: Secured Area

Bldgs. 2007, 2801
Naval Base
Silverdale Co: Kitsap WA 98315
Landholding Agency: Navy
Property Number: 77200640019
Status: Unutilized
Reasons: Secured Area

Bldgs. 6021, 6095
Naval Base
Silverdale Co: Kitsap WA 98315
Landholding Agency: Navy
Property Number: 77200640020
Status: Unutilized
Reasons: Secured Area

Bldgs. 6606, 6661
Naval Base
Silverdale Co: Kitsap WA 98315
Landholding Agency: Navy
Property Number: 77200640021
Status: Unutilized
Reasons: Secured Area

Bldgs. 726, 727, 734
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345
Landholding Agency: Navy
Property Number: 77200640022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 901, 911
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345
Landholding Agency: Navy
Property Number: 77200640023
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 925, 938
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345
Landholding Agency: Navy
Property Number: 77200640024
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 1020
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345
Landholding Agency: Navy
Property Number: 77200640025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Fisher Transit Site
Easement
Jefferson WA
Landholding Agency: Navy
Property Number: 77200710015
Status: Excess
Reasons: Other—Remote Location

Bldgs. 437, 853
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200710018
Status: Unutilized
Reasons: Secured Area

Bldg. 1039
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200710019
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 1400, 1461
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200710020
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 6026
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200710021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6608, 6609, 6904
Naval Base
Bremerton Co: Kitsap WA 98310
Landholding Agency: Navy
Property Number: 77200710022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 110, 116
Naval Air Station
Oak Harbor WA 98278
Landholding Agency: Navy
Property Number: 77200740013
Status: Excess
Reasons: Secured Area

Bldg. 839
Puget Sound Naval Shipyard
Bremerton WA 98314
Landholding Agency: Navy
Property Number: 77200740014
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 402, 403, 2634
Naval Air Station
Oak Harbor Co: Whidbey Island WA 96278
Landholding Agency: Navy
Property Number: 77200810020
Status: Excess
Reasons: Extensive deterioration

Bldg. 7658
Naval Base
Bangor WA
Landholding Agency: Navy
Property Number: 77200830017
Status: Excess

Reasons: Extensive deterioration, Secured Area

Bldgs. 986, 987
Naval Air Station
Whidbey Island
Oak Harbor WA 98278
Landholding Agency: Navy
Property Number: 77200840001
Status: Unutilized
Reasons: Secured Area

Bldg. 94
Naval Air Station
Whidbey Island
Oak Harbor WA 98278
Landholding Agency: Navy
Property Number: 77200840002
Status: Excess
Reasons: Secured Area

Bldgs. 20, 62, 2616, 2663
Naval Air Station
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77200840017
Status: Excess
Reasons: Secured Area

Bldg. 113
Naval Air Station
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77200920017
Status: Excess
Reasons: Secured Area

6 Bldgs.
Naval Air Station
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77200920018
Status: Unutilized
Directions: 175, 855, 2601, 2602, 2603, 2604
Reasons: Secured Area, Extensive deterioration

Bldg. 1013
Naval Base Kitsap
Bangor WA
Landholding Agency: Navy
Property Number: 77200920019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 2660, 2661, 2662
Naval Air Station
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77200920047
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 130
Naval Station
Pacific Beach WA 98571
Landholding Agency: Navy
Property Number: 77200930011
Status: Excess
Reasons: Extensive deterioration

West Virginia

Bldgs. 102, 106, 111
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200920013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Wisconsin

Bldg. OV1
USCG Station
Bayfield WI 54814
Landholding Agency: Coast Guard
Property Number: 88200620001
Status: Excess
Reasons: Secured Area

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable properties

Land

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031
Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Facilities 99002 thru 99014
Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Trailer Space
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200520013
Status: Unutilized
Reasons: Secured Area

Parcels 1, 2, 3, 4
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630003
Status: Underutilized
Reasons: Secured Area

Parcels 11, 12, 13, 14, 15
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200630004
Status: Underutilized
Reasons: Secured Area

Sand Spit
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200720008
Status: Underutilized
Reasons: Floodway

Florida

Defense Fuel Supply Point
Lynn Haven FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

Hawaii

14.235 parcel
Marine Corps Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77200830020
Status: Unutilized
Reasons: Secured Area

Indiana

approx. 0.2 acre
Naval Support Activity
Crane IN 47522
Landholding Agency: Navy
Property Number: 77200910006
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

South Carolina

Laurel Bay Tract
Marine Corps Air Station
Beaufort SC
Landholding Agency: Navy
Property Number: 77200830010
Status: Excess
Reasons: Secured Area

Texas

Rattlesnake ESS
FNWZ, Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920011
Status: Unutilized
Reasons: Secured Area

24 acres
Tethered Aerostate Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920022
Status: Excess
Reasons: Secured Area

FNXH 99100
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

2.43 acre/0.36 acre
Dyess AFB
Dyess AFB TX 79563
Landholding Agency: Air Force
Property Number: 18200930014
Status: Unutilized
Directions: FNXL 99104, 99108, 99110, 99112 FNXM 99102, 99103, 99108
Reasons: Within airport runway clear zone

Utah

0.47 acre
Hyrum Feeder Canal
Hyrum UT 84319
Landholding Agency: Interior
Property Number: 61200820004
Status: Excess
Reasons: Other—landlocked

Washington
405 sq. ft./Land
Naval Base Kitsap
Bangor WA
Landholding Agency: Navy
Property Number: 77200520060
Status: Unutilized
Reasons: Secured Area
230 sq. ft. land
Naval Magazine
Indian Island WA
Landholding Agency: Navy
Property Number: 77200620037
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Tabook Transit Site
Easement
Jefferson WA
Landholding Agency: Navy
Property Number: 77200710016
Status: Excess
Reasons: Other—Remote Location

[FR Doc. E9–20421 Filed 8–27–09; 8:45 am]
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Federal Register

Friday,

August 28, 2009

Part IV

Department of Homeland Security

Coast Guard

33 CFR Part 151

46 CFR Part 162

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters; Draft Programmatic Environmental Impact Statement; Proposed Rule and Notice

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

46 CFR Part 162

[USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations on ballast water management by establishing standards for the allowable concentration of living organisms in ships' ballast water discharged in U.S. waters. The Coast Guard also proposes to amend its regulations for approving engineering equipment by establishing an approval process for ballast water management systems. These new regulations would aid in controlling the introduction and spread of nonindigenous species from ships discharging ballast water in U.S. waters.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before November 27, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2001–10486 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *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.

(3) *Hand delivery:* 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. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

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.

You may inspect the material proposed for incorporation by reference at Room 1601, Environmental Standards Division, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1433. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or e-mail Mr. John Morris, Project Manager, Environmental Standards Division, U.S. Coast Guard Headquarters, telephone 202–372–1433, e-mail *John.C.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee Wright, Chief, Dockets, Department of Transportation, telephone 202–366–9826.

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2001–10486), 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. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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* and click on the ''submit a comment'' box, which will then become highlighted in blue. Insert ''USCG–2001–10486'' in the Keyword box, click ''Search'', and 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 this proposed rule based on your comments.

B. 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* at any time. Enter the docket number for this rulemaking (USCG–2001–10486) in the Keyword box, and click ''Search''. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT 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.

C. Privacy Act

Anyone can search the electronic form of all 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).

D. Public Meeting

We have determined that public meetings would aid this rulemaking. Consequently, we plan to hold public

meetings at times and places to be announced by separate notices in the **Federal Register.**

II. Table of Abbreviations

BWDS ballast water discharge standard(s)
BWE ballast water exchange
BWM ballast water management
BWMS ballast water management system(s)
cfu colony forming unit
CZMA Coastal Zone Management Act
DPEIS Draft Programmatic Environmental Impact Statement
EEZ U.S. Exclusive Economic Zone
EFH essential fish habitat
EPA Environmental Protection Agency
ESA Endangered Species Act
ETV Environmental Technology Verification
HAB Harmful algal blooms
IL Independent Laboratory
IMO International Maritime Organization
MARAD U.S. Maritime Administration
MEPC Marine Environment Protection Committee (of the IMO)
NANPCA Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
NARA National Archives and Records Administration
NBIC National Ballast Information Clearinghouse
NIS nonindigenous species
NISA National Invasive Species Act of 1996
NMFS National Marine Fisheries Service
OMSM Operation, Maintenance, and Safety Manual
ppt parts per thousand
SERC Smithsonian Environmental Research Center
STEP Shipboard Technology Evaluation Program

III. Legislative and Regulatory History

Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), 16 U.S.C. 4711 *et seq.,* on November 29, 1990, and established the Coast Guard's regulatory jurisdiction over ballast water management (BWM). To fulfill the directives of NANPCA, the Coast Guard published a final rule in the **Federal Register** on April 8, 1993, titled ''Ballast Water Management for Vessels Entering the Great Lakes''. 58 FR 18330. On December 30, 1994, we published another final rule in the **Federal Register** titled ''Ballast Water Management for Vessels Entering the Hudson River''. 59 FR 67632. These rules added a new subpart C to 33 CFR part 151, ''Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River'', which established mandatory BWM procedures for vessels entering the Great Lakes and Hudson River.

Congress enacted the National Invasive Species Act (NISA) on October 26, 1996, reauthorizing and amending NANPCA. 16 U.S.C. 4711 *et seq.* Through NISA, Congress reemphasized the significant role the discharge of ships' ballast water plays in the spread of nonindigenous species (NIS), defined as any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another, in U.S. waters and directed the Coast Guard to develop a voluntary national BWM program. On May 17, 1999, the Coast Guard published an interim rule in the **Federal Register** on this voluntary program titled ''Implementation of the National Invasive Species Act of 1996 (NISA)''. 64 FR 26672. The interim rule added a new Subpart D to 33 CFR part 151 titled ''Ballast Water Management for Control of Nonindigenous Species in Waters of the United States''. We published the final rule in the **Federal Register** on November 21, 2001. 66 FR 58381.

Through NISA, Congress also directed the Secretary of the Department in which the Coast Guard is operating to submit a report to Congress evaluating the effectiveness of the voluntary BWM program. In the June 3, 2002, report to Congress, the Secretary of the Department of Transportation [1] concluded that low participation in the voluntary program resulted in insufficient data for an accurate assessment of its effectiveness. This finding triggered the requirement in NISA that the voluntary BWM program become mandatory. A copy of the report to Congress can be found in docket (USCG–2002–13147) at *http://www.regulations.gov.*

On July 28, 2004, we published a final rule in the **Federal Register** titled, ''Mandatory Ballast Water Management Program for U.S. Waters''. 69 FR 44952. This final rule changed the national voluntary BWM program to a mandatory one, requiring all vessels equipped with ballast water tanks and bound for ports or places of the United States to conduct a mid-ocean ballast water exchange (BWE), retain their ballast water onboard, or use an alternative environmentally sound BWM method approved by the Coast Guard.

[1] The Coast Guard moved from the Department of Transportation to the Department of Homeland Security on March 1, 2003. Homeland Security Act of 2002, Pub. L. 107–296 (November 25, 2002), Title VIII, Subtitle H, Section 888.

Also, on June 14, 2004, the Coast Guard published a final rule in the **Federal Register** titled ''Penalties for Non-submission of Ballast Water Management Reports''. 69 FR 32864. In this final rule, we established penalties for failure to comply with the reporting requirements located in 33 CFR part 151 and broadened the applicability of the reporting and recordkeeping requirements to a majority of vessels bound for ports or places of the United States.

On August 31, 2005, we published a notice of policy in the **Federal Register** titled ''Ballast Water Management for Vessels Entering the Great Lakes that Declare No Ballast Onboard''. 70 FR 51831. Through this policy, we established the best management practices for vessels entering the Great Lakes that have residual ballast water and ballast tank sediment.

IV. Background and Purpose

Under the legislative mandate in NISA, the Coast Guard must approve any alternative methods of ballast water management (BWM) that are used in lieu of mid-ocean ballast water exchange (BWE) required under NISA. 16 U.S.C. 4711(c)(2)(D)(iii). NISA further stipulates that such alternative methods must be at least as effective as BWE in preventing or reducing the introduction of nonindigenous species into U.S. waters. 16 U.S.C. 4711(c)(2)(D)(iii). Finally, NISA requires the Coast Guard to review and revise its BWM regulations not less than every three years based on the best scientific information available to the Coast Guard at the time of that review, and potentially to the exclusion of the BWM methods listed at 16 U.S.C. 4711(c)(2)(D). 16 U.S.C. 4711(e).

Determining whether an alternative method is as effective as BWE is not an easy task. The effectiveness of BWE is highly variable, largely depending on the specific vessel and voyage. These variables make comparing the effectiveness of an alternative BWM method to BWE extremely difficult. In addition, a majority of vessels are constrained by design or route from practicing BWE effectively. This is supported by BWE results which show a proportional reduction in abundance of organisms, so every vessel then has a different allowable concentration of organisms in its discharge. Thus, vessels with very large starting concentrations of organisms in their ballast tanks might still have large concentrations of organisms after BWE. Results from several studies have shown the effectiveness of BWE varies considerably and are dependent upon

vessel type (design), exchange method, ballasting system configuration, exchange location, and method of study. One group of studies suggests that the efficacy of ballast water exchange is 80–99 percent per event (Dickman and Zhang 1999; Hines and Ruiz 2000; Rigby and Hallegraeff 1993; Smith *et al.* 1996; Taylor and Bruce 2000; Zhang and Dickman 1999). Other studies demonstrate that the volumetric efficiency of BWE ranges from 50–90 percent (Battelle 2003; USCG 2001; Zhang and Dickman 1999).

For these reasons, BWE is not well suited as the basis for a protective programmatic regimen, even though it has been a useful ''interim'' management practice. We have concluded that, as an alternative to using BWE as the benchmark, establishing a standard for the concentration of living organisms that can be discharged in ballast water would advance the protective intent of NISA and simplify the process for Coast Guard approval of ballast water management systems (BWMS). Additionally, setting a discharge standard would promote the development of innovative BWM technologies, be used for enforcement of the BWM regulations, and assist in evaluating the effectiveness of the BWM program.

Therefore, in this rulemaking, we would amend 33 CFR part 151 by establishing two ballast water discharge standards (BWDS), which are discussed below. We also propose amending 46 CFR part 162 by adding an approval process for BWMS intended for use on board vessels to meet the proposed discharge standard.

Vessels that would be subject to today's proposed rulemaking would also be subject to the December 2008 Environmental Protection Agency (EPA) Vessel General Permit (VGP) issued under section 402 of the Clean Water Act. That VGP contains discharge limits for a number of discharges incidental to the normal operation of vessels, including ballast water, and applies to vessels being used as a means of transportation with incidental discharges into inland navigable waters and the three mile U.S. territorial sea. For more information on the VGP, visit EPA's Web site at: *http://www.epa.gov/npdes/vessels*. Nothing in today's proposal is intended to affect in any way action EPA may take in the future with respect to regulation of ballast water discharges in the vessel general permit under its Clean Water Act authorities. *See, e.g.,* 16 U.S.C. 4711(b)(2)(C) and 4711(c)(2)(J).

V. Discussion of Proposed Rule

A. Phase-One Ballast Water Discharge Standard (BWDS)

This NPRM would require that all vessels that operate in U.S. waters, are bound for ports or places in the U.S., and are equipped with ballast tanks, install and operate a Coast Guard approved ballast water management system (BWMS) before discharging ballast water into U.S. waters. This would include vessels bound for offshore ports or places. It would not include vessels that operate exclusively in one Captain of the Port (COTP) Zone, as it is unlikely that vessels operating only within one COTP Zone would introduce invasive species (from outside of that COTP Zone) into the waters of their COTP Zone. Whether the vessel traveled 200 nautical miles offshore would no longer be a factor in determining applicability. This means that some vessels that operated exclusively in the coastwise trade, which were previously exempt from having to perform ballast water exchange (BWE), would now be required to meet the BWDS. This requirement is intended to meet the directives under NISA that requires the Coast Guard to ensure to the maximum extent practicable that nonindigenous species (NIS) are not introduced and spread into U.S. waters and that they apply to all vessels equipped with ballast tanks that operate in U.S. waters. 16 U.S.C. 4711(c)(1), (c)(2)A, (e) and (f).

The proposed rule includes a phase-in schedule for complying with both the phase-one and phase-two proposed BWDS based on each vessel's ballast capacity and build date. During the phase-in period for the phase-one standard, ballast water exchange (BWE) would remain as a ballast water management (BWM) option for vessels not yet required to meet the BWDS. At the end of the phase-one phase-in schedule, the option of using BWE would be eliminated. From that date forward, all vessels would be required to manage their ballast water through a Coast Guard approved BWMS and meet either the proposed phase-one or phase-two discharge standard, as applicable, or retain their ballast water onboard.

The phase-one BWDS proposed in this notice is the same standard adopted by the International Maritime Organization (IMO) in 2004, ''International Convention for the Control and Management of Ships' Ballast Water and Sediments'' (BWM Convention). The USCG leads the U.S. government delegation to the IMO, the organization responsible for improving maritime safety and preventing pollution from vessels. In September 1995, the IMO identified NIS as a major issue confronting the international maritime community. To address the issue, in 1997, the IMO adopted voluntary guidelines, ''International Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharges.'' In February 2004, the IMO adopted the BWM Convention, which establishes BWM procedures and includes an international standard for BWD. The USCG coordinated U.S. participation in this effort with the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the U.S. Department of Defense, the U.S. Maritime Administration, the U.S. Department of Justice, and the U.S. Department of State. The BWM Convention opened for ratification in February 2004, and under its terms does not enter into force until one year after ratification by 30 countries representing not less than 35 percent of the gross tonnage of the world's merchant shipping. To date, the BWM Convention is not in force.

The Draft Programmatic Environmental Impact Statement (DPEIS) (available in the docket for this rule where indicated under **ADDRESSES**) states that the phase-one proposed BWDS should markedly decrease the risks of vessel-mediated introductions of NIS into U.S. waters, relative to the status quo. We also consider that this BWDS, which has become the *de facto* international efficacy target for developers of BWMS, will be practicable to implement in the near term. Currently, numerous technology developers are submitting BWMS designed to meet this standard to several foreign governments for testing in accordance with the IMO guidelines for approval of BWMS. All indications are that there will soon be technologies available on the market to allow vessels to meet this standard. As of July 2009, there have been 15 BWMS given IMO basic approval and of those 15, eight have been given IMO final approval. Further, six BWMS have received type approval certifications under the requirements of the convention from foreign administrations (Liberia, Germany, Norway, and United Kingdom). Some of the manufacturers of BWMS that have been given type approval have received orders from vessel owners to purchase those BWMSs.

B. Phase-Two Ballast Water Discharge Standard (BWDS)

While the proposed phase-one BWDS is practicable to achieve in the near term and will considerably advance environmental protection over the current exchange-based regime, we also recognize that it should not be the ultimate endpoint for protection of U.S. waters. We note that a number of states have already adopted BWDS using more stringent standards. We have considered information concerning whether technology to achieve this standard can practicably be implemented now or by the compliance dates under consideration. Although some technologies may be capable of achieving the phase-two standard, we believe there is not now a testing protocol capable of establishing that a technology achieves the phase-two standard and testing results under existing protocols do not provide sufficient statistical confidence to establish that technologies consistently meet the phase-two standard.

The purpose of NISA, as already noted, is to ensure to the maximum extent practicable that NIS are not introduced and spread into U.S. waters. Our phase-two standard represents a standard that is potentially 1,000 times more stringent than the phase-one standard. We believe that setting this more stringent standard and establishing implementation dates for the phase-two BWDS will encourage technology vendors to develop technologies capable of meeting the phase-two standard. In addition, we expect to continue cooperative work to establish testing protocols that can establish that technologies meet the standard with adequate statistical confidence.

We propose incorporating a practicability review into the phase-in schedule for the phase-two BWDS. The purpose of the review is to determine whether technology to achieve the performance standard can practicably be implemented, in whole or in part, by the applicable compliance dates. This includes more than just looking at whether there is technology available to achieve the phase-two standard, as we discuss later in this preamble. The initial review would be completed in early 2013 and, in the event that some or all of the phase-two standard is found to be not practicable, the compliance date for those elements found not to be practicable would be extended in accordance with the findings of the practicability review. At the same time, a date for the next practicability review would be established, no later than two years after the completion of the first practicability review (*i.e.*, no later than 2015). In establishing this time frame we are attempting to balance our intent to implement the phase-two standards as expeditiously as practicable with a consideration of how quickly progress in developing and testing technology may be likely to occur. We seek comment on whether one year or three years would be a more appropriate time limit for further practicability review, should one or more be needed.

The Coast Guard will seek public input in preparing the practicability review, and any decision to extend the compliance date of elements of the phase-two standards found not to be practicable would be subject to the requirements of the Administrative Procedure Act.

We've also left open the possibility that the practicability review might reveal that a more stringent standard between the proposed phase-one and the phase-two BWDS is achievable. We also allow for the possibility that technology might be capable of achieving a standard that is even more stringent than what we have proposed as the phase-two BWDS. In these cases, we would propose amending either the implementation timeline or the phase-two standard, or both, at the time that we publicize the results of our practicability review. Once the phase two standards are fully implemented, the Coast Guard would continue to review the standards every three years, as required by NISA, to ensure that they continue to ensure, to the maximum extent practicable, that aquatic nuisance species are not introduced and spread into U.S. waters.

In addition to the comments we receive from the public, we also will use the technical information gained from the rigorous testing of BWMS here and in other countries to determine whether it is practicable to meet the phase-two BWDS on the timeline we have proposed in this NPRM. The testing conducted for purposes of type approval in the U.S. and abroad, as well as testing for other purposes (such as the Coast Guard's Shipboard Technology Evaluation Program and the U.S. Environmental Protection Agency's (EPA) Environmental Technology Verification Program, discussed later in this preamble), will provide credible and standardized data on the performance characteristics of BWMS. We will use technical information from these testing activities and any other information to complete the practicability review proposed in this NPRM. This practicability review could entail more than determining whether there exists one system that is capable of meeting the phase-two standard. It could also include additional parameters, such as the capability of the vendor(s) to make the system(s) available, and the ship building and repair industry to install, systems in a timely and practicable manner given the large number of vessels that would require such system(s), and the cost impact of the system(s) on the regulated industry. We request comment on the appropriate scope of the practicability review and, in particular, how and to what extent costs should be considered in the review.

Practicability could also include consideration of scientific factors beyond technology. For example, it could include the likely effect of a particular decrease in the threshold concentration on the probability of introduced organisms successfully establishing populations in U.S. waters. Currently, the scientific understanding of the quantitative relationships between the frequency and magnitude of introductions and the probability of successful establishment is not well understood for aquatic species. Given that such information will help to improve our ability to evaluate appropriate prevention measures, we will work to elevate the priority of this topic for research by the Coast Guard, resource agencies and others funding environmental science. We request comment on whether and how such factors should be considered in the practicability review.

C. Applicability

The Coast Guard proposes that the ballast water discharge standard apply to all vessels discharging ballast water into U.S. waters. In accordance with NISA, certain vessels would be exempt from the requirements to install and operate a Coast Guard approved BWMS, including:

- Crude oil tankers engaged in coastwise trade (16 U.S.C. 4711(c)(2)(L));
- Any vessel of the U.S. Armed Forces as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the Uniformed National Discharge Standards for Vessels of the Armed Forces (33 U.S.C. 1322(n)) (16 U.S.C. 4711(c)(2)(J)); and
- Any warship, naval auxiliary, or other vessel owned or operated by a foreign state and used, for the time being, only on government non-commercial service (consistent with IMO BWM Convention, Article 3; 1982 United Nations Convention on the Law of the Sea, Article 236).

Under today's proposal, foreign vessels equipped with and operating a BWMS that has been approved by a Foreign Administration would be allowed to use the BWMS for discharging ballast water into U.S. waters if the Coast Guard determines that the Foreign Administration's approval process is equivalent to the Coast Guard's approval program, the BWMS otherwise meets the requirements of this proposed rule, and the resulting discharge into waters of the U.S. meets the applicable (*i.e.*, phase-one or phase-two) proposed discharge standard.

The Coast Guard initiated a BWMS research program on January 7, 2004, called the Shipboard Technology Evaluation Program (STEP). 69 FR 1082. STEP is intended to facilitate research, development, and shipboard testing of effective BWMS. Vessels participating in STEP would be granted equivalencies to the BWMS approval requirements of the proposed rule. In the event that information learned during STEP on any experimental BWMS leads the Coast Guard to conclude that there is a risk to the environment, vessel, and/or human health, testing of the BWMS would be stopped and acceptance to STEP would be withdrawn. This would mean that the equivalency determination would also be withdrawn, and that the vessel would be required to use a different Coast Guard approved BWMS to meet the requirements of the proposed rulemaking. More information on STEP can be found at: *http://www.uscg.mil/environmental_standards/*.

The Coast Guard would consider, on a case-by-case basis, making equivalency determinations for vessels participating in similar research programs conducted by Foreign Administrations or State governments. In such cases, the vessel owner or operator would request an equivalency determination from the Coast Guard. If a vessel granted an equivalency determination is later removed from one of these programs, the vessel would be required to install a different Coast Guard approved BWMS to meet the requirements of the proposed rule.

D. Proposed Discharge Standards

The current BWM regulations in 33 CFR part 151 are split into two regulatory regimens—the Great Lakes Ballast Water Management Program and the U.S. Ballast Water Management Program. These regulations are found in 33 CFR part 151 subparts C and D, respectively. In this proposed rule, we would establish a phase-one and phase-two discharge standard for all vessels that discharge ballast water into U.S. waters. However, we would keep subparts C and D separate to retain some pre-existing regulations that are specific to the Great Lakes. We are retaining these pre-existing regulations, specific to the Great Lakes, because we want to be consistent with the Department of Transportation's Saint Lawrence Seaway Development Corporation's BWM regulations and Canadian (Transport Canada) BWM regulations. Also, the uniqueness of vessel traffic patterns into the Great Lakes warrants special treatment, as reflected in the pre-existing regulations.

Invasive species have proven to be a significant and costly problem in the Great Lakes. NISA explicitly recognized that some areas might require special protections by providing that ballast water management regulations may be regional in scope. The Coast Guard thus requests comment on the appropriateness of the proposed rule for control of invasive species from ballast waters discharged into the Great Lakes or other areas. More specifically, are there characteristics of the Great Lakes ecosystem or other ecosystems that would justify more stringent standards or earlier compliance dates for ships operating in the Lakes or other areas than for ships in other U.S. waters, keeping in mind that NISA also requires that such regulations should be practicable? Should the regulations include provisions that apply only to the Great Lakes or other areas? What provisions of the proposed rule might be changed in light of the identified special circumstances in the Great Lakes or other locations (*e.g.*: Compliance schedules, treatment levels)? In addition, are there practices or technologies not addressed in the proposed rule that might be practicably applied specifically to protection of the Great Lakes or other ecosystems (*e.g.*: On-shore treatment or prior to entering freshwater or limitations on access to the Lakes or other areas for vessels that pose a special risk of discharge of new invasive species, and if so, how would those special risks be assessed in a practicable manner)? Please provide explicit information on the practicability of any such proposed approaches, including costs and resources required to implement and maintain such requirements.

The proposed phase-one standard for allowable concentrations of living organisms in ships' ballast water is:

(1) For organisms larger than 50 microns in minimum dimension: Discharge less than 10 organisms per cubic meter of ballast water.

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 10 organisms per milliliter (ml) of ballast water.

(3) Indicator microorganisms must not exceed:

(a) For toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of <1 colony forming unit (cfu) per 100 ml;

(b) For *Escherichia coli:* A concentration of <250 cfu per 100 ml; and

(c) For intestinal enterococci: a concentration of <100 cfu per 100 ml.

The Coast Guard has determined that the proposed phase-one standard for ballast water discharge would provide a greater degree of protection than BWE and will help reduce the risk of NIS introductions. In our study of five alternative ballast water discharge standards, detailed in the Draft Programmatic Environmental Impact Statement (DPEIS), we estimated that ballast water treatment to achieve the phase-one standard proposed in this rulemaking would be up to 60% more effective than BWE and 80% more effective than unmanaged ballast water discharge in preventing the probability of biological invasions.

As described and discussed in Section 4 (Environmental Consequences) of the DPEIS, the alternative ballast water discharge standards compared in the NEPA assessment can be expressed in terms of the proportion of organisms in different size classes that will be prevented from being introduced. Table 1 describes the alternative BWDS.

TABLE 1—ALLOWABLE CONCENTRATION OF ORGANISMS IN BWD, BY SIZE, FOR ALTERNATIVES 2–4 [2]

	Large organisms >50 microns in size	Small organisms >10 and ≤50 microns in size	Bacteria		
			Toxigenic *Vibrio cholerae* (O1 and O139)	*E. coli*	Intestinal enterococci
Alternative 2	<10 per m^3	<10 per ml	<1 cfu per 100 ml	<250 cfu per 100 ml ..	<100 cfu per 100 ml.

TABLE 1—ALLOWABLE CONCENTRATION OF ORGANISMS IN BWD, BY SIZE, FOR ALTERNATIVES 2–4 [2]—Continued

	Large organisms >50 microns in size	Small organisms >10 and ≤50 microns in size	Bacteria		
			Toxigenic *Vibrio cholerae* (O1 and O139)	*E. coli*	Intestinal enterococci
Alternative 3	<1 per m^3	<1 per ml	<1 cfu per 100 ml	<126 cfu per 100 ml	<33 cfu per 100 ml.
Alternative 4	<0.1 per m^3	<0.1 per ml	<1 cfu per 100 ml	<126 cfu per 100 ml	<33 cfu per 100 ml.

In addition to the alternatives shown in the table above, Alternative 5 (which is essentially sterilization) would require the removal or inactivation of all living membrane-bound organisms (including bacteria and some viruses) larger than 0.1 micron. The mathematical modeling approach that we used in the DPEIS provides an assessment of the relative effectiveness in increasing extinction probability, by taxonomic group, of a particular alternative ballast water discharge standard. Relative effectiveness is measured by the proportional increase in theoretical extinction probability over the 'no management' option (No Action Alternative).

This mathematical or analytical approach can be used to compare the alternatives in relative terms, but not in absolute terms. For example, Alternative 5 in the DPEIS results in no introduction of nonindigenous species via ballast water, whereas Alternatives 2, 3, and 4 increase extinction probability, and thus decrease the probability of successful invasions by different factors when compared to the No Action Alternative. The comparison is relative, rather than absolute, because the analysis was done using a specific and highly limited, but reasonable, set of estimates for the controlling variables. These variables include initial population size, threshold population size for extinction, population growth rate, and population variability around the mean growth rate. It is important to understand that these predictions relate to relative, not absolute, differences in risk reduction. Table 2 illustrates the potential impacts to the various environments in relation to vessels treating their ballast water to the alternative BWDS.

TABLE 2—COMPARISON OF ALTERNATIVES

Resource	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
Marine Ecosystems ...	Current impacts would continue—trophic interactions,[1] changing community structures,[2] harmful algal blooms (HAB), effects on ecosystem services.[3]	Minor to moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structures, fewer HAB.	Moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structures, fewer HAB.	Moderate to major reduction in NIS introductions, resulting in fewer negative changes to natural community structures, fewer HAB.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.
Estuarine Ecosystems	Current impacts would continue—erosion, turbidity, trophic interactions, changing community structures, HAB, effects on ecosystem services.	Minor to moderate reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Moderate reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Moderate to major reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.
Freshwater Ecosystems.	Current impacts would continue—erosion, trophic interactions, changing community structures, effects on ecosystem services.	Minor to moderate reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Moderate reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Moderate to major reduction in NIS introductions, resulting in less erosion, fewer negative changes to natural community structure, fewer HAB, lessened negative impacts on ecosystem services.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.

[2] Note, for ease of comparison within the Table, the alternatives have all been standardized to numbers of organisms per standard unit of volume. For organisms larger than 50 microns, the unit volume is one cubic meter. For organisms less than or equal to 50 microns, but greater than 10 microns, the unit volume is 1 milliliter. Note also that if expressed in terms of whole numbers of organisms in a volume, alternative 4 would be equal to less than 1 organism per 10 cubic meters or 10 milliliters of water (depending on size class) and the phase two standard would be less than 1 organism per 100 cubic meters or 100 milliliters of water (depending on size class).

TABLE 2—COMPARISON OF ALTERNATIVES—Continued

Resource	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
Threatened and Endangered Species.	Current impacts would continue, trophic interactions, changing community structures, HAB, disruption of food sources, effects on ecosystem services.	Minor to moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less disruption of food sources, lessened negative impacts on ecosystem services.	Moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less disruption of food sources, lessened negative impacts on ecosystem services.	Moderate to major reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less disruption of food sources, lessened negative impacts on ecosystem services.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.
Essential Fish Habitat	Current impacts would continue, trophic interactions, changing community structures, HAB, degradation of habitat.	Minor to moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less degradation of habitat.	Moderate reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less degradation of habitat.	Moderate to major reduction in NIS introductions, resulting in fewer negative changes to natural community structure, fewer HAB, less degradation of habitat.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.
Socioeconomics	Disruptions of fisheries, fouling of environment, reduction in tourism due to fouling, higher costs from NIS impacts & responses to them.	Minor to moderate reduction in NIS introductions, resulting in less fouling of the environment, fewer fishery disruptions, and less revenue lost from a decrease in tourism due to NIS impacts on the environment.	Moderate reduction in NIS introductions, resulting in less fouling of the environment, fewer fishery disruptions, and less revenue lost from a decrease in tourism due to NIS impacts on the environment.	Moderate to major reduction in NIS introductions, resulting in less fouling of the environment, fewer fishery disruptions, and less revenue lost from a decrease in tourism due to NIS impacts on the environment.	Unquantified. Impacts would likely be greatly reduced compared to the other alternatives.

Resources listed are from Chapter 3, Affected Environment. Reduction amounts, and therefore environmental impacts, are based on the modeling results described in Chapter 4, Environmental Consequences. Further descriptions of the environmental impacts are found in Chapter 4, Environmental Consequences. Alternatives 2–5 are compared to the No Action Alternative (both BWE and no BWM) as a baseline.

Notes: 1. Trophic interactions pertain to the feeding relationships between organisms in a food web.

2. Community structure refers to the physical structure and composition, as well as energy flows, of a community of organisms.

3. Ecosystem services are those resources and processes that are performed by natural systems for which there is human demand and benefit.

TABLE 3—COMPARISON OF THE RELATIVE EFFECTIVENESS OF ALTERNATIVES

Alternative	$N_e = 1$		$N_e = 100$	
	No BWM (percent)	BWE (percent)	No BWM (percent)	BWE (percent)
2	52	37	78	63
3	73	64	94	90
4	88	85	100	100

N_e is the extinction threshold of the population in the model.

Alternative 3 could be 64% more effective than BWE and 94% more effective than unmanaged ballast water discharge and Alternative 4 could be 85% more effective than BWE and 100% more effective than unmanaged ballast water discharge in preventing the probability of biological invasions as shown in Table 3.

As noted above, this proposed rule would remove the option of conducting BWE as a ballast water management method per the compliance dates of the implementation schedule, which detail the timeframe that vessels would be required to install and operate a Coast Guard approved BWMS.

The proposed phase-two standard for allowable concentrations of living organisms in ships' ballast water is:

(1) For organisms larger than 50 microns in minimum dimension: Discharge less than 1 per 100 cubic meter of ballast water;

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 1 organism per 100 milliliter (ml) of ballast water;

(3) For organisms less than 10 microns in minimum dimension:

(i) Discharge less than 10^3 living bacterial cells per 100 ml of ballast water; and

(ii) Discharge less than 10^4 viruses or viral-like particles per 100 ml of ballast water; and

(4) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of <1 colony forming unit (cfu) per 100 ml;

(ii) For *Escherichia coli:* A concentration of <126 cfu per 100 ml; and

(iii) For intestinal enterococci: A concentration of <33 cfu per 100 ml.

This phase-two standard largely mirrors the standard proposed by the U.S. during negotiations for the IMO BWM convention and the more stringent standard established by several states, either under the states' authority or as state conditions to the Environmental Protection Agency (EPA) Vessel General Permit (VGP).

3. Proposed Implementation Schedule

The proposed implementation schedule for meeting the proposed phase-one ballast water discharge standard is shown in Table 4. The proposed implementation schedule for meeting the proposed phase-two ballast water discharge standard is shown in Table 5. Our proposed implementation schedule would provide vessel owners and operators sufficient time to install the necessary equipment needed to comply with the phase-one discharge standard, without causing significant disruptions to vessels operations and maritime commerce. Our phase-one implementation schedule is similar to the implementation schedule for the IMO Convention as they are both based on build date and ballast water capacity. An implementation schedule using build dates and ballast water capacities was determined by the Coast Guard and IMO to be an appropriate mechanism for giving both vessel owners and BWMS manufacturers enough time to have BWMS approved and installed while avoiding long delays at shipyards where these installations would take place. As there are limited numbers of shipyards around the world, vessel owners must schedule BWMS installations well in advance. An implementation schedule calling for faster installation would likely make it difficult for vessel owners to comply with the requirements in time. However, we are requesting comment specifically on whether it would be possible for vessel owners to comply with a phase-one BWDS implementation schedule that called for all existing vessels to install an approved BWMS on their vessel by 2014.

We also request comment on whether there are any facilities ready to meet the requirements of becoming an Independent Lab (IL), and any technology vendors ready to submit their system(s) to the proposed protocols as soon as a facility is recognized as an IL, such that the initial practicability review, now scheduled for January 2013, could be moved to January 2012. If the IL and vendors were ready, would moving the practicability review allow time for vessels with a 2014 compliance date to implement technology meeting phase two standards in place of technology meeting only phase one standards?

TABLE 4—PROPOSED IMPLEMENTATION SCHEDULE FOR THE PHASE-ONE BALLAST WATER MANAGEMENT PROGRAM

Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date
New vessels: All	On or after January 1, 2012	On Delivery.
Existing vessels:		
Less than 1500	Before January 1, 2012	First drydocking after January 1, 2016.
1500–5000	Before January 1, 2012	First drydocking after January 1, 2014.
Greater than 5000	Before January 1, 2012	First drydocking after January 1, 2016.

TABLE 5—PROPOSED IMPLEMENTATION SCHEDULE FOR THE PHASE-TWO BALLAST WATER MANAGEMENT PROGRAM

Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date
New vessels: All	On or after January 1, 2016	On Delivery.
Existing vessels: All	Before January 1, 2016	First drydocking after January 1, 2016, UNLESS the vessel installed a BWMS meeting the phase-one standard before January 1, 2016, then 5 years after installation of the BWMS meeting the phase-one standard.

Note that the phase-two standard implementation date for all existing vessels that have not installed a BWMS meeting the phase-one standard by January 1, 2016 is the same compliance date regardless of the vessel's ballast water capacity. The only exception for this would be for those vessels that have already installed a BWMS type approved as meeting the phase-one standard. (These vessels would be allowed additional time to comply with the phase-two standards, as discussed below.) This is because we would be publishing the results of a practicability review in early 2013 to determine whether it will be practicable to meet the phase-two standard in the proposed timeline. If, at that time, we determine that it is practicable, these vessels would have enough time to plan for installation of a system capable of meeting the phase-two standard and should be required to do so. If, however, our practicability review indicates that it will not be possible to implement the phase-two standard on our proposed timeline, those vessels would still be required to install a system capable of meeting the phase-one standard in accordance with the schedule in Table 4.

The phase-two standard also includes a grandfather clause for those vessels that install technology that has been type approved as meeting the phase-one BWDS prior to January 1, 2016. We seek comment on whether such a grandfather clause is necessary, and if so, whether the proposed five-year period is enough time, more than enough time, or not long enough. We specifically request information pertaining to the impacts, cost and otherwise, of the grandfather clause as it is proposed, as well as not having a grandfather clause (*i.e.*, requiring all vessels to install a phase-two technology at their first dry dock after January 1, 2016). Assuming a grandfather period is necessary, what is the appropriate period, and why?

4. Practicability Review

We are proposing to require a practicability review, to be published three years prior to the first implementation date for the phase-two BWDS, in order to determine whether the technology to achieve and verify compliance with the phase-two

performance standard can practicably be implemented, in whole or in part, by the applicable compliance date.

This review would seek to determine first whether there was any technology with the verified ability to achieve the phase-two standard. It would examine whether that technology could be practicably made available in time to meet the implementation schedule. This review would then be used to determine whether to allow the phase-two implementation schedule to come into effect, to delay the schedule by some period of time, or to amend the standard and/or schedule to reflect the practicability review conclusions on what performance standards existing or emerging technologies could meet. Any proposed amendments to the standard or the schedule would be done through rule making and could also include consideration of grandfather periods for owners of vessels that have already complied with an earlier standard.

The practicability review would also consider, among other factors, whether testing protocols are available to verify that treatment technologies can be expected to comply with the phase-two performance standard. Development of protocols capable of determining compliance with the phase-two is a high priority for the Coast Guard. Other factors to be considered could include cost of compliant treatment technologies, and whether any amendments have been made to the IMO Ballast Water Management Convention.

We've also left open the possibility that the practicability review might reveal that a more stringent standard between the proposed phase-one and the phase-two BWDS is achievable. We also allow for the possibility that technology might be capable of achieving a standard that is more stringent than what we have proposed as the phase-two BWDS. In the event the IMO BWM Convention standard is subsequently raised, we would expect at least a matching increase in the domestic standard. In these cases, we would propose to revise this regulation to amend either the implementation timeline or the phase-two standard, or both, at the time that we publicize the results of our practicability review.

5. Other Proposed Amendments to 33 CFR Part 151

In subpart C, we would add relevant definitions. In subpart D, we would add definitions, revise the provision allowing for discharge of ballast water in extraordinary circumstance (previously known as the ''safety'' exemption), and add a requirement for the vessel owner or operator to maintain the BWMS certificate of approval onboard the vessel. Additionally, we would reorganize subpart D and revise all section headings to remove the current question-and-answer format.

B. Approval Program

The Coast Guard proposes to add requirements for the approval of BWMS. These requirements would be added to 46 CFR Subchapter Q, by creating a new subpart 162.060, ''Ballast Water Management Systems''. In this new subpart, we would establish an approval program, including requirements for designing, installing, operating, and testing BWMS to ensure these systems meet required safety and performance standards. These proposed approval requirements use information from the IMO G8 Guidelines for type approval of BWMS under the BWM Convention, the Protocols for Verification of Ballast Water Treatment Systems developed under EPA's Environmental Technology Verification (ETV) Program, and existing Coast Guard approval requirements for equipment installed onboard vessels.

1. Section-by-Section Summary of Changes to 46 CFR Subchapter Q Part 162

In proposed § 162.060–1, we describe the purpose and scope of the approval requirements.

In proposed § 162.060–3, we define the terms used in the subpart.

In proposed § 162.060–5, we list those standards which we propose to incorporate by reference into the regulations.

In proposed § 162.060–10, we describe the content requirements for a manufacturer submitting a Letter of Intent to the Coast Guard stating that the manufacturer intends to begin testing of its BWMS in order to obtain Coast Guard approval. We also describe the specific procedures for obtaining approval of a BWMS.

In proposed § 162.060–12, we provide equivalent approval procedures. First, a manufacturer whose BWMS has been approved by a Foreign Administration may request a written determination from the Coast Guard's Marine Safety Center that such approval by a Foreign Administration is equivalent to a Coast Guard approval.

Second, we recognize the importance of experimental shipboard testing of prototype BWMS, and further recognize that shipboard testing programs of prototype systems may be more intensive than the requirements proposed in this subpart. We do not want to create redundant requirements for BWMS already entered into recognized national or international shipboard testing programs, as this would constitute a disincentive for participation in these programs. Therefore, this section allows for a manufacturer whose BWMS is undergoing such shipboard testing under a recognized national program to request an equivalency for the shipboard testing requirements. In this case, the manufacturer would request an equivalency determination from the Coast Guard's Marine Safety Center by submitting a description of the BWMS, the specific information on the vessel where the shipboard testing would occur, the testing protocols, and information about the goals and expected results of the testing project, as well as a full description of the recognized program under which the testing is taking place. If a manufacturer is removed from one of these programs, the manufacturer would need to make the appropriate arrangements in order to comply with the requirements of proposed § 162.060–28.

Finally, if a manufacturer has already conducted a substantial amount of land-based and/or shipboard testing independent of the requirements of this subpart, the Coast Guard's Marine Safety Center may make an equivalency determination. The manufacturer would submit a written request for such a determination to the Coast Guard's Marine Safety Center.

In proposed § 162.060–14, we describe the content requirements of an application for Coast Guard approval of a BWMS. This section states that each item requiring approval would be the subject of a separate application.

In proposed § 162.060–16, we describe the procedures that would be followed if the design or conditions of the original approval changes, if a manufacturer wishes to change the design or conditions of an approved system, or if the Coast Guard determines that an approval or conditions of approval are no longer valid under the provisions of proposed § 162.060–14.

In proposed § 162.060–18, we state that the Coast Guard may suspend, withdraw, or terminate approval of a BWMS if it is:

- Not in compliance with the requirements of approval;
- Unsuitable for its intended purpose;
- Not in compliance with the requirements of other applicable laws, rules, and/or regulations;
- No longer being manufactured or supported; or
- Under an approval that expires.

In proposed § 162.060–20, we describe design and construction requirements for BWMS. The IMO's

Marine Environment Protection Committee (MEPC) Technical Specifications in section 4 of MEPC 125(53), ''Guidelines for Approval of Ballast Water Management Systems'' provide a basis for the proposed requirements. The proposed requirements also refer to the applicable design and material requirements in the Coast Guard marine and electrical engineering regulations found in 46 CFR subchapters F and J, respectively.

In proposed § 162.060–22, we outline the marking requirements for an approved BWMS.

In proposed § 162.060–24, we describe the requirements and format of the test plans that would be required to be prepared prior to conducting each test required by this subpart.

In proposed § 162.060–26, we describe the land-based testing and evaluation requirements for BWMS approval. MEPC 125(53), ''Guidelines for Approval of Ballast Water Management Systems'' provides a basis for the proposed requirements. The proposed requirements also incorporate findings from the draft Environmental Technology Verification (ETV) protocols of the EPA's ETV Program. These tests are designed to assess the ability of a BWMS to meet the BWDS proposed in 33 CFR part 151 subparts C and D, evaluate the suitability of the system for shipboard installation, and validate the operating and maintenance parameters presented by the manufacturer.

In proposed § 162.060–28, we describe the shipboard testing requirements that would have to be completed in addition to the land-based testing requirements for Coast Guard approval of a BWMS.

In proposed § 162.060–30, we describe tests that would be conducted on all electrical components submitted for approval as part of the complete BWMS. These tests assess whether BWMS components would operate properly for an extended period of time under harsh shipboard operating and environmental conditions. The Independent Laboratory (IL) would conduct all approval tests and evaluations under this subpart for the applicant. The results of these tests must be included in the final Test Report.

In proposed § 162.060–32, we describe the requirements for any BWMS that utilizes or generates an active substance or preparation.

In proposed § 162.060–34, we describe the required contents of the Test Report, format of the Test Report, and the IL's responsibilities for completing the Test Report and submitting all required information to the Coast Guard.

In proposed § 162.060–36, we describe the requirements of the Quality Assurance Project Plans that the IL would develop and be required to follow.

In proposed § 162.060–38, we describe the requirements for an Operation, Maintenance, and Safety Manual (OMSM) that the manufacturer would prepare and submit along with the application for approval specified in this subpart. This OMSM would need to be kept onboard each vessel with an approved BWMS.

In proposed § 162.060–40, we describe how ILs would obtain recognition by the Coast Guard.

2. Discussion of Previous Comments on the Approval Program

On August 5, 2004, the Coast Guard published a notice in the **Federal Register** with a request for comments regarding, among other things, whether proposing an approval program alongside a BWDS would be necessary. 69 FR 47453. The Coast Guard further asked commenters to identify, if they supported an approval program, what type of testing procedures should be developed and what issues should be addressed; such as water resources, water quality conditions, and any other environmental conditions. We received 8 comments related to the establishment of an approval program and discuss them below.

Two commenters stated the Coast Guard should not require shipboard testing. Both commenters stated that the Coast Guard has a long history of providing onshore testing of equipment for Coast Guard approval, and they saw no reason to depart from the practice. One commenter also disagreed with shipboard testing due to logistical difficulty, time delay, and expense.

The Coast Guard disagrees. Land-based testing alone does not always simulate long-term shipboard conditions. Moreover, the BWM Convention G8 type-approval guidelines employ both land-based and ship-based testing of BWMS. Therefore, the Coast Guard has proposed shipboard testing requirements in this rulemaking.

One commenter stated that on-shore testing will need to be adaptable because various technologies may require their own individualized regimen of tests.

The Coast Guard agrees that test facilities must be adaptable for different types of technologies, but we disagree that each technology will require its own individualized regimen of tests during land-based testing. To the greatest degree possible, test facilities must employ standard test protocols to ensure that different technologies, tested at different facilities and times, undergo the same level of testing. Through the EPA's ETV program, stakeholder reviews, and partnerships with the Naval Research Laboratory, we developed the standard protocols for land-based tests found in this regulation. The basic parameters we would incorporate for shipboard testing, however, allow the IL to design tests that address specific needs of varying BWMS employing different technologies.

Two commenters recommended the Coast Guard use ILs to perform approval tests. The Coast Guard agrees with these commenters and has incorporated ILs into the proposed approval process.

One commenter stated the Coast Guard should use its own expertise with the additional resources available from classification societies and EPA to make appropriate decisions, which consider the safety of the vessel and crew as well as the harsh seafaring environment.

The Coast Guard agrees and notes that we developed the BWDS and approval requirements proposed in this notice utilizing existing Coast Guard design and safety requirements, an extensive stakeholder review process within the EPA's ETV program, and guidelines developed by the IMO with input from classification societies.

One commenter stated that whatever testing procedures are ultimately adopted, it is essential that a sufficient number of laboratories be established so that a given manufacturer's equipment may be evaluated and approved no more than six to eight weeks after its submission to the Coast Guard.

The Coast Guard agrees that a sufficient number of laboratories should be established; however, we disagree with the six to eight week time period for approval after submission. Land based tests conducted by the IL and the statutorily required environmental assessments conducted by the Coast Guard during the approval process would necessitate more than six to eight weeks for complete approval. It is important to note that Coast Guard type approval of a BWMS does not require each individual BWMS to be tested and evaluated. Under the proposed process, a representative system would undergo the rigorous tests for Coast Guard approval, and subsequent BWMS built to the same design and within the rated capacity parameters would only require installation surveys.

C. Enforcement and Compliance

The Coast Guard would conduct enforcement and compliance activities for the BWM program as part of the overall BWM enforcement and compliance program. This program would continue to be conducted as part of regularly scheduled Port State and Flag State exams and inspections, as well as other continued compliance verification and outreach efforts. All Coast Guard offices involved with BWM compliance would maintain a local training and qualification program for its inspections consistent with guidance provided by Office of Vessel Activities (CG–543), Environmental Standards Division (CG–5224), Areas, Sectors, and Districts.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in 46 CFR 162.060–5. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 162.060–5.

Before publishing a binding rule, we will submit this material to the Director of the **Federal Register** for approval of the incorporation by reference.

VII. Regulatory Analysis

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

A. Executive Order 12866

This proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. A preliminary assessment (''Regulatory Analysis'') is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Regulatory Analysis (RA) follows:

The RA provides an evaluation of the economic impacts associated with the implementation of standards limiting the quantities of living organisms in ships' ballast water discharged in U.S. waters. The focus of this assessment is to analyze the costs and benefits of implementing the phase one BWDS, which is the same standard adopted by the IMO in 2004.[3]

While the proposed phase one BWDS is practicable to achieve in the near term and will considerably advance environmental protection over the current exchange-based regime, we also recognize that it is not the ultimate endpoint for protection of U.S. waters. We note that a number of states have already adopted BWDS using more stringent standards. The purpose of NISA, as already noted, is to ensure, to the maximum extent practicable, that NIS are not introduced and spread into U.S. waters. Hence, the Coast Guard is proposing today the adoption of a more stringent standard (phase-two standard) to take effect in 2016. The phase-two standard represents a standard that is potentially 1,000 times more stringent than the phase-one standard. We wish to solicit comments with respect to the following questions (when providing comments, please explain the reasoning underlying your comment and provide citations to and copies of any relevant studies, reports and other sources of information on which you rely):

1. What are the acquisition, installation, operation/maintenance and replacement costs of technological systems that are able to meet more stringent standards? Please provide quantitative cost data specifying complete data sources, type of technology and testing status, and the stringency (at 10x, 100x, and 1000x the IMO standard and for sterilization).

2. Are there technology systems that can be scalable or modified to meet multiple stringency standards after being installed? Please provide quantitative data specifying the technology, necessary modifications (to go to a more stringent standard), costs, and sources of the information.

3. What are the additional costs for vessels compliant with the phase-one standard to go to the phase- two standard? Please provide quantitative cost data specifying complete data sources, type of technology, and possible phase-two stringencies (at 10x, 100x, and 1000x the IMO standard and for sterilization).

4. What are the technology alternatives and costs for smaller coastwise vessel types? Please provide quantitative data specifying the technology and stringency, costs, and sources of the information.

5. What are the additional avoided environmental and social damages and economic benefits of ballast water discharge standards at more stringent standards? Please provide quantitative data and sources for all information.

6. In light of the potentially severe nature of such damages, does the proposed rule ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels, as required by NISA? Would an approach that bypassed phase-one and went directly to the phase-two standards be practicable and provide greater protection of the aquatic environment? Please provide quantitative data and sources to support your response.

For more details on phase one and two BWDS, see the ''Discussion of Proposed Rule'' section.

For additional details on other alternatives considered for this rulemaking, see the Draft Programmatic Environmental Impact Statement (DPEIS) available on the docket.

Population Affected:

This proposed rule would affect vessels operating in U.S. waters that are equipped with ballast tanks. These vessels would be required to install and operate a Coast Guard approved ballast water management system (BWMS) before discharging ballast water into U.S. waters. This would include vessels bound for offshore ports or places. Additionally, whether the vessel traveled 200 nautical miles offshore would not be a factor in determining applicability. This means that some vessels that operated exclusively in the coastwise trade, within the U.S. Exclusive Economic Zone (EEZ), which were previously exempt from having to perform ballast water exchange (BWE), would now be required to meet the ballast water discharge standard (BWDS). See the ''Discussion of Proposed Rule'' section of the NPRM for applicability of the rule regarding vessel operation.

The primary source of data used in this analysis is the Marine Information for Safety and Law Enforcement (MISLE) system and Ballast Water Reporting Forms for 2007 submitted to the National Ballast Information Clearinghouse (NBIC), which maintains the reporting and database. MISLE is the Coast Guard database system for information on vessel characteristics, arrivals, casualties, and inspections. The NBIC database provides information on the amount of ballast water discharged in U.S. ports for the range of vessel types calling on U.S. waters. Since October 2004, all vessels, U.S. and foreign, operating in U.S. waters and bound for U.S. ports or places, have been required to submit reports of their

[3] International Convention for the Control and Management of Ship's Ballast Water and Sediments (BWM Convention).

BWM practices to the NBIC database. 33 CFR 151.2041.

Approximately 7,575 vessels from the current vessel population, of which 2,616 are U.S. vessels, would be required to meet the BWDS. We propose that full implementation for the phase one BWDS would be required by 2016. The installation requirements would be phased-in for new and existing vessels over the 2012 through 2016 period.

As previously mentioned, the BWDS analyzed in the RA is the same standard as in the 2004 IMO BWM Convention (see the ''Discussion of Proposed Rule'' section for more information on the ratification of the Convention). For the purposes of the RA, we consider the costs of this rulemaking to involve U.S. vessels.[4] Nevertheless, we anticipate that the development of treatment technology would involve the world fleet, not the U.S. fleet alone. In order to estimate the cost associated with BWMS on the U.S. fleet, we needed to develop the range of technologies that may be available and the unit costs of these technologies. We assume that there will be a broad market for the new BWMS that includes both U.S. and foreign vessels, thus improving the range of technologies available and the cost efficiencies of production.

Costs:

The IMO Convention has spurred development of BWMS designed to meet the IMO discharge standard (phase-one BWDS). Various technologies are being evaluated. Shipboard trials are being conducted for some of these technologies, others are undergoing land-based laboratory testing, while yet others have received type-approval from foreign administrations.

Not all systems are appropriate for all vessel types. Variation in the operational costs relate, in part, to the use of chemicals or other agents in the BWMS and are also due to the treatment of certain discharges not required under current regulations. The BWMS on ships is a new process for which there is minimal operating practical experience, any discussion of the treatment technologies, effectiveness, costs, and operating issues is provisional.

Approximately 4,758 BWMS installations for the U.S. vessels would be required by 2021 because of projected fleet growth. We expect highest annual costs in the period between 2012 and 2016, as the bulk of the existing fleet of vessels must meet the standards according to the phase-in schedule proposed by this rulemaking (see Table 6). The primary cost driver of this rulemaking is the installation costs for all existing vessels. After installation, we estimate operating costs to be substantially less.

TABLE 6—COSTS TO U.S. VESSELS TO COMPLY WITH PHASE-ONE BWDS*

Year	Installation cost ($Mil)	Operating cost ($Mil)	Total cost ($Mil)
2012	$238.42	$0.18	$238.61
2013	223.91	0.34	224.25
2014	219.63	0.48	220.11
2015	171.40	0.59	171.99
2016	161.15	0.68	161.84
2017	33.82	0.66	34.47
2018	32.51	0.63	33.14
2019	31.24	0.61	31.85
2020	30.03	0.58	30.62
2021	28.87	0.56	29.44
Total	1,171.00	5.32	1,176.31
Annualized	166.72	0.76	167.48

* Present value costs discounted at 7 percent. See RA for additional discount factors. The period of analysis is 10 years (2012–2021). Discounting begins in 2012.

We estimate the first-year cost of this rulemaking to be $239 million based on a 7 percent discount rate. The total costs over the phase-in period (2012–2016) range between $162 million to about $239 million depending on the year. Over the 10-year period of analysis (2012–2021), the total cost of the phase-one BWDS for the U.S. vessels is approximately $1.18 billion using the 7 percent discount rate. Our cost assessment includes existing and new vessels.

Because development and testing of technology to meet the phase-two standards has not progressed as far as for technology to meet the phase-one standards, we are not including cost data for the phase-two standards at this time. In addition to requesting data from the public through this notice (see above), the Coast Guard will seek data from vendors and other sources on the costs of achieving the phase-two standard prior to promulgation of the final rule.

Economic Costs of Invasions of Nonindigenous Species (NIS):

NIS introductions contribute to the loss of marine biodiversity and have associated significant social, economic, and biological impacts. NIS introductions in U.S. waters are occurring at increasingly rapid rates. Avoided costs associated with future NIS invasions represent one of the benefits of ballast water management (BWM). Economic costs from invasions of NIS range in the billions of dollars annually. Evaluation of these impacts was difficult because of limited knowledge of the patterns and basic processes that influence marine biodiversity. The most extensive review to date on the economic costs of introduced species in the U.S. includes estimates for many types of NIS, and is reflected in Table 7.

TABLE 7—ESTIMATED ANNUAL COSTS ASSOCIATED TO AQUATIC NON-INDIGENOUS SPECIES INTRODUCTION IN THE U.S. ($2007)

Species	Costs
Fish	$5.7 billion.
Zebra and Quagga Mussels.	$1.06 billion.

[4] The RA presents cost estimates for foreign flag vessels projected to call in U.S. waters.

TABLE 7—ESTIMATED ANNUAL COSTS ASSOCIATED TO AQUATIC NON-INDIGENOUS SPECIES INTRODUCTION IN THE U.S. ($2007)—Continued

Species	Costs
Asiatic Clam	$1.06 billion.
Aquatic Weeds	$117 million.
Green Crab	$47 million.

Source: Pimentel, D. et al., 2005. "Update on the environmental and economic costs associated with alien-invasive species in the United States," Ecological Economics. 52:273–288.

Though a particular invasion may have small direct economic impacts, the accumulation of these events may cost in the billions of dollars every year. Only a few invasions to date have led to costs in the billions of dollars per year.

Benefits of Ballast Water Discharge Standards (BWDS):

The benefits of BWDS are difficult to quantify because of the complexity of the ecosystem and a lack of understanding about the probabilities of invasions based on prescribed levels of organisms in ballast water. However, evaluation of costs associated with previous invasions (described above) allows a comparison of the cost of discharge standards versus the costs avoided. Because the amount of shipping traffic and the number of incidents of invasions per year are both increasing, historical data provide a lower bound for the basis of benefit evaluation.

We assessed the functional benefits prior to comparing monetary benefit measures. The primary functional benefits of this rulemaking are:

- A reduction in the concentration of all organisms leading to lower numbers of these organisms being introduced per discharge; and
- The elimination of the exemptions in the BWM regulations leading to the discharge of unmanaged ballast water (*e.g.,* safety concerns during exchange, deviation/delay of voyage required to travel to acceptable mid-ocean exchange location).

This overall strategy should reduce the number of new invasions because the likelihood of establishment decreases with reduced numbers of organisms introduced per discharge or inoculation.

We calculate potential benefits of the BWDS by estimating the number of invasions reduced and the range of economic damage avoided. We use information on the invasion rate of invertebrates from shipping reported by Ruiz *et al.* (2000) to project the number of future shipping invasions per year. We then estimate the number of fish and aquatic plant invasions based on historical relationships of fish and plant invasions to invertebrate invasions. We then adjust the projected invasions to account for the fraction of invasions that are attributable to ballast water and the fraction of invasions that cause severe economic damage. The resulting projection of the number of ballast water invasions that will cause harm is displayed in Table 8.

TABLE 8—ESTIMATED NUMBER OF BALLAST WATER INVASIONS THAT CAUSE HARM

Year	Invertebrate	Fish	Aquatic plant
2012	0.372	0.074	0.149
2013	0.381	0.076	0.152
2014	0.390	0.078	0.156
2015	0.399	0.080	0.160
2016	0.409	0.082	0.164
2017	0.419	0.084	0.168
2018	0.429	0.086	0.172
2019	0.439	0.088	0.176
2020	0.450	0.090	0.180
2021	0.461	0.092	0.184
Total	4.149	0.830	1.659

To estimate the potential economic harm that may be caused by these invasions, we assign a cost per invasion based on the available data on the range of costs and damages incurred by past invasions. As no comprehensive estimate is available on the costs from past invasions, we do not try to develop a composite cost estimate for all invasions, but instead select a low and high estimate for fish, aquatic plants and invertebrates based on representative species. We then calculate a mid-point for the range and calculate costs for future invasions using all three values. The resulting ranges of costs per invasions are summarized in Table 9.

TABLE 9—RANGE OF ANNUAL COSTS ASSOCIATED WITH SELECTED NIS INTRODUCTIONS

[$Million; $2007]

	Low range	Mid-range	High range
Fish	$15.8	$160.6	$305.3
Invertebrates	19.5	539.8	1,060
Aquatic Plants	4.5	214.6	424.7

Note: The RA contains additional details and source information.

We assume that once an invasion is established, it will continue to generate costs and/or damages for each year subsequent to the invasion. Thus, an invasion that occurs in the first year of our analysis (2012) will incur costs/damages in each of the next 10 years (through 2021). Based on the cumulative impacts of invasions, we have calculated a mid-range estimate of annual costs for all harmful ballast water-introduced invasions over the 10 year period of 2012 to 2021 at $2.016 billion at 7 percent discount rate. These estimates assume no BWM.

The Draft Programmatic Environmental Impact Statement (DPEIS) has estimated the reduction in the mean rate of successful introductions of various alternative standards. In comparison with the existing practice of ballast water exchange, the proposed phase-one BWDS (Alternative 2 in the DPEIS) is between 37 percent and 63 percent more effective in preventing invasions when fully implemented (see the DPEIS for further details on effectiveness). We use these estimates of the reduction in the rate of invasions to estimate the economic cost/damage avoided as a result of a BWDS.

As discussed earlier, the implementation of the phase-one BWDS would be phased-in over several years. During the phase-in period of 2012–2016, there is considerable uncertainty as to how effective the measures will be in preventing invasions if only a subset of ships have implemented ballast water management. There is also uncertainty as to the availability and effectiveness of ballast water management technologies. Proper operation of these new technologies may require training and experience on the part of vessel operators. For these reasons we assume that no invasions will be avoided during the period of 2012–2015, which may lead to an underestimate of potential benefits.

The resulting damages avoided for the phase-one BWDS range from a minimum of $6 million and the maximum is $553 million with a mid-range estimate of $165–$282 million per year at a 7 percent discount rate (Table 10).

TABLE 10—BENEFITS (COSTS AVOIDED) FOR PHASE-ONE BWDS

[$Millions]

Year	Low effectiveness—37%			High effectiveness—63%		
	Low	Mid	High	Low	Mid	High
2012	$0	$0	$0	$0	$0	$0
2013	0	0	0	0	0	0
2014	0	0	0	0	0	0
2015	0	0	0	0	0	0
2016	2	66	130	4	113	222
2017	5	125	246	8	214	419
2018	7	178	349	11	303	595
2019	8	225	441	14	382	750
2020	10	266	521	17	452	887
2021	11	301	592	19	513	1,008
Total	43	1,161	2,279	74	1,977	3,881
Annualized	6	165	325	10	282	553

Note: Present value costs discounted at 7 percent.

The annualized cost for domestic vessels over the 10-year period of 2012–2021 for the phase one BWDS is estimated at $167 million at a 7 percent discount rate. Thus, quantified benefits are roughly equal to estimated costs for the mid-point cost estimate of the phase one BWDS ''Low Effectiveness''.

B. 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.

An Initial Regulatory Flexibility Analysis (IRFA) discussing the impact of this proposed rule on small entities is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

Based on available data, we determined that about 57 percent of the businesses affected are small by the Small Business Administration (SBA) size standards. We discovered that these businesses operate almost entirely in coastwise trade and are not involved with larger scale trans-ocean shipping.

Based on our assessment of the impacts from the phase-one BWDS, we determined that some coastwise businesses would incur a significant economic impact (more than 1 percent impact on revenue) during the installation and phase-in period based. After installation, however, most small businesses would not incur a significant impact from the estimated annual recurring operating costs. We have determined that this proposed rule would have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act.

C. 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 the 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 consult Mr. John Morris, Project Manager, telephone 202–372–1433. 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.

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).

D. Collection of Information

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

Our research indicates that there are 25–30 manufacturers developing BWMS for installation onboard vessels.[5] We expect to receive less than 10 system approval requests per year. This figure is less than the threshold of 10 per twelve-month period for collection of information reporting purposes under the PRA of 1995.

E. 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. NANPCA, as reauthorized and amended by NISA, contains a ''savings provision'' that saves to the states their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any States over species of fish and wildlife.'' 16 U.S.C. 4725. It also requires that ''all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic nuisance species into U.S. waters from ships' ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, would occur. If, at some later point in the rulemaking process, we determine that preemption may become an issue, we would develop a plan for consultation with affected States/localities.

F. 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. This proposed rule would result in such an expenditure, and we have included an ''Unfunded Reform Act Statement'' in the Regulatory Assessment (Section 7), located in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

G. Taking of Private Property

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

H. 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.

I. Protection of Children

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

J. 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.

K. 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. Though it is a ''significant regulatory action'' under Executive Order 12866, it 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.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272) 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 would incorporate a number of technical standards, all of which are voluntary consensus standards. These may be found in the proposed approval program amendments to 46 CFR part 162. Additionally, the proposed phase-one ballast water discharge standard is also, at least for the time being, a voluntary consensus standard. While the IMO BWM Convention has been adopted, it has not been ratified by enough countries to bring it into force as an international requirement. The phase-two standard is not a voluntary consensus standard, but it is a standard that has been adopted by a number of states.

M. 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 determination that this action may have a significant effect on the human environment. A Draft Programmatic Environmental Impact Statement (DPEIS) is available in the docket where indicated under the Public Participation and Request for Comments section of this preamble. We encourage the public to submit comments on the DPEIS.

On October 27, 2006, we initiated informal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) regarding this proposed rule in accordance with Section 7 of the Endangered Species Act of 1973 (ESA) (Pub. L. 93–205, 81 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to

[5] Sources: Lloyds Register Report, Ballast Water Treatment Technology-Current Status, September 2008; and California State Lands Commission Report, Assessment of the Efficacy, Availability, and Environmental Impacts of Ballast Water Treatment Systems in California Waters, January 2009.

ensure that our actions are not likely to jeopardize the continued existence of listed and proposed endangered and threatened species or result in the destruction or adverse modification of critical habitat. The consultation and determinations will be reflected in the Final Programmatic Environmental Impact Statement (FPEIS).

We initiated informal consultation with NMFS regarding this proposed rule in accordance with the Magnuson-Stevens Act (Pub. L. 94–265, as amended; 16 U.S.C. 1801 *et seq.*) to demonstrate that our actions are not likely to affect essential fish habitat (EFH). The DPEIS addresses the potential effects the proposed rule would have on EFH and the FPEIS will contain a written assessment describing the effects of our actions on EFH (50 CFR 600.920(e)(1)).

We will seek Federal Consistency Determinations for 29 States and 5 U.S. Territories regarding this proposed rule as required by the Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C.A. § 1451–1465). Each Federal consistency determination letter will explain to each State and U.S. Territories that the USCG's action is consistent, to the maximum extent practicable, with the enforceable polices of each State's and U.S. Territories approved CZM plan.

As previously discussed in Section V.A.2. of this preamble, the DPEIS includes a number of alternative discharge standards, with Alternatives 3 and 4 establishing more stringent limits on concentrations of living organisms in ships' ballast water than today's proposed phase-one BWDS, and Alternative 5 requiring the removal or inactivation of all living membrane-bound organisms (including bacteria and some viruses) larger than 0.1 micron (this is essentially sterilization). We recognize, however, that there is uncertainty regarding the data used to complete the analysis for these more stringent standards. We specifically request public comment on these and other alternatives (*e.g.,* standards proposed or adopted by various states in their legislation or via the states' certification under EPA's VGP, our proposed phase-two standard). While we welcome comment on all aspects of alternative BWDS, we particularly wish to solicit comment with respect to the following matters. When providing comments, please explain the reasoning underlying your comment and provide citations to and copies of any relevant studies, reports, or scientific literature on which you rely.

1. What BWDS is sufficient to adequately safeguard against the introduction of species into U.S. waters via ships' ballast water? Should the standard provide for zero risk of spreading invasive species via ballast water (*e.g.* zero living organisms), or should the standard be one that substantially mitigates any risk, but may not eliminate the possibility of species being introduced?

2. For any BWDS identified in response to (1), what is the evidence that the systems can meet either of the BWDS proposed in this NPRM, and what are the timeframes by which such BWDS can be achieved and what technologies are, or will be, available to meet such BWDS?

3. For any BWDS identified in response to (1), what are the costs of such systems for various classes of ships and under differing operating conditions? Additionally, what are power requirements on board those vessels and what additional chemical storage requirements and other space requirements are needed on board those vessels?

4. Any studies that exist on the effects of propagule pressure on successful establishment of a NIS in aquatic ecosystems.

5. What are the advantages and disadvantages of a ballast water discharge standard that is more stringent than the IMO standard? Please provide quantitative data and sources of the information.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Ballast water management, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control, Ballast water management.

46 CFR Part 162

Ballast water management, Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 and 46 CFR part 162 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Subchapter O—Pollution

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

2. In § 151.1504, add, in alphabetical order, definitions for the terms ''Ballast Water Management System (BWMS)'' and ''Build date'' to read as follows:

§ 151.1504 Definitions.

* * * * *

Ballast Water Management System (BWMS) means any system which processes ballast water to kill or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

* * * * *

Build date means the date when construction identifiable with the specific vessel begins; or assembly of the vessel has commenced comprising at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less; or the ship undergoes a major conversion.

* * * * *

3. Add § 151.1505 to read as follows:

§ 151.1505 Severability.

If a court finds any portion of this subpart to have been promulgated without proper authority, the remainder of this subpart will remain in full effect.

4. Revise § 151.1510(a)(1) and (3) to read as follows:

§ 151.1510 Ballast water management.

(a) * * *

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged

contains water with a minimum salinity level of 30 parts per thousand, unless the vessel is required to implement an approved BWMS per the schedule found in § 151.1512 of this subpart.

* * * * *

(3) Use a ballast water management system (BWMS) that has been approved by the Coast Guard. Requests for approval of BWMS must be submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593.

(i) Requirements for approval of BWMS are found in 46 CFR 162.060–10.

(ii) Unless otherwise expressly provided for in this subpart, the master, owner, operator, agent, or person-in-charge of vessels employing a Coast Guard approved BWMS must, at all times of discharge into the waters of the United States, meet the applicable ballast water discharge standard (BWDS) found in § 151.1511 of this subpart.

* * * * *

5. Add § 151.1511 to read as follows:

§ 151.1511 Ballast water discharge standard (BWDS).

(a) Vessels employing a Coast Guard approved BWMS must meet the following phase-one BWDS by the date listed in Table 151.1512(b) in section 151.1512 of this subpart:

(1) For organisms larger than 50 microns in minimum dimension: Discharge less than 10 per cubic meter of ballast water;

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 10 per milliliter (ml) of ballast water; and

(3) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of <1 colony forming unit (cfu) per 100 ml;

(ii) For *Escherichia coli:* A concentration of <250 cfu per 100 ml; and

(iii) For intestinal enterococci: A concentration of <100 cfu per 100 ml.

(b) Vessels employing a Coast Guard approved BWDS must meet the following phase-two BWDS by the date listed in Table 151.1512(c) in section 151.1512 of this subpart:

(1) For organisms larger than 50 microns in minimum dimension: discharge less than 1 per 100 cubic meter of ballast water;

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 1 organism per 100 milliliter (ml) of ballast water;

(3) For organisms less than 10 microns in minimum dimension:

(i) Discharge less than 103 living bacterial cells per 100 ml of ballast water; and

(ii) Discharge less than 104 viruses or viral-like particles per 100 ml of ballast water; and

(4) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of <1 colony forming unit (cfu) per 100 ml;

(ii) For *Escherichia coli:* A concentration of <126 cfu per 100 ml; and

(iii) For intestinal enterococci: A concentration of <33 cfu per 100 ml.

(c)(1) The Coast Guard shall, at least three years prior to the first compliance date set forth in Table 151.1512(c) in section 151.1512 of this subpart, publish the results of a practicability review to determine whether—

(i) Technology to comply with the performance standard required under paragraph (b) of this section can practicably be implemented, in whole or in part, by the applicable compliance dates; and

(ii) Testing protocols that can assure accurate measurement of compliance with the performance standard required under paragraph (b) of this section can practicably be implemented.

(2) If the Coast Guard cannot make a determination under paragraph (c)(1) of this section for some or all elements of the performance standard listed in paragraph (b) of this section, the Coast Guard shall, at the same time that it publishes the results of the practicability review, extend the initial compliance date, in accordance with the Administrative Procedure Act, in Table 151.1512(c) for the applicable elements of the performance standard, taking into consideration the findings of the practicability review.

(3) If the Coast Guard cannot make a determination under paragraph (c)(1) of this section for some or all elements of the performance standard under paragraph (b) of this section, the Coast Guard shall update the practicability review, consistent with the requirements of paragraph (c)(1) of this section, as appropriate, but at least every two years, until the performance standard under paragraph (b) of this section is fully implemented.

(4) If the Coast Guard finds, as a result of a practicability review under either paragraphs (c)(1) or (c)(3) of this section, that technology to achieve a significant improvement in treatment efficacy, either greater or less than the efficacy of the performance standards in paragraph (b) of this section can practicably be implemented, as outlined in paragraph (c)(1) of this section, the Coast Guard shall report this finding in the practicability review and propose an appropriate revision to the applicable requirements of this subpart.

6. Redesignate § 151.1512 as § 151.1513, and add a new § 151.1512 to read as follows:

§ 151.1512 Implementation schedule.

(a) The master, owner, operator, agent, or person-in-charge of the vessel subject to this subpart and wishing to discharge ballast within U.S. waters must install and operate a Ballast Water Management System (BWMS) approved by the Coast Guard under 46 CFR part 162 in accordance with Table 151.1512(b) ''Implementation Schedule for the Phase-One Ballast Water Management Program'' of this section and Table 151.1512(c) ''Implementation Schedule for the Phase-Two Ballast Water Management Program'' of this section, as applicable. Following installation, the master, owner, operator, agent, or person-in-charge of the vessel subject to this subpart must properly maintain the BWMS in accordance with all manufacturer specifications.

(b) Table 151.1512(b) Implementation Schedule for the Phase-One Ballast Water Management Program

Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date	
New vessels	All	On or after January 1, 2012	On delivery.
Existing vessels	Less than 1500	Before January 1, 2012	First drydocking after January 1, 2016.
	1500–5000	Before January 1, 2012	First drydocking after January 1, 2014.
	Greater than 5000	Before January 1, 2012	First drydocking after January 1, 2016.

(c) Table 151.1512(c) Implementation Schedule for the Phase-Two Ballast Water Management Program

Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date	
New vessels	All	On or after January 1, 2016	On delivery.
Existing vessels	All	Before January 1, 2016	First drydocking after January 1, 2016, UNLESS the vessel installed a BWMS meeting the phase-one standard before January 1, 2016, then 5 years after installation of the BWMS meeting the phase-one standard.

7. Revise § 151.1516(a) to read as follows:

§ 151.1516 Compliance monitoring.

(a) The master of each vessel equipped with ballast tanks must provide, as detailed in § 151.2070, the following information, in written form, to the COTP.

* * * * *

8. Revise Subpart D to read as follows:

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

Sec.

151.2000 Purpose and scope.
151.2005 Definitions.
151.2010 Applicability.
151.2013 Severability.
151.2015 Exemptions.
151.2020 Vessels in innocent passage.
151.2025 Ballast water management requirements.
151.2030 Ballast water discharge standard (BWDS).
151.2035 Implementation schedule for approved ballast water management system (BWMS).
151.2040 Discharge of ballast water in extraordinary circumstances.
151.2045 Safety exception.
151.2050 Additional requirements—nonindigenous species reduction practices.
151.2055 Deviation from planned voyage.
151.2060 Reporting requirements.
151.2065 Equivalent reporting methods for vessels other than those entering the Great Lakes or Hudson River after operating outside the exclusive economic zone or Canadian equivalent.
151.2070 Recordkeeping requirements.
151.2075 Enforcement and compliance.
151.2080 Penalties.

Appendix to Subpart D of Part 151—Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

§ 151.2000 Purpose and scope.

This subpart implements the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) (16 U.S.C. 4701–4751), as amended by the National Invasive Species Act of 1996 (NISA).

§ 151.2005 Definitions.

(a) Unless otherwise stated in this section, the definitions in 33 CFR 151.1504, 33 CFR 160.203, and the United Nations Convention on the Law of the Sea apply to this part.

(b) As used in this part—

ANSTF means the Aquatic Nuisance Species Task Force mandated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA).

Ballast tank means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

Ballast Water Management System (BWMS) means any system which processes ballast water to kill or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

Build date means the date when construction identifiable with the specific vessels begins; or assembly of the vessel has commenced comprising at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less; or the ship undergoes a major conversion.

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in part 3 of this chapter.

Exchange means to replace the water in a ballast tank using one of the following methods:

(1) *Flow through exchange* means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water has been changed—to minimize the number of original organisms remaining in the tank.

(2) *Empty/refill exchange* means to pump out the ballast water taken on in ports, estuarine, or territorial waters until the tank is empty, then refilling it with mid-ocean water. Masters or operators should pump out as close to 100 percent of the ballast water as is safe to do so.

Exclusive economic zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48 FR 10605, 3 CFR, 1983 Comp., p. 22), which extends from the base line of the territorial sea of the United States seaward 200 nautical miles, and the equivalent zone of Canada.

IMO guidelines mean the Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens (IMO Resolution A.868 (20), adopted November 1997).

NANPCA means the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

NBIC means the National Ballast Information Clearinghouse operated by the Coast Guard and the Smithsonian Environmental Research Center as mandated under NISA.

NISA means the National Invasive Species Act of 1996, which reauthorized and amended NANPCA.

NIS reduction practices means non-ballast water management practices that vessels employ to reduce NIS introductions into U.S. waters.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

Shipboard Technology Evaluation Program (STEP) means a Coast Guard research program intended to facilitate

research, development, and shipboard testing of effective BWMS. STEP requirements are located at: *http://www.uscg.mil/environmental_standards/*.

United States means the States, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Voyage means any transit by a vessel destined for any United States port or place.

Waters of the United States means waters subject to the jurisdiction of the United States as defined in 33 CFR 2.38, including the navigable waters of the United States. For 33 Code of Federal Regulations part 151, subparts C and D, the navigable waters include the territorial sea as extended to 12 nautical miles from the baseline, pursuant to Presidential Proclamation No. 5928 of December 27, 1988.

§ 151.2010 Applicability.

This subpart applies to all vessels, U.S. and foreign, equipped with ballast tanks, that operate in the waters of the United States except as expressly provided in 151.2020.

§ 151.2013 Severability.

If a court finds any portion of this subpart to have been promulgated without proper authority, the remainder of this subpart will remain in full effect.

§ 151.2015 Exemptions.

(a) The following vessels are exempt from the requirements of this subpart:

(1) Department of Defense or Coast Guard vessels subject to the requirements of section 1103 of the Nonindigenous Aquatic Nuisance Prevention and Control Act as amended by the National Invasive Species Act, or any vessel of the Armed Forces, as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' (33 U.S.C. 1322(n)); and

(2) Any warship, naval auxiliary, or other vessel owned or operated by a foreign state, and used, for the time being, only on government non-commercial service. However, each such foreign state shall ensure that such vessels act in a manner consistent, so far as is reasonable and practicable, with this subpart.

(b) Crude oil tankers engaged in coastwise trade are exempt from the requirements of §§ 151.2025, 151.2060, and 151.2070 of this subpart.

(c) A vessel that operates exclusively within one Captain of the Port (COTP) Zone is exempt from the requirements in §§ 151.2060 and 151.2070 of this subpart.

§ 151.2020 Vessels in innocent passage.

A foreign vessel merely traversing the territorial sea of the U.S. (*i.e.*, not bound for, entering or departing a U.S. port, or not navigating the internal waters of the U.S.) does not fall within the applicability of this subpart.

§ 151.2025 Ballast water management requirements.

(a) The master, owner, operator, agent, or person-in-charge of a vessel must:

(1) Use a ballast water management system (BWMS) that has been approved by the Coast Guard under 46 CFR part 162;

(2) Retain ballast water onboard the vessel; or

(3) Perform complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water in U.S. waters, unless the vessel is required to implement an approved BWMS per the schedule found in § 151.2035 of this subpart.

(b) Requests for approval of BWMS must be submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593, in accordance with 46 CFR part 162.

(c) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2060 and 151.2070 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). Section 15 CFR 754.2(j)(1)(iii) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable regulations.

(e) This subpart does not affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

(f) This subpart does not affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*).

(g) Vessels with installed BWMS for testing and evaluation by an accepted Independent Laboratory in accordance with the requirements of 46 CFR 162.060–10 will be deemed to be in compliance with paragraph (a)(1) of this section.

§ 151.2030 Ballast water discharge standard (BWDS).

(a) Unless otherwise expressly provided for in this subpart, the master, owner, operator, agent, or person-in-charge of a vessel must ensure that vessels employing a Coast Guard approved Ballast Water Management System (BWMS) must, at all times of discharge into waters of the United States, meet the following phase-one BWDS by the date listed in Table 151.2035(b) in section 151.2035 of this subpart:

(1) For organisms larger than 50 microns in minimum dimension: Discharge less than 10 per cubic meter of ballast water.

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 10 per milliliter (ml) of ballast water.

(3) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of <1 colony forming unit (cfu) per 100 ml;

(ii) For *Escherichia coli:* A concentration of <250 cfu per 100 ml; and

(iii) For intestinal enterococci: A concentration of <100 cfu per 100 ml.

(b) Unless otherwise expressly provided for in this subpart, the master, owner, operator, agent, or person-in-charge of a vessel must ensure that vessels employing a Coast Guard approved BWMS must, at all times of discharge into waters of the United States, meet the following phase-two BWDS by the date listed in Table 151.2035(c) in section 151.2035 of this subpart:

(1) For organisms larger than 50 microns in minimum dimension: Discharge less than 1 per 100 cubic meter of ballast water;

(2) For organisms equal to or smaller than 50 microns and larger than 10 microns: Discharge less than 1 organism per 100 milliliter (ml) of ballast water;

(3) For organisms less than 10 microns in minimum dimension:

(i) Discharge less than 10^3 living bacterial cells per 100 ml of ballast water; and

(ii) Discharge less than 10^4 viruses or viral-like particles per 100 ml of ballast water; and

(4) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A

concentration of <1 colony forming unit (cfu) per 100 ml;

(ii) For *Escherichia coli:* A concentration of <126 cfu per 100 ml; and

(iii) For intestinal enterococci: A concentration of <33 cfu per 100 ml.

(c)(1) The Coast Guard shall, at least three years prior to the first compliance date set forth in Table 151.2035(c) in section 151.1512 of this subpart, publish the results of a practicability review to determine whether—

(i) Technology to comply with the performance standard required under paragraph (b) of this section can practicably be implemented, in whole or in part, by the applicable compliance dates; and

(ii) Testing protocols that can assure accurate measurement of compliance with the performance standard required under paragraph (b) of this section can practicably be implemented.

(2) If the Coast Guard cannot make a determination under paragraph (c)(1) of this section for some or all elements of the performance standard listed in paragraph (b) of this section, the Coast Guard shall, at the same time that it publishes the results of the practicability review, extend the initial compliance date, in accordance with the Administrative Procedure Act, in Table 151.2035(c) for the applicable elements of the performance standard, taking into consideration the findings of the practicability review.

(3) If the Coast Guard cannot make a determination under paragraph (c)(1) of this section for some or all elements of the performance standard under paragraph (b) of this section, the Coast Guard shall update the practicability review, consistent with the requirements of paragraph (c)(1) of this section, as appropriate, but at least every three years, until the performance standard under paragraph (b) of this section is fully implemented.

(4) If the Coast Guard finds, as a result of a practicability review under either paragraphs (c)(1) or (c)(3) of this section, that technology to achieve a significant improvement in treatment efficacy, either greater or less than the efficacy of the performance standards in paragraph (b) of this section can practicably be implemented, as outlined in paragraph (c)(1) of this section, the Coast Guard shall report this finding in the practicability review and propose an appropriate revision to the applicable requirements of this subpart.

§ 151.2035 Implementation schedule for approved ballast water management systems (BWMS).

(a) The master, owner, operator, agent, or person-in-charge of a vessel subject to this subpart and wishing to discharge ballast within U.S. waters must install and operate a Ballast Water Management System (BWMS) approved by the Coast Guard under 46 CFR part 162 in accordance with Table 151.2035(b) ''Implementation Schedule for the Phase-One Ballast Water Management Program'' of this section and Table 151.2035(c) ''Implementation Schedule for the Phase-Two Ballast Water Management Program'' of this section, as applicable. Following installation, the master, owner, operator, agent, or person-in-charge of the vessel subject to this subpart must properly maintain the BWMS in accordance with all manufacturer specifications.

(b) Table 151.2035 (b) Implementation Schedule for the Phase-One Ballast Water Management Program

	Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date
New vessels	All	On or after January 1, 2012	On delivery.
Existing vessels	Less than 1500	Before January 1, 2012	First drydocking after January 1, 2016.
	1500–5000	Before January 1, 2012	First drydocking after January 1, 2014.
	Greater than 5000	Before January 1, 2012	First drydocking after January 1, 2016.

(c) Table 151.2035(c) Implementation Schedule for the Phase-Two Ballast Water Management Program

	Vessel's ballast water capacity (cubic meters, m^3)	Vessel's construction date	Vessel's compliance date
New vessels	All	On or after January 1, 2016	On delivery.
Existing vessels	All	Before January 1, 2016	First drydocking after January 1, 2016, UNLESS the vessel installed a BWMS meeting the phase-one standard before January 1, 2016, then 5 years after installation of the BWMS meeting the phase-one standard.

§ 151.2040 Discharge of ballast water in extraordinary circumstances.

(a) The master, owner, operator, agent, or person-in-charge of a vessel that cannot practicably meet the requirements of § 151.2025(a)(3) of this subpart—either because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time and the vessel retains ballast water on board, or because the master of the vessel has identified the safety or stability concerns contained in § 151.2045 of this subpart—will be allowed to discharge ballast water in areas other than the Great Lakes and the Hudson River. This exception would be allowed until the vessel would be required to have a Coast Guard approved BWMS per the implementation schedule found in Table 151.2035(b) of this subpart. The master, owner, operator, agent, or person-in-charge of the vessel must

discharge only that amount of ballast water operationally necessary to ensure the safety of the vessel for cargo operations. Ballast water records must be made available to the local Captain of the Port upon request.

(b) A vessel that cannot practicably meet the requirements of § 151.2025(a)(1) of this subpart because its approved BWMS is inoperable must employ one of the other ballast water management practices listed in § 151.2025(a) of this subpart. If the master of the vessel determines that the vessel cannot employ other ballast water management practices due to voyage or safety concerns, the vessel will be allowed to discharge ballast water in areas other than the Great Lakes and the Hudson River. The vessel must discharge only that amount of ballast water operationally necessary to ensure the safety and stability of the vessel for cargo operations. Ballast water records must be made available to the local Captain of the Port upon request. Per the implementation schedule found in Table 151.2035(b) of this subpart, a vessel will be prohibited from discharging non-managed ballast water until its approved BWMS is repaired in accordance to the manufacturer's specifications.

§ 151.2045 Safety exception.

(a) The master, owner, operator, agent, or person-in-charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) The master, owner, operator, agent, or person-in-charge of a vessel is not required to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. If the master uses this safety exception and the vessel—

(1) Is on a voyage to the Great Lakes or Hudson River, the vessel must comply with the requirements of § 151.1514 of subpart C of this part.

(2) Is on a voyage to any port other than the Great Lakes or Hudson River, the vessel will not be required to perform a ballast water management practice, including exchange, that the master has found to threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(c) Nothing in this subpart relieves the master, owner, operator, agent, or person-in-charge of a vessel of any responsibility, including ensuring the safety and stability of the vessel and the safety of the crew and passengers.

§ 151.2050 Additional requirements—nonindigenous species reduction practices.

The master, owner, operator, agent, or person-in-charge of any vessel equipped with ballast water tanks that operates in the waters of the U.S. must:

(a) Avoid the discharge or uptake of ballast water in areas within, or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(b) Minimize or avoid uptake of ballast water in the following areas and situations:

(1) Areas known to have infestations or populations of harmful organisms and pathogens (*e.g.,* toxic algal blooms);

(2) Areas near sewage outfalls;

(3) Areas near dredging operations;

(4) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be turbid;

(5) In darkness when bottom-dwelling organisms may rise up in the water column;

(6) Where propellers may stir up the sediment; and

(7) Areas with pods of whales, convergence zones, and boundaries of major currents.

(c) Clean the ballast tanks regularly to remove sediments. Tanks should be cleaned 200 nautical miles from any shore or under controlled arrangements in port or at dry dock. Sediments should be disposed of in accordance with local, State, and Federal regulations.

(d) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the United States.

(e) Rinse anchors and anchor chains when the anchor is retrieved to remove organisms and sediments at their place of origin.

(f) Remove fouling organisms from hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, State and Federal regulations.

(g) Maintain a ballast water management plan that has been developed specifically for the vessel that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy and comply with the requirements of this subpart. The plan must include the following:

(1) Detailed safety procedures;

(2) Actions for implementing the mandatory BWM requirements and practices;

(3) Detailed fouling maintenance and sediment removal procedures;

(4) Procedures for coordinating the shipboard BWM strategy with Coast Guard authorities;

(5) Identification of the designated officer[s] in charge of ensuring that the plan is properly implemented;

(6) Detailed reporting requirements and procedures for ports and places in the U.S. where the vessel may visit; and

(7) A translation of the plan into English, French or Spanish if the Ship's working language is another language.

(h) Train the master, operator, agent, person-in-charge, and crew on the application of ballast water and sediment management and treatment procedures.

§ 151.2055 Deviation from planned voyage.

As long as ballast water exchange (BWE) is an allowable ballast water management option under §§ 151.2025 and 151.2035 of this subpart, a vessel will not be required to deviate from its voyage or delay the voyage in order to conduct BWE.

§ 151.2060 Reporting requirements.

(a) Ballast water reporting requirements exist for each vessel subject to this subpart bound for ports or places of the United States regardless of whether a vessel operated outside of the exclusive economic zone (which includes the equivalent zone of Canada), unless exempted in § 151.2015 of this subpart.

(b) The owner, operator, agent, or person-in-charge of a vessel subject to this subpart and to whom this section applies must provide the information required by § 151.2070 of this subpart in electronic or written form (OMB form Control No. 1625–0069) to the Commandant, U.S. Coast Guard or the appropriate Captain of the Port (COTP) as follows:

(1) *For any vessel bound for the Great Lakes from outside the EEZ.*

(i) Fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to the USCG COTP Buffalo, Massena Detachment (315–769–5032); or

(ii) As an alternative for non-U.S. and non-Canadian flag vessels, complete the ballast water information section of the form required by the St. Lawrence Seaway, ''Pre-entry Information from Foreign Flagged Vessels Form'', and submit it in accordance with the applicable Seaway Notice in lieu of this requirement.

(2) *For any vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ.* Fax the information to the COTP New York (718–354–4249) at least 24 hours before the vessel enters New York, New York.

(3) *For any vessel that is equipped with ballast water tanks and bound for ports or places in the United States and not addressed in paragraphs (b)(1) and (b)(2) of this section.* If a vessel's voyage is less than 24 hours, report before departing the port or place of departure. If a voyage exceeds 24 hours, report at least 24 hours before arrival at the port or place of destination. All required information is to be sent to the National Ballast Information Clearinghouse (NBIC) using only one of the following means:

(i) Via the Internet at: *http://invasions.si.edu/nbic/index.html;*

(ii) E-mail to *NBIC@BallastReport.org;*

(iii) Fax to 301–261–4319; or

(iv) Mail to U.S. Coast Guard, c/o Smithsonian Environmental Research Center, P.O. Box 28, Edgewater, MD 21037–0028.

(c) If the information submitted in accordance with this section changes, submit an amended form before the vessel departs the waters of the United States.

§ 151.2065 Equivalent reporting methods for vessels other than those entering the Great Lakes or Hudson River after operating outside the EEZ or Canadian equivalent.

For ships required to report under § 151.2060(b)(3) of this subpart, the Chief, Environmental Standards Division (CG–5224), acting for the Assistant Commandant for Safety, Security, and Stewardship (CG–5), may, upon receipt of a written request, consider and approve alternative methods of reporting if:

(a) Such methods are at least as effective as that required by § 151.2060 of this subpart; and

(b) Compliance with § 151.2060 of this subpart is economically or physically impractical. The Chief, Environmental Standards Division (CG–5224), will take approval or disapproval action on the request submitted in accordance with this section within 30 days of receipt of the request.

§ 151.2070 Recordkeeping requirements.

(a) The master, owner, operator, agent, or person-in-charge of a vessel bound for a port or place in the United States, unless specifically exempted by § 151.2015 of this subpart, must maintain written records that include the following information:

(1) *Vessel information.* This includes the name, International Maritime Organization (IMO) Number (official number if IMO number not issued), vessel type, owner or operator, gross tonnage, call sign, and port of registry (flag).

(2) *Voyage information.* This includes the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(3) *Total ballast water information.* This includes the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, and total number of ballast water tanks in ballast. Use units of measurements such as metric tons (MT), cubic meters (m^3), long tons (LT), and short tons (ST).

(4) *Ballast water management.* This includes the total number of ballast tanks/holds that are to be discharged into the waters of the United States or to a reception facility. If an alternative ballast water management method is used, note the number of tanks that are managed using an alternative method, as well as the type of method used. Indicate whether the vessel has a ballast water management plan and IMO guidelines on board, and whether the ballast water management plan is used.

(5) *Information on ballast water tanks that are to be discharged into the waters of the United States or to a reception facility.* Include the following:

(i) The origin of ballast water. This includes date(s), location(s), volume(s) and temperature(s). If a tank has been exchanged, list the loading port of the ballast water that was discharged during the exchange.

(ii) The date(s), location(s), volume(s), method, thoroughness (percentage exchanged if exchange conducted), and sea height at time of exchange if exchange conducted of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or a reception facility.

(6) *Discharge of sediment.* If sediment is to be discharged within the jurisdiction of the United States, include the location of the facility where the disposal will take place.

(7) *Certification of accurate information.* Include the master, owner, operator, agent, person-in-charge, or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and certifying compliance with the requirements of this subpart.

(8) *Change to previously submitted information.* Indicate whether the information is a change to information previously submitted for this voyage.

(9) The master, owner, operator, agent, or person-in-charge of a vessel subject to this section must retain a signed copy of this information on board the vessel for 2 years.

(10) The information required of this subpart may be used to satisfy the ballast water recordkeeping requirements for vessels subject to 33 CFR Part 151 subpart C and § 151.2025(c).

(11) A sample form and the instructions for completing the form are in the appendix to this subpart. Completing the ''Ballast Water Reporting Form'' contained in the IMO Guidelines or completing the ballast water information section of the form required by the St. Lawrence Seaway ''Pre-entry Information Flagged Vessels Form'' meets the requirements of this section.

§ 151.2075 Enforcement and compliance.

(a) The Captain of the Port (COTP) shall be provided access in order to take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this subpart.

(b) The master, owner, operator, agent, or person in charge of a vessel subject to this section must provide to the COTP the records required by § 151.2070 of this subpart upon request.

(c) The NBIC will compile the data obtained from submitted reports. This data will be used, in conjunction with existing databases on the number of vessel arrivals, to assess vessel reporting rates.

(d) Vessels with installed BWMS are subject to Coast Guard inspection in accordance with 46 CFR 2.75–1.

(e) In this subpart, wherever multiple entities are responsible for compliance with any requirement of the rule, each entity is jointly liable for a violation of such requirement.

§ 151.2080 Penalties.

(a) A person who violates this subpart is liable for a civil penalty not to exceed $ 27,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable *in rem* for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

Appendix to Subpart D of Part 151—Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form

BILLING CODE 4910–15–P

INSTRUCTIONS FOR BALLAST WATER REPORTING FORM

(Please write in English and PRINT legibly.)

Is this an Amended Ballast Reporting Form?: **Check Yes or No. Amendments should be submitted if there are any differences between actual ballast discharges and discharge information reported in a prior form. Please mark "Yes" if this form amends a previously submitted ballast reporting form.**

SECTION 1. VESSEL INFORMATION

Vessel Name: Print the name of the vessel clearly.

IMO Number: Fill in identification number of the vessel used by the International Maritime Organization.

Owner: Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name.

Type: List specific vessel type. Use the following abbreviations: bulk **(bc)**, roro **(rr)**, container **(cs)**, tanker **(ts)**, passenger **(pa)**, oil/bulk ore **(ob)**, general cargo **(gc)**, reefer **(rf)**. Write out any additional vessel types.

GT: What is the Gross Tonnage of the vessel?

Call Sign: Write in the official call sign.

Flag: Fill in the full name of the country under whose authority the ship is operating. No abbreviations, please.

SECTION 2. VOYAGE INFORMATION

Arrival Port: Write in the name of your first port of call after entering the U.S. EEZ or St. Lawrence Seaway. No abbreviations, please.

Arrival Date: Fill in the arrival date to the above port. Please use European date format (DDMMYY).

Agent: List agent used for current port.

Last Port: Last Port: Fill in the last port at which the vessel called immediately before entering the U.S. EEZ. No abbreviations, please.

Country of Last Port: Fill in the last country at which the vessel called immediately before entering the U.S. EEZ. No abbreviations, please.

Next Port: Fill in the port at which the vessel will call immediately after departing the current port ("Current Port" = "Arrival Port" above). No abbreviations, please.

Country of Next Port: Fill in the country of "Next Port" at which the vessel will call immediately after current port. No abbreviations, please.

SECTION 3. BALLAST WATER

Total Ballast Water on Board:

Volume: What was the total volume of ballast water on board upon arrival into the waters of U.S. EEZ? Do not count potable water.

Units: Please include volume units (m^3, MT, LT, ST).

Number of Tanks in Ballast: Count the number of ballast tanks and holds with ballast as the vessel enters waters inside the U.S. EEZ.

Total Ballast Water Capacity:

Volume: What is the maximum volume of ballast water used when no cargo is on board?

Units: Please include volume units (m^3, MT, LT, ST).

Total Number of Tanks on Ship: Count all tanks and holds that can carry ballast water (do not include tanks that carry potable water).

SECTION 4. BALLAST WATER MANAGEMENT

Total No. of tanks to be discharged: Count only tanks and holds with ballast to be discharged into waters inside the United States EEZ or into an approved reception facility. Count all tanks and holds separately (e.g., port and starboard tanks should be counted separately).

Of tanks to be discharged, how many Underwent Exchange: Count all tanks that are to be discharged into waters of the United States or into an approved reception facility.

Of tanks to be discharged, how many Underwent Alternative Management: Count all tanks that are to be discharged into waters of the United States or an approved reception facility.

Please specify alternative method(s) used, if any: Specifically, describe methods used for ballast management.

If no ballast treatment conducted, state reason why not: This applies to all tanks and holds being discharged into waters of the United States or into an approved reception facility.

Ballast Management Plan on board?: Is there a written document on board, specific to your vessel, describing the procedure for ballast management? This should include safety and exchange procedures (usually provided by vessel's owner or operator). Check Yes or No.

Management Plan implemented?: Do you follow the above management plan? Check Yes or No.

IMO Ballast Water Guidelines on board?: Is there a copy of the International Maritime Organization (IMO) Ballast Water Guidelines on board this vessel (i.e.

"Guidelines for the Control and Management of Ship's Ballast Water to Minimize the Transfer Aquatic Organisms and Pathogens", [Res. A.868(20)])? Check Yes or No.

SECTION 5. BALLAST WATER HISTORY

(Record all tanks to be deballasted in port state of arrival: If none, go to #6)

Tanks/Holds: Please list all tanks and holds that you have discharged or plan to discharge into waters of the United States or into an approved reception facility (write out, or use codes listed below table). Follow each tank across the page listing all source(s), exchange events, and/or discharge events separately. List each tank on a separate line. Port and starboard tanks with identical ballast water histories may be included on same line. Please use an additional page if necessary, being careful to include ship name, date, and IMO number at the top of each. For tanks with multiple sources: list 3 largest sources from last 30 days on separate lines. If more than 3 sources, include a 4th line for the respective tank(s) that indicated "Multiple" in port column and list the remaining tank volume not included in the 3 largest sources (i.e., total tank volume minus volume of the 3 largest sources). See example #1 on sample ballast reporting form.

-BW SOURCES-

Date: Record date of ballast water uptake. Use European format (DDMMYY).

Port or latitude/longitude: Record location of ballast water uptake, no abbreviations for ports.

Volume: Record total volume of ballast water uptake, with volume units.

Temp: Record water temperature at time of ballast water uptake, in degrees Celsius (include units).

-BW MANAGEMENT PRACTICES-

Date: Date of ballast water management practice. If exchanges occurred over multiple days, list the day when exchanges were completed. Use European format (DDMMYY).

Endpoint or latitude/longitude: Report location of ballast water management practice. If an exchange occurred over an extended distance, list the end point latitude and longitude.

Volume: Report total volume of ballast water moved (i.e., gravitated and pumped into tanks, discharged to reception facility) during management practice, with units.

% Exchange: (Note: for effective flow through exchange, this value should be at least 300%).

$$\% \text{ Exchange} = \frac{\text{Total Volume Added by Refill or Flow Through}}{\text{Capacity of Ballast Tank or Hold}} \times (100\%)$$

Method: Indicate management method using code (ER = empty/refill, FT = flow through, ALT = alternative method).

Sea Ht. (m): Estimate the sea height in meters at the time of the ballast water exchange if this method was used. (Note: this is the combined height of the wind-seas and swell, and does not refer to water depth).

-BW DISCHARGES-

Date: Date of ballast water discharge. Use European format (DDMMYY).

Port or latitude/longitude: Report location of ballast water discharge, no abbreviations for ports.

Volume: Report volume of ballast water discharged, with units.

Salinity: Document salinity of ballast water at the time of discharge, with units (i.e., specific gravity (sg) or parts per thousand (ppt)).

SECTION 6. TITLE AND SIGNATURE

Responsible officer's name and title (printed) and signature: Print name and title, include signature.

BALLAST WATER REPORTING FORM

IS THIS AN AMENDED BALLAST REPORTING FORM? YES ☐ NO ☐

1. VESSEL INFORMATION | **2. VOYAGE INFORMATION** | **3. BALLAST WATER USAGE AND CAPACITY**

Vessel Name:	Arrival Port:		***Specify Units Below (m³, MT, LT, ST)***
IMO Number:	Arrival Date:		Total Ballast Water on Board:
Owner:	Agent:		Volume / Units / No. of Tanks in Ballast
Type:	Last Port:	Country of Last Port:	
GT:			Total Ballast Water Capacity:
Call Sign:	Next Port:	Country of Next Port:	Volume / Units / Total No. of Tanks on Ship
Flag:			

4. BALLAST WATER MANAGEMENT Total No. Ballast Water Tanks to be discharged: ☐

Of tanks to be discharged, how many: Underwent Exchange: ☐ Underwent Alternative Management: ☐

Please specify alternative method(s) used, if any: _____

If no ballast treatment conducted, state reason why not: _____

Ballast management plan on board? YES ☐ NO ☐ Management plan implemented? YES ☐ NO ☐

IMO ballast water guidelines on board [res. A.868(20)]? YES ☐ NO ☐

5. BALLAST WATER HISTORY: Record all tanks to be deballasted in port state of arrival; IF NONE, GO TO #6 ***(Use additional sheets as needed)***

Tanks/ Holds List multiple sources/tanks separately	BW SOURCES				BW MANAGEMENT PRACTICES						BW DISCHARGES			
	DATE DD/MM/YY	**PORT or** LAT. LONG.	VOLUME (units)	TEMP (units)	**DATE** DD/MM/YY	ENDPOINT LAT. LONG.	VOLUME (units)	% Exch	METHOD (ER/FT/ ALT)	SEA HT. (m)	DATE DD/MM/YY	PORT or LAT. LONG.	VOLUME (units)	SALINITY (units)

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing = WT, Topside = TS, Cargo Hold = CH, Other = O

6. RESPONSIBLE OFFICER'S NAME AND TITLE, PRINTED AND SIGNATURE: _____

Where to send this form:

Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).	
Bound for	You must submit your report as detailed below.
The Great Lakes	Fax the information at least 24 hours before the vessel arrives in Montreal, Quebec, to the USCG COTP Buffalo, Massena Detachment (315-769-5032). In lieu of faxing, vessels that are not U.S. or Canadian flagged may complete the ballast water information section of the St. Lawrence Seaway "Pre-entry Information from Foreign Flagged Vessel Form".
Hudson River north of the George Washington Bridge	Fax the information to the COTP New York (718-354-4249) at least 24 hours before the vessel arrives at New York, New York. * <E T='02'>Note:</E> Vessels entering COTP New York Zone which are not bound up the Hudson River north of George Washington Bridge should submit the form in accordance with the instructions in the following block.
All other U.S. Ports	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at: http://invasions.si.edu/nbic/index.html; E-mail to: NBIC@BallastReport.org; Fax to: 301-261-4319; or Mail to: U.S. Coast Guard, c/o Smithsonian Environmental Research Center, P.O. Box 28, Edgewater, MD 21037-0028.
Vessels that have not operated outside the EEZ, which are equipped with ballast water tanks and are bound for all ports or places within the waters of the United States.	
Bound for	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at: http://invasions.si.edu/nbic/index.html; E-mail to: NBIC@BallastReport.org; Fax to: 301-261-4319; or Mail to: U.S. Coast Guard, c/o SERC. P.O. Box 28, Edgewater, MD 21037-0028.

If any information changes, send an amended form before the vessel departs the waters of the United States.
An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (CG-5224), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593, or Office of Management and Budget, Paperwork Reduction Project (2115-0598), Washington, DC 20503

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Title 46—Shipping

CHAPTER I—COAST GUARD

Subchapter Q—Equipment, Construction, and Materials: Specifications and Approval

PART 162—ENGINEERING EQUIPMENT

9. Revise the authority citation for part 162 to read as follows:

Authority: 16 U.S.C. 4711; 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

10. Add subpart 162.060 to subchapter Q of Chapter I of title 46 of the CFR to read as follows:

Subpart 162.060—Ballast Water Management Systems

Sec.

162.060–1 Purpose and scope.
162.060–3 Definitions.
162.060–5 Incorporation by reference.

Application Submission Procedures

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162.060–30 Testing requirements for ballast water management system *(BWMS)* components.
162.060–32 Testing and evaluation requirements for Active Substances, Preparations, and Relevant Chemicals.
162.060–34 Test Report requirements.
162.060–36 Quality Assurance Project Plan (QAPP) requirements.
162.060–38 Operation, Maintenance, and Safety Manual (OMSM).
162.060–40 Requirements of Independent Laboratories (IL).

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

Subpart 162.060—Ballast Water Management Systems

§ 162.060–1 Purpose and scope.

This subpart contains procedures and requirements for approval of complete ballast water management systems (BWMS) to be installed onboard vessels for the purpose of complying with the ballast water discharge standard of 33 CFR part 151, subparts C and D.

§ 162.060–3 Definitions.

As used in this subpart—

Active substance means a chemical or an organism, including a virus or a fungus, that has a general or specific action on or against nonindigenous species.

Ballast water management system (BWMS) means any system which processes ballast water to kill or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

Ballast water system means the tanks, piping, valves, pumps, sea chests, and any other associated equipment the vessel uses for the purposes of ballasting.

Ballast water treatment equipment means equipment that mechanically, physically, chemically, or biologically processes ballast water, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of living organisms within ballast water and sediments.

Control and monitoring equipment means installed equipment required to operate, control, and assess the effective operation of the ballast water treatment equipment.

Foreign Administration means the Government of the State under whose authority the ship is operating.

Hazardous location means areas where fire or explosion hazards may exist due to the presence of flammable gases/vapors, flammable liquids, combustible dust, or ignitable fibers. Refer to NEC and IEC 79–0.

Hazardous materials means hazardous materials as defined in 49 CFR 171.8; hazardous substances designated under 40 CFR part 116.4; reportable quantities as defined under 40 CFR 117.1; materials that meet the criteria for hazard classes and divisions in 49 CFR part 173; materials under 46 CFR 153.40 determined by the Coast Guard to be hazardous when transported in bulk; flammable liquids defined in 46 CFR 30.10–22; combustible liquids as defined in 46 CFR 30.10–15; materials listed in Table 46 CFR 151.05, Table 1 of 46 CFR 153, or Table 4 of 46 CFR part 154; or any liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

Independent Laboratory (IL) means an organization that meets the requirements in 46 CFR 159.010–3 and is accepted by the Coast Guard for performing approval tests and evaluations of BWMS required by this subpart. In addition to commercial testing laboratories, the Commandant may also accept classification societies and agencies of governments (including State and Federal agencies of the United States) that are involved in the evaluation and testing of BWMS, if they meet the requirements of § 159.010–3 of this subchapter.

In-line treatment means a treatment system or technology used to treat ballast water during normal flow of ballast uptake or discharge.

In-tank treatment means a treatment system or technology used to treat ballast water during the time that it resides in the ballast tanks.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest as defined under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)(7 U.S.C. 136 *et seq.*) and 40 CFR 152.3.

Preparation means any commercial formulation containing one or more active substances, including any additives. This definition also includes any active substances generated onboard a vessel for the purpose of ballast water management and any relevant chemical formed in or by the BWMS that makes use of active substances to comply with the ballast water discharge standard codified in 33 CFR part 151 subpart C or D.

Quality Assurance Project Plan (QAPP) means a project-specific technical document reflecting the implementation of quality assurance and quality control activities, including specifics of the BWMS to be tested, the Independent Laboratory, and other conditions affecting the actual design and implementation of the required tests and evaluations.

Relevant chemicals mean transformation or reaction products that are produced during the treatment process or in the receiving environment and may be of concern to the aquatic environment and human health when discharged.

Representativeness means a sample that can be expected to adequately reflect the properties of interest from where the sample was drawn.

Sampling port refers to the equipment installed in the ballast water piping prior to the point of overboard discharge through which representative samples of the ballast water being discharged are extracted. This is equivalent to the term ''sampling facility'' under the guidelines for the International Convention for the Control and Management of Ships' Ballast Water and Sediments, ''Convention Guidelines for Ballast Water Sampling (G2)''.

Test facilities means locations where ILs conduct land-based, component, active substance and relevant chemical testing and evaluations, as required by this subpart.

§ 162.060–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Environmental Standards Division (CG–5224), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, and is available from the sources indicated in this section.

(b) *International Electrotechnical Commission (IEC)*, 3 rue Varembe, Geneva, Switzerland.

(1) IEC 79–0, Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements, 1983 (Including Amendment 2, 1991), § 162.060–38.

(2) IEC 529, Classification of Degrees of Protection by Enclosures, § 162.060–30.

(c) *International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC)*, 1, ch. de la Voie-Creuse, Case postale 56 CH–1211 Geneva 20, Switzerland. ISO/IEC 17025, General Requirements for the Competence of Calibration and Testing Laboratories, § 162.060–36.

(d) *National Fire Protection Association* (NFPA), Batterymarch Park, Quincy, MA 02269. NEC, see NFPA 70, § 162.060–38.

§ 162.060–10 Approval procedures.

(a) Before any testing is initiated on the ballast water management system (BWMS), the manufacturer must submit a Letter of Intent providing as much as possible of the below information to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593 and the Commanding Officer, U.S. Coast Guard, Office of Operating and Environmental Standards (CG–522), RM 1210, 2100 Second Street, SW., Washington, DC 20593:

(1) Manufacturer's name.

(2) Name and location of Independent Laboratory (IL).

(3) Name and type of BWMS.

(4) Expected date of submission of full application package to the Coast Guard.

(5) Name and type of vessel for shipboard testing.

(b) The manufacturer must ensure testing of the BWMS is conducted by an Independent Laboratory in accordance with §§ 162.060–20 through 162.060–40 of this subpart.

(c) The manufacturer must submit application in accordance with § 162.060–14 of this subpart.

(d) Upon receipt of an application completed in compliance with § 162.060–14 of this subpart, the Coast Guard Marine Safety Center will evaluate the application and either approve, disapprove, or return it to the manufacturer for further revision.

(e) The Coast Guard will independently conduct environmental analyses of each system in accordance with the National Environmental Policy Act, the Endangered Species Act, and/or other environmental statues, in addition to tests and evaluations conducted by an IL required by this subpart. Applicants are advised that applications including novel processes or active substances may encounter significantly longer reviews during this evaluation.

(f) After evaluation of the Test Report and all design, construction, and environmental considerations, the Commanding Officer, U.S. Coast Guard Marine Safety Center, will advise the applicant in accordance with 46 CFR §§ 159.005–13 or 159.005–15 whether the BWMS is approved.

(g) A BWMS is eligible for approval if:

(1) It meets the design and construction requirements in § 162.060–20 of this subpart;

(2) It is tested under land-based and shipboard conditions in accordance with § 162.060–26 and § 162.060–28 of this subpart, respectively, and thereby demonstrated to consistently meet the ballast water discharge standard in 33 CFR part 151, subparts C and D;

(3) All applicable components of the BWMS meet the component testing requirements of § 162.060–30 of this subpart;

(4) Of the BWMS that use an active substance or preparation, the BWMS meets the requirement of § 162.060–32 of this subpart; and

(5) Of the BWMS that use or generate an active substance, preparation, or relevant chemical, the ballast water discharge, preparation, active substance, or relevant chemical are not found to be persistent, bioaccumulative, or toxic.

(h) If tests or evaluations required by this section are not practicable or applicable, a manufacturer may submit a written request to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593 for approval of alternatives. The request must include the manufacturer's justification for any proposed changes and contain full descriptions of any proposed alternative tests. The Coast Guard's Marine Safety Center will return a copy of the Test Report with a cover letter advising the manufacturer whether the BWMS is approved. Any limitations imposed by the BWMS on testing procedures and all approved deviations from any test or evaluation required by this subpart must be duly noted in the Experimental Design section of the Test Plan.

(i) The Commanding Officer, USCG Marine Safety Center will send a copy of the Test Report to the applicant and advise the applicant whether the BWMS is approved. If the BWMS is approved, an approval certificate is sent to the applicant. The approval certificate lists conditions of approval applicable to the item. The approval certificate will be issued in accordance with 46 CFR 2.75–5.

§ 162.060–12 Equivalency determinations for ballast water management systems (BWMS).

(a) A manufacturer whose BWMS has been approved by a Foreign Administration may request in writing for the Coast Guard to make an equivalency determination if it can be demonstrated that the BWMS successfully met or exceeded the requirements of this subpart.

(b) A manufacturer whose BWMS that has successfully been used in a prototype experimental treatment system program that included tests onboard a vessel under normal shipping operations may apply for an equivalency for the shipboard or component testing requirements outlined in §§ 162.060–28 and 162.060–30 of this subpart respectively, if it can be demonstrated that the BWMS successfully met or exceeded comparable conditions during the shipboard testing period.

(c) If a manufacturer has already conducted a substantial amount of land-based and/or shipboard testing independent of the requirements of this subpart, the Coast Guard may make an equivalency determination.

(d) The request for an equivalency must include the following:

(1) Name, point of contact, address, and phone number of the authority overseeing the program;

(2) Entry and exit dates to that program;

(3) Final test results and findings; and

(4) A description of any modifications made to the system between the prototype and final development of the system.

(e) All requests for equivalencies under this section should be submitted in writing to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593.

§ 162.060–14 Information requirements for the ballast water management system (BWMS) application.

(a) A complete BWMS application must contain the following information:

(1) The name and location of the Independent Laboratory (IL) conducting approval tests and evaluations;

(2) Two sets of plans describing the BWMS, as specified in 46 CFR 159.005–12;

(3) An Operation, Maintenance and Safety Manual for the BWMS that meets the requirements in § 162.060–38;

(4) A bill of materials showing all components and specifications of the BWMS, as required by 46 CFR § 56.60;

(5) A list of any system or component of the BWMS that may require certification under 46 CFR part 64 as a marine portable tank;

(6) A list of any pressure vessels used as a part of the BWMS along with a description of either how each pressure vessel meets the requirements of 46 CFR part 54 or why it should be considered exempt from these requirements. Manufacturers must also submit detailed plans in accordance with 46 CFR 50.20 if they intend to fabricate pressure vessels, heat exchangers, evaporators and similar appurtenances covered by the requirements in 46 CFR part 54;

(7) Documentation of all necessary approval, registrations, and other documents or certification required for any active substances, preparations, or relevant chemicals used by the BWMS. The documentation must include the following:

(i) A list of any active substances, preparations, or relevant chemicals that are used, produced, generated as a byproduct, and/or discharged in association with the operation of the BWMS; and

(ii) A list of all limitations or restrictions that must be complied with during the approval testing and evaluations;

(8) A detailed description of the manufacturer's quality control procedures for:

(i) In-process and final inspections;

(ii) Tests followed in manufacturing the item; and

(iii) Construction and sales recordkeeping maintenance systems; and

(9) The completed Test Report prepared and submitted by the IL.

(b) The completed application must be sent to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593.

(c) If examination of the application reveals that it is incomplete, it will be returned to the applicant with an explanation.

§ 162.060–16 Changes to an approved ballast water management system (BWMS).

(a) The manufacturer of a BWMS that is approved by the Coast Guard must notify the Commanding Officer, USCG Marine Safety Center, in writing of any change in design or intended operational conditions of an approved BWMS.

(b) The notification in (a) must include:

(1) A description of the change, and its advantages;

(2) A determination by the original IL, or an alternate IL deemed acceptable by the Coast Guard, as to whether or not the change affects how the BWMS operates;

(3) A determination of whether or not the modified BWMS remains in all material respects, the same as the original; and

(4) An indication of whether or not the original BWMS will continue to be made or discontinued altogether.

(c) After receipt of the notice and information, the Coast Guard will notify the manufacturer and the IL in writing of any tests or evaluations that must be conducted, and then determine if recertification and/or modification is required.

§ 162.060–18 Suspension, withdrawal, or termination of approval.

The Coast Guard may suspend an approval issued for a BWMS in accordance with 46 CFR 2.75–40, withdraw an approval in accordance with 46 CFR 2.75–50(a), or terminate an approval in accordance with 46 CFR 2.75–50(b) if the BWMS as manufactured:

(a) Is not found to be in compliance with the conditions of approval;

(b) Is unsuitable for the purpose intended by the manufacturer;

(c) Does not meet the requirements of applicable laws, rules, and regulations when installed and operated as intended by the manufacturer;

(d) Is no longer being manufactured or supported; or

(e) When the approval expires.

§ 162.060–20 Design and construction requirements.

(a) Unless otherwise authorized by the Commandant, each BWMS must be designed and constructed in a manner that:

(1) Ensures simple and effective means for its operation;

(2) Allows operation to be initiated, controlled, and monitored by a single individual, and with minimal interaction or attention once normal operation is initiated;

(3) Is robust and suitable for working in the shipboard environment and adequate for its intended service;

(4) Meets all applicable requirements in 46 CFR Subchapter F, Marine Engineering, and Subchapter J, Electrical Engineering; and

(5) Operates when the vessel is upright, inclined under static conditions at any angle of list up to and including 15°, and when the vessel is inclined under dynamic, rolling conditions at any angle of list up to and including 22.5° and, simultaneously, at any angle of trim (pitching) up to and including 7.5° by bow or stern. Deviations from these angles of inclination may be permitted by the Coast Guard's Marine Safety Center, in accordance with § 162.060–10(h), considering the type, size, and service of intended vessels and considering how the BWMS is to be operated.

(b) Each BWMS must have control and monitoring equipment that:

(1) Automatically monitors and adjusts necessary treatment dosages, intensities, or other aspects required for proper operation;

(2) Incorporates a continuous self-monitoring function during the period in which the BWMS is in operation;

(3) Records proper functioning and failures of the BWMS;

(4) Records all events in which an alarm is activated for the purposes of cleaning, calibration, or repair;

(5) Records any bypass of the BWMS;

(6) Is able to store data for at least 24 months and to display or print a record for official inspections as required; and

(7) In the event the control and monitoring equipment is replaced, actions must be taken to ensure the data recorded prior to replacement remains available onboard for a minimum of 24 months.

(c) Each BWMS must be designed and constructed with the following operating and emergency controls:

(1) Visual means of indicating when the BWMS is operating, including a visual alarm activated whenever the BWMS is in operation for the purpose of cleaning, calibration, or repair;

(2) Audible and visual alarm signals must be provided in all stations from which ballast water operations are controlled in case of any failure(s) compromising the proper operation of the BWMS;

(3) As applicable, have means to activate stop valves when failure of the BWMS occurs;

(4) Suitable manual by-passes or overrides to protect the safety of the ship and personnel in the event of an emergency;

(5) Means that compensate for a momentary loss of power during operation of the BWMS so that unintentional discharges do not occur;

(6) BWMS installed in unoccupied machinery spaces must be capable of operating automatically from the time it is placed on-line until it is secured; and

(7) Adequate alarms for the applicable chemicals used in the BWMS and spaces where they are introduced or stored.

(d) BWMS must comply with the relevant requirements of 46 CFR subpart 111.105 if it is intended to be fitted in hazardous locations. Any electrical equipment that is a component of the BWMS must be installed in a non-hazardous location unless certified as safe for use in a hazardous location. Any moving parts which are fitted in hazardous locations must be arranged in a manner that avoids the formation of static electricity.

(e) To ensure continued operational performance of the BWMS without interference, the following conditions must be incorporated into the design:

(1) Each part of the BWMS that is required to be serviced routinely per the manufacturer's instructions or is liable to wear or damage must be readily accessible in the installed position(s) recommended by the manufacturer;

(2) To avoid interference with the BWMS, every access of the BWMS beyond the essential requirements, as determined by the manufacturer, must require the breaking of a seal, and any bypass or avoidance of the BWMS for the purpose of maintenance must activate an alarm;

(3) Simple means must be provided aboard the ship to identify drift and repeatability fluctuations and re-zero measuring devices that are part of the control and monitoring equipment.

(f) Each BWMS must be designed so that it does not rely in whole or in part on dilution of ballast water as a means of achieving the ballast water discharge standard as required in 33 CFR part 151, subparts C or D.

(g) Adequate arrangements for storage, application, mitigation, monitoring, and safe handling must be made for all BWMS that incorporate the use of, produce, generate, or discharge a hazardous material, active substance, and/or pesticide in accordance with Coast Guard regulations on handling/storage of hazardous materials (33 CFR 126) and any other applicable Federal, State, and local requirements.

(h) For any BWMS that incorporates the use of or generates active substances, preparations, or chemicals, the BWMS must be equipped with each of the following as applicable:

(1) A means of indicating the amount and concentration of any chemical in the BWMS that is necessary for its effective operation;

(2) A means of indicating when chemicals must be added for the proper continued operation of the BWMS;

(3) Sensors and alarms in all spaces that may be impacted by a malfunction of the BWMS;

(4) A means of monitoring all active substances and preparations in the treated discharge;

(5) A means to ensure that any maximum dosage or maximum allowable discharge concentrations of active substances and preparations are not exceeded at any time; and

(6) Each chemical that is specified or provided by the manufacturer for use in the operation of a BWMS and is defined as a hazardous material in 49 CFR 171.8 must be certified by the procedures in 46 CFR Part 147.

§ 162.060–22 Marking requirements.

(a) Each BWMS manufactured for Coast Guard approval must have a nameplate which is securely fastened to the BWMS and plainly marked by the manufacturer with the information listed in paragraph (b) of this section.

(b) Each nameplate must include the following information:

(1) Coast Guard Approval Number assigned to the system in the certificate of approval;

(2) Name of the manufacturer;

(3) Name and model number of the item;

(4) The manufacturer's serial number for the item;

(5) The month and year of manufacture completion; and

(6) The maximum allowable working pressure for the BWMS.

(c) The information required by paragraph (b) of this section must appear on a nameplate attached to, or in lettering on, the BWMS. The nameplate or lettering must be capable of withstanding, without loss of readability, the combined effects of normal wear and tear and exposure to water, salt spray, direct sunlight, heat, cold, and any substance used in the normal operation and maintenance of the BWMS. The nameplate must not be obscured by paint, corrosion, or other materials that would hinder readability.

§ 162.060–24 Test Plan requirements.

(a) Test Plans must include an examination of all the manufacturer's stated requirements and procedures for installation, calibration, maintenance, and operations that will be used by the BWMS during each test.

(b) Test Plans must also address potential environmental, health, and safety issues; unusual operating requirements such as labor or materials; and any issues related to the disposal of treated ballast water, by-products, or waste streams.

(c) Each Test Plan must be in the following format:

(1) Title page, including all project participants;

(2) Table of contents;

(3) Project description and treatment performance objectives;

(4) Project organization and personnel responsibilities;

(5) Description of the Independent Laboratory (IL);

(6) Treatment technology description;

(7) Test setup, including a diagram of the test configuration and all connections of the BWMS to be tested;

(8) Experimental design, including specific test procedures, installation and start-up plan, sample and data collection, and sample handling and preservation;

(9) Challenge water conditions and preparation, including IL's procedures for preparation, and a description of how the water quality and biological challenge conditions meet the applicable requirements of this subpart;

(10) Pre- and post-test evaluation methods;

(11) Quality Assurance Project Plan (QAPP);

(12) Data management, analysis, and reporting, including measures of precision, accuracy, comparability, and representativeness;

(13) Environmental, health, and safety plan; and

(14) Applicable references.

§ 162.060–26 Land-based testing requirements.

(a) Each BWMS must undergo land-based tests and evaluations that meet the requirements of this section, in addition to the shipboard tests required in § 162.060–28. The land-based testing

will determine whether the biological efficacy of the BWMS under consideration for approval is sufficient to meet the applicable BWDS, evaluate the suitability of the BWMS for shipboard installation, and validate those aspects of the operating and maintenance parameters presented by the manufacturer that are appropriate for assessment under the relatively short-term, but well-controlled circumstances of a land-based test.

(b) The test set-up must operate as described in the Test Plan requirements per § 161.060–24 during at least five consecutive valid replicate test cycles.

(c) Each valid test cycle must include the following:

(1) Uptake of test water by pumping;

(2) Treatment of a minimum of 200 m^3 of test water with the BWMS,

(3) Process of a minimum of 200 m^3 of untreated test water through the IL in a manner that is in all ways identical to (2) above, except that the BWMS is not used to treat the water;

(4) Retention of the treated and control water in separate tanks for a minimum of 24 hours; and

(5) Discharge of the test water by pumping.

(d) BWMS not tested for each of the 3 salinity ranges and water conditions listed in (e) may be subject to operational restrictions within a certificate of type approval.

(e) The BWMS must be tested in water conditions for which it will be approved. For any set of test cycles, a salinity range must be chosen. With respect to the salinity of water bodies where the BWMS is intended to be used, the test water used in the test set-up must have dissolved and particulate content in the following combinations:

(1) BWMS intended for use in water bodies with salinities greater than or equal to 32 parts per thousand (ppt) must use test water that has the following:

(i) A salinity greater than 32 ppt;

(ii) Dissolved Organic Carbon (DOC) in the range of 5–12 mg/l;

(iii) Particulate Organic Carbon (POC) in the range of 5–12 mg/l; and

(iv) Total Suspended Solids (TSS) greater than 5 mg/l;

(2) BWMS intended for use in water bodies with salinities greater than 3 and less than 32 ppt must use test water that has the following:

(i) A salinity in the range of 3–32 ppt;

(ii) DOC in the range of 5–12 mg/l;

(iii) POC in the range of 5–12 mg/l; and

(iv) TSS greater than 5 mg/l;

(3) BWMS intended for use in water bodies with salinities less than or equal to 3 ppt must use test water that has the following:

(i) A salinity less than 3 ppt;

(ii) DOC in the range of 5–12 mg/l;

(iii) POC in the range of 5–12 mg/l; and

(iv) TSS greater than 10 mg/l;

(4) At least 2 sets of test cycles should be conducted with different salinity ranges and associated dissolved and particulate content as described. BWMS not tested for each of the 3 salinity ranges and water conditions listed in this section may be subject to operational restrictions within a certificate of approval.

(f) Test cycles under adjacent salinity ranges listed in (e) must be separated by at least 10 ppt.

(g) The BWMS must be tested at its rated capacity or as specified in (g)(1) for each test cycle and must function to the manufacturer's specifications during the test.

(1) In-line treatment equipment may be downsized for land-based testing, but only when the following criteria are met:

(i) In-line treatment equipment with a Treatment Rated Capacity (TRC) equal to or smaller than 200 m^3/h should not be downscaled:

(ii) In-line treatment equipment with a TRC larger than 200 m^3/h, but smaller than 1000 m^3/h may be downscaled to a maximum of 1:5 scale, but must not be smaller than 200 m^3/h;

(iii) In-line treatment equipment with a TRC equal to or larger than 1000 m^3/h may be downscaled to a maximum of 1:100 scale, but must not be smaller than 200 m^3/h; and

(iv) The manufacturer of the BWMS must demonstrate by using mathematical modeling and/or by calculations that any downscaling will not affect the ultimate functioning and effectiveness onboard a vessel of the type and size for which the BWMS will be approved;

(2) Larger scaling may be applied and lower flow rates used other than those described in (g)(1) if the manufacturer can provide evidence from full-scale shipboard testing, in accordance with (g)(1)(iv), that larger scaling and lower flow rates will not adversely affect the ability to predict full-scale compliance with the BWDS. The procedures of § 162.060–10 must be followed before scaling of flow rates other than those provided in (g)(1), may be used.

(3) In-tank treatment equipment must be tested on a scale that allows verification of full-scale effectiveness. The suitability of the test set-up must be evaluated by the manufacturer and approved by the IL.

(h) The test set-up, TRC, and scaling of all tests must be clearly identified in the Experimental Design section of the Test Plan per § 162.060–24.

(i) The test set-up for approval tests must be representative of the characteristics and arrangements of the types of vessels in which the BWMS is intended to be installed. The test set-up must include at least the following:

(1) The complete BWMS to be tested;

(2) Piping and pumping arrangements; and

(3) At least one storage tank that simulates a ballast tank, constructed so that the water in the tank is completely shielded from light.

(j) Tanks used must—

(1) Have a minimum capacity of 200 m^3; and

(2) Be designed and constructed in a manner that minimizes the tank's effects on test organisms.

(k) The test setup piping must be rinsed with fresh water and the test tanks must be pressure-washed with tap water, before starting testing procedures and between test cycles.

(l) The test set-up must supply influent water to meet the conditions specified in paragraph (c)(2) of this section and include adequate facilities or arrangements to meet the sampling requirements of paragraphs of this section while ensuring representative samples of treated and control water can be taken with as little adverse effects as possible on the test organisms.

(m) The influent water must include:

(1) Test organisms greater than or equal to 50 micrometers in size in a total density of at least 10^5 individuals per cubic meter. The test organisms must comprise at least 5 species from at least 3 different phyla/divisions;

(2) Test organisms greater than or equal to 10 micrometers and less than 50 micrometers in size in a total density of at least 10^4 individuals per liter. Test organisms must also consist of at least 5 species from at least 3 different phyla/divisions; and

(3) Heterotrophic bacteria to be present in a density of at least 10^4 living bacteria per milliliter.

(n) The test organisms used for influent water may be either naturally occurring in the test water, cultured species that may be added to the influent test water, or a mixture of both. The classification of test organisms in the test water must be documented according to the size classes mentioned in paragraph (m) of this section, regardless if natural organisms or cultured organisms were used to meet the density and organism classification requirements.

(o) If cultured test organisms are used, the IL must ensure that all applicable Federal, State, local, and Tribal

regulations are complied with during culturing and discharging of the cultured test organisms.

(p) Changes in the number of test organisms due to treatment or storage must be measured.

(q) The following bacteria do not need to be added to the influent water, but must be measured at the influent and at the time of discharge:

(1) *Escherichia coli;*

(2) Enterococci group;

(3) *Vibrio cholerae;* and

(4) Total heterotrophic bacteria.

(r) Testing and evaluation must verify that the BWMS performs within the parameters specified by the manufacturer, such as power consumption and flow rate during the test cycle.

(s) Samples must be collected during the test immediately before the test water enters the treatment equipment and upon discharge. Samples should be drawn using sample ports designed and installed as follows:

(1) The test set up should have sampling ports that are arranged in an order that will collect representative samples of the water under the following conditions:

(i) Sampling ports should be located as close as practicable to the BWMS prior to testing and prior to the discharge point after testing. Sampling should include any hold time; and

(ii) Sampling ports should be located elsewhere as necessary to ascertain the proper functioning of the BWMS.

(2) Sample ports must be designed and constructed to ensure the velocity profile at the opening of the sample port matches the velocity profile in the main stream of the pipe from which samples are taken. Sample ports must be designed and installed taking into consideration the findings and recommendations in the U.S. Coast Guard Research and Development Center (R&DC) Report ''Analysis of Ballast Water Sampling Port Designs Using Computational Fluid Dynamics''. The report is available for download from the R&DC Web site at *http://www.rdc.uscg.gov/*.

(i) The opening of the sample port should be 1.5–2 times the isokinetic sample diameter, D_{iso}, which can be derived as follows:

$$D_{ISO} = D_M \sqrt{\frac{Q_{ISO}}{Q_M}}$$

Where:

D_M is the diameter of the main pipe from which samples are to be extracted;
Q_M is the flow rate in the main pipe; and
Q_{iso} is the desired sample flow rate.

(ii) The sample port size must be based on the combination of maximum sample flow rate and minimum main-pipe flow rate that yields the largest isokinetic diameter.

(iii) Samples must be drawn from a straight pipe section on the centerline of the main flow, looking into the flow.

(iv) The sample taken should be drawn from the main pipe at a location where the flowing stream at the sample point is representative of the contents of the flow in the main pipe. The sample port should be located at a point where the flow in the main pipe is as close to fully mixed and fully developed as practicable.

(v) Ball valves must be used for shutting off the flow.

(vi) Smooth transition flow controls, like flexible venturi, must be used to control flow rates.

(viii) Piping and fittings from the sample port to the sample collection vessel must be minimized.

(t) Samples should be collected for:

(1) Organisms of greater than or equal to 50 micrometers in size from at least 20 liters of influent water and 1,000 liters of treated water, in triplicate, respectively. If samples are concentrated for enumeration, the samples should be concentrated using a sieve no greater than 50 micrometer mesh in the diagonal dimension;

(2) Organisms greater than or equal to 10 micrometers and less than 50 micrometers in size from at least 1 liter of influent water and at least 10 liters of treated water, in triplicate, respectively. If samples are concentrated for enumeration, the samples should be concentrated using a sieve no greater than 10 micrometers mesh in the diagonal dimension; and

(3) *Escherichia coli,* enterococci, *Vibrio cholerae*, and heterotrophic bacteria from at least 500 milliliters of influent and treated water collected in sterile bottles, in triplicate, respectively.

(u) All applicable environmental parameters such as pH, temperature, salinity, DO, TSS, DOC, POC, and turbidity must be measured at the same time samples are taken.

(v) The control and treatment test cycles may be run simultaneously or sequentially. Control samples are to be taken in the same manner as treatment samples, upon influent and discharge.

(w) The samples must be analyzed in such a way so that post collection mortality is minimized and proper analyses can be performed to determine the number of living organisms relative to the specifications of the discharge standard. Validation of the methods used must be made in the Test Plan required under § 162.060–24 of this subpart.

(x) Efficacy testing and sample analysis is meant to determine the number of living organisms in the samples both before and after treatment. The methods for the collection, handling, storage, and analysis of samples must be clearly cited and described in the Test Plan, and they must include detection, enumeration, and identification of test organisms used for determining viability. When standard methods are not available for particular organisms or taxonomic groups, methods that are developed for use must also be described in detail in the Test Plan and include any experiments conducted to validate the use of the methods. At a minimum—

(1) The efficacy of a proposed BWMS must be tested by means of standard scientific methodology in the form of controlled experiments;

(2) The efficacy of the BWMS must be determined by comparing the concentration of organisms in the treated discharge with the values of the BWDS specified in 33 CFR part 151, subparts C and D;

(3) Any statistical analyses of BWMS performance must include power analyses to evaluate the ability of the tests to detect differences;

(4) If, in any test cycle, the average organism concentration in challenge water is less than 10 times the maximum permissible values of the BWDS required in 33 CFR part 151, subparts C and D, the test cycle is invalid;

(5) If, in any test cycle, the average organism concentration in discharged control water is less than the maximum permissible values of the BWDS required in 33 CFR part 151, subparts C and D, the test cycle is invalid; and

(6) Different samples may be taken for determination of the concentration and viability of organisms in the different groups specified in the BWDS required in 33 CFR part 151, subparts C and D.

(y) Live/dead judgment must be determined by appropriate industry or government standards or methods approved by the Coast Guard, including, but not limited to morphological change, mobility, reaction to stimulus, or staining using vital dyes or molecular techniques.

(z) All replicate samples collected within a valid set of test cycles must meet the BWDS required in 33 CFR part 151, subparts C and D.

§ 162.060–28 Shipboard testing requirements.

(a) The BWMS manufacturer is responsible for making all arrangements

for a vessel on which to conduct shipboard tests.

(b) In addition to the land-based tests required in § 162.060–26 of this subpart, each BWMS approved under this subpart must undergo shipboard tests and evaluations that meet the requirements of this section. The shipboard testing will verify:

(1) That the BWMS under consideration for approval consistently results in the routine discharge of ballast water that meets the BWDS requirements of part 151, subparts C and D; and

(2) That the operating and maintenance parameters identified by the manufacturer in the Operation, Maintenance, and Safety Manual are consistently achieved.

(c) The vessel used as a platform for shipboard testing under this section must be selected so that:

(1) The volumes and rates of ballast water used and treated are representative of the upper end of the treatment rated capacity for which the BWMS is intended to be used;

(2) The circumstances of the vessel's operation during the period of shipboard testing provide an acceptable range of geographic and seasonal variability conditions.

(i) During testing, the ballast water used by the vessel and treated by the BWMS for the purposes of the shipboard tests must come from at least 3 different geographic locations that lie in non-neighboring marine biogeographical provinces (*e.g.*, the IUCN Marine Ecoregions of the World, as published in the journal BioScience, 2007, Vol. 57 No. 7; or the Briggs and Eckman bioprovinces, as published in Briggs, J.C., 1995, Global biogeography. Developments in paleontology and stratigraphy, Elsevier Science, Amsterdam.)

(ii) Shipboard tests must be conducted throughout a 12 month period.

(3) The ports visited by the vessel provide adequate availability of transportation and scientific support needed to accomplish the necessary sampling and analytical procedures during the shipboard tests.

(d) The vessel's ballast water system must be provided with sampling ports arranged in order to collect representative samples of the ship's ballast water.

(1) In addition to the sampling ports requirements found in 162.060–26, sampling ports must be located:

(i) As close as practicable to the BWMS prior to testing and prior to the discharge point after testing to determine concentrations of living organisms upon uptake and prior to discharge; and

(ii) Elsewhere as necessary to ascertain the proper functioning of the BWMS;

(2) As close to the overboard outlet as possible.

(e) The efficacy of the BWMS must be tested during at least ten valid test cycles.

(1) A test cycle entails:

(i) The uptake of ballast water of the ship; the storage of ballast water on the ship;

(ii) Treatment of the ballast water by the BWMS, except in control tanks; and

(iii) The discharge of ballast water from the ship.

(2) All test cycles will include quantification of the water quality parameters on uptake;

(3) Three test cycles will entail full experimental tests and consist of quantification of the concentration of living organisms in the ballast water on uptake and at discharge from the treatment and control tanks;

(4) Seven test cycles will consist of discharge tests and of quantification of the concentration of living organisms in the treated ballast water on discharge. No control tanks are required;

(5) Valid test cycles are as follows:

(i) For full experimental test cycles, uptake water for both the control tank and ballast water to be treated must have living organism concentrations exceeding ten times the threshold values of BWDS required in 33 CFR part 151, subparts C and D, and control tank living organism concentrations must exceed the values of the BWDS on discharge;

(ii) For full experimental test cycles and discharge test cycles, the BWMS must operate successfully as designed, maintaining control of all set points and treatment processes, including any pre-discharge conditioning to remove or neutralize residual treatment chemicals or by-products; and

(iii) For full experimental test cycles and discharge test cycles, all design or required water quality parameters must be met for the discharged water;

(6) The source water for all test cycles must be characterized by measurement of water quality parameters as follows:

(i) For all BWMS tests, salinity, temperature, and turbidity must be measured at the beginning, middle, and end of the period of ballast water uptake; and

(ii) BWMS that make use of active substances or other processes that are affected by specific water quality parameters (*e.g.,* dissolved and particulate organic material, pH, *etc.*), or water quality parameters identified by the manufacturer and/or the IL as being critical must be measured at the beginning, middle, and end of the period of ballast water uptake.

(f) Samples of ballast water must be collected from in-line sampling ports in either of two ways:

(1) Three replicate samples of water, collected at three discrete periods of time over the entire period of uptake or discharge (*e.g.* beginning, middle, end) as appropriate; or

(2) One flow averaged sample of at least 1 cubic meter collected over the entire period of uptake or discharge.

(g) The following information must be documented during all BWMS testing operations conducted on the vessel:

(1) All ballast water operations, including volumes and locations of uptake and discharge;

(2) All weather conditions and resultant effects on vessel orientation and vibration;

(3) Temperature of the BWMS;

(4) Scheduled maintenance performed on the system;

(5) Unscheduled maintenance and repair performed on the system;

(6) Data for all engineering parameters monitored as appropriate to the specific system;

(7) Consumption of all solutions, preparations, or other consumables necessary for the effective operation of the BWMS; and

(8) All parameters necessary for tracking the functioning of the control and monitoring equipment.

(h) All measurements for numbers and viability of organisms, water quality parameters, engineering performance parameters, and environmental conditions must be conducted:

(1) As described in § 162.060–26 (w) and (x) of this subpart, using standard methods from recognized bodies such as EPA (in 40 CFR part 136), the International Standards Organization, or others accepted by the scientific community, or

(2) Using validated methods approved in advance by the Coast Guard. The possible reasons for the occurrence of an unsuccessful test cycle due to obvious mechanical or process failure or a test cycle discharge failing the discharge standard should be investigated and reported.

§ 162.060–30 Testing requirements for ballast water management system (BWMS) components.

(a) The electrical and electronic components, including each alarm and control and monitoring device of the BWMS, must be subjected to the following environmental tests when in the standard production configuration:

(1) A resonance search vertically up and down, horizontally from side to side, and horizontally from end to end, at a rate sufficiently low to permit resonance detection made over the following ranges of oscillation frequency and amplitude:

(i) 2 to 13.3 Hz with a vibration amplitude of ± 1 mm;

(ii) 13.2 to 80 Hz with an acceleration amplitude of ± 0.7 g;

(2) The components must be vibrated in the above mentioned planes at each major resonant frequency for a period of 4 hours.

(3) In the absence of any resonant frequency, the components must be vibrated in each of the planes at 30 Hz with an acceleration of ± 0.7 g for a period of 4 hours.

(4) Components that may be installed in exposed areas on the open deck or in enclosed spaces not environmentally controlled must be subjected to a low temperature test of − 25 °C and a high temperature test of 55 °C for a period of two hours.

(5) Components that may be installed in enclosed spaces that are environmentally controlled, including an engine-room, must be subjected to a low temperature test at 0 °C and a high temperature test at 55 °C, for a period of two hours. At the end of each test, the components are to be switched on and must function normally under the test conditions.

(6) Components should be switched off for a period of two hours at a temperature of 55 °C in an atmosphere with a relative humidity of 90%. At the end of this period, the components should be switched on and should operate satisfactorily for one hour under the test conditions.

(7) Components that may be installed in exposed areas on the open deck must be subjected to tests for protection against heavy seas in accordance with IP 56 of publication IEC 529 (incorporated by reference; see § 162.060–5) or its equivalent.

(8) Components must operate satisfactorily with a voltage variation of ± 10% together with a simultaneous frequency variation of ± 5%, and a transient voltage of ± 20% together with a simultaneous transient frequency of ± 10% and transient recovery time of 3 seconds.

(9) The components of a BWMS must be designed to operate when the ship is upright and inclined at any angle of list up to and including 15° either way under static conditions and 22.5° under dynamic, rolling conditions either way and simultaneously inclined dynamically (pitching) 7.5° by bow or stern. Deviation from these angles may be permitted only upon approval of a written waiver submitted to the Coast Guard in accordance with 162.060–10(h), taking into consideration the type, size and service conditions and locations of the ships and operational functioning of the equipment for where the system will be used. Any deviation permitted must be documented in the Type Approval Certificate.

(10) The same component(s) must be used for each test required by this section, and testing must be conducted in the order in which the tests are described, unless otherwise authorized by the Coast Guard.

(b) There shall be no cracking, softening, deterioration, displacement, breakage, leakage, or damage of components or materials that affects the operation or safety of the BWMS after each test. The components must remain operable after all tests.

§ 162.060–32 Testing and evaluation requirements for Active Substances, Preparations, and Relevant chemicals.

(a) A BWMS may not use an active substance or preparation that is a pesticide unless the sale and distribution of such pesticide is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use in ballast water treatment, prior to submission to the Coast Guard for approval of the BWMS. This requirement does not apply to the use of active substances or preparations generated solely by the use of a device (as defined under FIFRA) on board the same vessel as the ballast water to be treated.

(b) A BWMS that uses an active substance or preparation that is not a pesticide, or that uses a pesticide that is generated solely by the use of a device (as defined under FIFRA) on board the same vessel as the ballast water to be treated, must prepare an assessment demonstrating the effectiveness of the BWMS for its intended use, appropriate dosage, hazards of the BWMS, and means for protection of the environment, and public health. This assessment must accompany the application package submitted to the Coast Guard.

§ 162.060–34 Test Report requirements.

(a) The final results of all approval tests and evaluations must be presented in a Test Report prepared by the Independent Laboratory (IL).

(b) The Test Report must include all data regarding test conditions, quality control measures, results of all approval tests and evaluations, and all data or information supplied by the manufacturer regarding the performance of the system. The Test Report must contain all information required by 46 CFR 159.005–11 and include applicable sections for all land-based, shipboard, component, active substance, preparations and relevant chemical tests, and evaluations.

(c) The Test Report must include a summary statement that presents the IL's assessment based on the tests and evaluations conducted. The summary statement should state if the BWMS—

(i) Has been shown under the procedures and conditions specified in this subpart to meet the Ballast Water Discharge Standard requirements of 33 part 151, subparts C and D;

(ii) Is designed and constructed according to the requirements of § 162.060–20 of this subpart;

(iii) Is in compliance with all applicable U.S. Environmental Protection Agency (EPA) regulations; and

(iv) Operates at the rated capacity, performance, and reliability as specified by the manufacturer.

(d) The Test Report for a BWMS that may incorporate, use, produce, generate as a by-product and/or discharge hazardous materials, active substances, relevant chemicals and/or pesticides during its operation must include the following information in the appendix of the Test Report:

(1) A list of each active substance or preparation used in the BWMS. For each active substance or preparation that is a pesticide and is not generated solely by the use of a device on board the same vessel as the ballast water to be treated, the appendix must also include documentation that the sale or distribution of the pesticide is authorized under FIFRA for use for ballast water treatment. For all other active substances or preparations, the appendix must include documentation of the assessment specified at Section 162.060–32(b);

(2) A list of all active substances, preparations, and relevant chemicals, along with the results of all tests conducted; and

(3) A list of all hazardous materials, including the applicable hazard classes, proper shipping names, reportable quantities as designated by 40 CFR 117.1, and chemical names of all components.

(e) The Test Report must contain the following documentation:

(1) The Operation, Maintenance, and Safety Manual meeting the requirements of § 162.060–38 for the BWMS specific to the vessel where testing was conducted, with a technical description of the BWMS, operational and maintenance procedures, backup

procedures in case of equipment malfunction, installation specifications, installation commissioning procedures, and any initial calibration procedures.

(2) Verification that—

(i) The BWMS installation has been carried out in accordance with the technical installation specification;

(ii) Any operational inlets and outlets are located in the positions indicated on the drawing of the pumping and piping arrangements;

(iii) The workmanship of the installation is satisfactory and, in particular, that any bulkhead penetrations or penetrations of the ballast system piping are to the relevant approved standards;

(iv) The control and monitoring equipment operates correctly;

(v) The BWMS's capacity is within the range of the Treatment Rated Capacity for which it is intended; and

(vi) The amount of ballast water treated in the test cycle is consistent with the normal ballast operations of the ship, and that the BWMS was operated at the Treatment Rated Capacity for which it is intended to be approved.

(f) The Test Report must contain the following information:

(1) Summary Statement;

(2) Executive Summary;

(3) Introduction and Background;

(4) Description of the BWMS;

(5) For each test conducted—

(i) Description of the test conditions;

(ii) Experimental design;

(iii) Methods and procedures; and

(iv) Results and discussion;

(6) Appendices, including—

(i) Test Plans;

(ii) Manufacturer supplied Operation, Maintenance and Safety Manual meeting the requirements of § 162.060–38;

(iii) Data generated during testing & evaluations;

(iv) Quality assurance and controls records;

(v) Maintenance logs;

(vi) Relevant records and tests results maintained or created during testing;

(vii) Information on hazardous materials, active substances, and relevant chemicals and pesticides; and

(viii) Permits, registrations, restrictions, and regulatory limitations on use.

§ 162.060–36 Quality Assurance Project Plan (QAPP) requirements.

The approval testing and evaluation process must contain a rigorous quality control and assurance program consisting of a Quality Assurance Project Plan (QAPP) developed in accordance with ISO/IEC 17025, General Requirements for the Competence of Calibration and Testing Laboratories. The Independent Laboratory performing approval tests and evaluations is responsible for ensuring the appropriate quality assurance and quality control procedures are implemented.

§ 162.060–38 Operation, Maintenance, and Safety Manual (OMSM).

(a) Each BWMS submitted for approval must include an Operation, Maintenance, and Safety Manual (OMSM), which includes a complete description of the BWMS, information on the treatment process[es], design criteria, physical configuration, electrical, instrumentation, control systems, operating instructions, maintenance requirements, and all health and safety issues.

(b) Each OMSM must include the following sections:

(1) Table of contents.

(2) Manufacturer's information.

(3) Principles of system operation including—

(i) A complete description of the BWMS, methods and type[s] of technologies used in each treatment stage of the BWMS;

(ii) The theory of operation;

(iii) Any process or technology limitations;

(iv) Performance ranges and expectations of the system; and

(v) A description of the locations and conditions for which the BWMS is intended.

(4) Major system components and shipboard application including—

(i) A general description of the materials used when constructing and installing the BWMS;

(ii) A detailed description of the onboard physical configuration of the BWMS and how it will be physically integrated with shipboard ballast systems at all stages of ballast water treatment; general arrangement of installed equipment; utility connections such as power, water, and air; interfaces with shipboard systems; and required connections to a vessel's piping systems and foundations;

(iii) A list of each major component that may be fitted differently in different vessels with a general description of the different arrangements schemes;

(iv) The range of vessel sizes, classes, and operations for which it is intended;

(v) Any vessel type[s], services or locations where the system is not intended to be used;

(vi) Maximum and minimum flow and volume capacities of the system;

(vii) The dimensions and weight of the complete system and required connection and flange sizes for all major components;

(viii) A description of all actual or potential effects of the BWMS on the vessel's ballast water, ballast water tanks, and ballast water piping and pumping systems;

(ix) A list of all active substances, relevant chemicals, and pesticides generated or stored onboard the vessel to be used by the BWMS; and

(x) Information on whether the BWMS is designed to be used in hazardous locations as defined in the NEC (incorporated by reference; see § 162.060–5) and in IEC 79–0 (incorporated by reference; see § 162.060–5).

(5) System and major system component drawings as applicable under 46 CFR § 56.01–10(b), including—

(i) Process flow diagram(s) of the BWMS showing the main treatment processes, chemicals, and monitoring and control devices for the BWMS;

(ii) Footprint(s), drawings, and system schematics showing all major components and arrangements;

(iii) Drawings of the pumping and piping arrangements, power panels, and all equipment provided with the BWMS;

(iv) All treatment application points, waste or recycling streams, and all sampling points integral to the specific BWMS;

(v) All locations and the sizes of all piping and utility connections for power, water, compressed air or other utilities as required by the BWMS;

(vi) Detailed electrical plans of each relevant component of the BWMS as described in 46 CFR 110.25–1 and electrical/electronic wiring diagrams that include the location and electrical rating of power supply panels and BWMS control and monitoring equipment;

(vii) Unit(s), construction materials, standards and labels on all drawings of equipment, piping, instruments, and appurtenances; and

(viii) An index of all drawings and diagrams.

(6) A description of the BWMS's control and monitoring equipment and how it will be integrated with the existing shipboard ballast system, including—

(i) Power demand;

(ii) Main and local control panels;

(iii) Power distribution system;

(iv) Power quality equipment;

(v) Instrumentation and control system architecture;

(vi) Process control description;

(vii) Operational set points, control loops, control algorithms, and alarm settings for routine, maintenance, and emergency operations; and

(viii) All devices required for measuring appropriate parameters such as: Pressure, temperature, flow rate, water quality, power, and chemical residuals.

(7) A description of all relevant standard operating procedures including, but not limited to:

(i) System start-up and system shutdown procedures and times;

(ii) Emergency shutdown and system by-pass procedures;

(iii) Requirements to achieve treatment objectives (*e.g.*, time following initial treatment, critical dosages, residual concentrations, *etc*);

(iv) Operating, safety, and emergency procedures;

(v) System limitations, precautions, and set points;

(vi) Detailed instructions on operation, calibration and zeroing of each monitoring device used with the system;

(vii) Personnel requirements for the BWMS including number and types of personnel needed, labor burden, and operator training or specialty certification requirements.

(8) A description of the preventive and corrective maintenance requirements of the BWMS, including:

(i) Inspection and adjustment procedures;

(ii) Troubleshooting procedures;

(iii) An illustrated list of parts and spare parts;

(iv) A list of recommended spare parts to have during installation and operation of the BWMS;

(v) Use of tools and test equipment in accordance with the maintenance procedures; and

(vi) Point[s] of contact for technical assistance.

(9) A description of the health and safety risks to the personnel associated with the installation, operation, and maintenance of the BWMS including, but not limited to:

(i) The storage, handling, and disposal of any hazardous wastes;

(ii) Any health and safety certification/training requirements for personnel operating the BWMS; and

(iii) All material safety data sheets for hazardous or relevant chemicals used, stored or generated by or for the system.

(c) If any information in the OMSM changes as a result of approval testing and evaluations, a new OMSM must be submitted.

§ 162.060–40 Requirements of Independent Laboratories (IL).

(a) Each request for designation as an Independent Laboratory (IL) authorized to perform approval tests must either be delivered by visitors or through the mail to the Commandant (CG–521), Office of Design and Engineering Standards, 2nd Street, SW., Washington, DC 20593, in a written or electronic format.

(b) Each request must include the following:

(1) Name and address of the IL;

(2) Each type of equipment the IL proposes to test; and

(3) A description of the IL's capability to perform approval tests including detailed information on the following:

(i) Management organization, including personnel qualifications;

(ii) Equipment available for conducting sample analysis;

(iii) Materials available for approval testing;

(iv) Each of the IL's test rigs; and

(v) Disposal procedures for all treated and control water.

(c) The Coast Guard will review each request submitted to determine whether the IL meets the requirements of this section.

(d) To obtain authorization to conduct approval tests—

(1) An IL must have the management organization, equipment for conducting sample analysis, and the materials necessary to perform the tests;

(2) The loss or award of a specific contract to test equipment must not be a substantial factor in the IL's financial well being; and

(3) The IL must be free of influence and control of the manufacturers and suppliers of the equipment.

(e) Each test and evaluation must be performed by the IL and accepted by the Coast Guard. A list of independent laboratories accepted by the Coast Guard may be found at *http://cgmix.uscg.mil/*, or may be obtained by contacting the Commandant (CG–521), 2100 2nd Street, SW., Washington, DC 20593. ILs may not be subcontracted by an IL for BWMS approval testing unless previously authorized by the Coast Guard. If the IL identified in the application requests authorization to subcontract approval tests or evaluations, the Coast Guard must evaluate the suitability of each identified IL prior to conducting any tests or evaluations required under this subpart. A request for authorization to subcontract must be sent to the Commandant (CG–521), 2100 2nd Street, SW., Washington, DC 20593.

(f) Upon receipt of the approval application, the IL will conduct a readiness evaluation and determine the acceptability for testing.

(g) The readiness evaluation will examine the design and construction of the BWMS to determine whether there are any fundamental problems that might constrain the ability of the BWMS to manage ballast water as proposed by the manufacturer or to operate it safely onboard vessels. This evaluation must consider the following:

(1) The health and safety of the crew, including potential long term effects as determined by the EPA;

(2) Any potential adverse environmental effects as determined by the EPA;

(3) Interactions with vessel systems and cargo and the potential impacts to a vessel, including effects on corrosion in the ballast water system and other spaces;

(h) To be approved for testing and evaluations, a BWMS must:

(1) Be designed and constructed according to the requirements of § 162.060–20;

(2) Meet the definition of a complete BWMS, as defined in this subpart, to include both ballast water treatment equipment and control and monitoring equipment. Only complete systems in the configurations in which they are intended for sale and use will be accepted for approval testing. The Coast Guard will not separately approve treatment, control, or monitoring components; and

(3) Meet all existing safety and environmental regulatory requirements for all locations and conditions where the system will be operated during the testing and evaluation period.

(i) The IL has the right to reject a proposed BWMS for testing and evaluation if it does not satisfy the requirements in (h), is not deemed ready for approval testing and evaluations, or, if for technical or logistical reasons, that IL does not have the capabilities to accommodate the BWMS for testing or evaluation.

(j) For each approval test to be completed, the IL must prepare a written test plan in accordance with § 162.060–24.

(k) Upon notification by the IL that the BWMS is acceptable for testing, the manufacturer must provide a complete BWMS for testing and evaluation to the IL.

(l) For all land-based tests, the BWMS must be set up in accordance with the BWMS Operation, Maintenance and Safety Manual, with respect to mounting water supply and discharge fittings.

(m) Prior to commencing land-based or shipboard testing required under this subpart, the manufacturer must sign a written statement to attest that the system was properly assembled and installed at the IL or onboard the test vessel.

(n) All approval testing and evaluations must be conducted in

accordance with testing requirements of this subpart and within the range or rated capacity of the BWMS.

(o) Upon completion of all approval tests and evaluations, the IL must follow the requirements of 46 CFR 159.005–9(a)(5) and ensure a complete Test Report is forwarded to the Commanding Officer, U.S. Coast Guard Marine Safety Center, Jemal Building, JR 10–0525, 2100 Second Street, SW., Washington, DC 20593.

Dated: August 17, 2009.

Thad W. Allen,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. E9–20312 Filed 8–27–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2001–10486]

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters; Draft Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a Draft Programmatic Environmental Impact Statement (DPEIS) for the rulemaking entitled ''Standards for Living Organisms in Ships' Ballast Water'' (Docket No. USCG–2001–10486), published elsewhere in today's issue of the **Federal Register**. This DPEIS provides an assessment of the potential environmental impacts associated with the proposed establishment of ballast water discharge standards. The standards would be used to approve alternative ballast water management methods that are effective in preventing or reducing the introduction of nonindigenous species via discharged ballast water into United States waters. We request your comments on this DPEIS.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before November 27, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2001–10486 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 notice, call or e-mail Mr. John Morris, Project Manager, Environmental Standards Division, U.S. Coast Guard Headquarters, telephone 202–372–1433, e-mail: *John.C.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the Draft Programmatic Environmental Impact Statement (DPEIS). All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2001–10486) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''submit a comment'' box, which will then become highlighted in blue. Insert ''USCG–2001–10486'' in the Keyword box, click ''Search'', and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and DPEIS: To view the comments and the DPEIS, go to *http://www.regulations.gov,* enter the docket number for this rulemaking (USCG–2001–10486) in the Keyword box, and click ''Search''. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

The United States Coast Guard (USCG) has evaluated the impacts to the environment from a range of alternative ballast water discharge standards (BWDS). BWDS would be used to approve ballast water management systems (BWMS) that are at least as effective as ballast water exchange in preventing or reducing the introduction of nonindigenous species (NIS) via discharged ballast water.

Ballast water is taken on by a vessel to increase the water draft, change the trim, regulate the stability, or maintain stress loads within acceptable operational limits. The term NIS refers to organisms found outside of their native or historical range. In cases where they invade ecosystems, NIS may alter aquatic and marine ecosystems and biodiversity, impact commercial and recreational fisheries, cause infrastructure damage, contribute to potential risks to human health, and generally create detrimental economic impacts. Ballast water discharge (BWD) is a major pathway for NIS introduction from vessels operating in or entering United States waters.

On September 26, 2003, the USCG announced its proposed action to establish BWDS that would be effective in preventing the introduction and spread of NIS via discharged ballast water. (68 FR 55559). This Draft Programmatic Environmental Impact Statement (DPEIS) addresses the effects on the human and natural environment of five alternatives for the proposed regulatory action to establish BWDS. This DPEIS is issued in conjunction with a Notice of Proposed Rulemaking, published elsewhere in today's **Federal Register**. The DPEIS will be used to make an informed decision about BWDS and to understand the nationwide environmental and socioeconomic implications of the decision.

Draft Programmatic Environmental Impact Statement (DPEIS)

We request your comments on the alternatives analyzed in the DPEIS, methodologies used in the DPEIS, and possible sources of data or information not included in the DPEIS. Your comments will be considered in preparing the Final Programmatic Environmental Impact Statement (FPEIS).

The USCG is the lead federal agency for this action under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) as reauthorized and amended in the National Invasive Species Act of 1996 (NISA).

Dated: August 17, 2009.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E9–20313 Filed 8–27–09; 8:45 am]

BILLING CODE P

Federal Register

Friday,
August 28, 2009

Part V

Environmental Protection Agency

40 CFR Part 449

Effluent Limitation Guidelines and New Source Performance Standards for the Airport Deicing Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 449

[EPA–HQ–OW–2004–0038 FRL–8948–2]

RIN 2040–AE69

Effluent Limitation Guidelines and New Source Performance Standards for the Airport Deicing Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing technology-based effluent limitation guidelines (ELGs) and new source performance standards (NSPS) under the Clean Water Act (CWA) for discharges from airport deicing operations. The requirements generally would apply to wastewater associated with the deicing of aircraft and airfield pavement at primary commercial airports. The ELGs would be incorporated into the NPDES permits issued by EPA, states or tribes. EPA expects compliance with this regulation to reduce the discharge of deicing-related pollutants by at least 44.6 million pounds per year. EPA estimates the annual cost of the rule would be $91.3 million.

DATES: Comments must be received on or before December 28, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget on or before September 28, 2009.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OW–2004–0038 by one of the following methods:

- *http:www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2004–0038.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2004–0038. Please include a total of 3 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2004–0038. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information by calling 202–566–2426.

Instructions: Direct your comments to Docket No EPA–HQ–OW–2004–0038. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The 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. A detailed record index, organized by subject, is available on EPA's Web site at *http://epa.gov/guide/airport.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division, *telephone:* 202–566–1026; *e-mail: strassler.eric@epa.gov* or Brian D'Amico, Engineering and Analysis Division, *telephone:* 202–566–1069; *e-mail: damico.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Example of regulated entity	North American Industry Classification System Code
Industry	Primary airports with over 1,000 annual jet departures that conduct deicing operations.	481, 4881

This section is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities that do not meet the above criteria could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria listed in § 449.01 and the definitions in § 449.02 of the rule and detailed further in Section IV of this preamble. If you still have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How To Submit Comments

The public may submit comments in written or electronic form. (*See* the **ADDRESSES** section above.) Electronic comments must be identified by the docket no. EPA–HQ–OW–2004–0038 and must be submitted as a WordPerfect, MS Word or ASCII text file, avoiding the use of special characters and any form of encryption. EPA requests that any graphics included in electronic comments also be provided in hard-copy form. EPA also will accept comments and data on disks in the aforementioned file formats. Electronic comments received on this notice may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent by e-mail.

Supporting Documentation

The rule proposed today is supported by a number of documents including:

- Technical Development Document for Proposed Effluent Limitation Guidelines and Standards for the Airport Deicing Category (TDD), Document No. EPA–821–R–09–004;
- Economic Analysis for Proposed Effluent Limitation Guidelines and Standards for the Airport Deicing Category (EA), Document No. EPA–821–R–09–005;
- Environmental Impact and Benefit Assessment for Proposed Effluent Limitation Guidelines and Standards for the Airport Deicing Category (EIB), Document No. EPA–821–R–09–003.

These documents are available in the public record for this rule and on EPA's Web site at *http://epa.gov/guide/airport.* They are available in hard copy from the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242–2419, telephone 800–490–9198, *http://epa.gov/ncepihom.*

Overview

The preamble describes the terms, acronyms, and abbreviations used in this notice; the background documents that support these proposed regulations; the legal authority of these rules; a summary of the proposal; background information; and the technical and economic methodologies used by the Agency to develop these regulations. This preamble also solicits comment and data on specific areas of interest.

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I. Legal Authority

EPA is proposing this regulation under the authorities of sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361 and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

II. Purpose and Summary of Proposed Rule

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitation guidelines and standards (''effluent guidelines'') and (2) promulgating new effluent guidelines. On September 2, 2004, EPA published an Effluent Guidelines Plan (69 FR 53705) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Airport Deicing Category. Today EPA proposes to set national standards for control of wastewater discharges from deicing operations at airports. Deicing operations include removal of ice from aircraft, application of chemicals to prevent initial icing or further icing (anti-icing), and removal of (and preventing) ice from airfield pavement (runways, taxiways, aprons and ramps).

Commercial airports and air carriers conduct deicing operations as required by the Federal Aviation Administration (FAA). Airport discharges from deicing operations may affect water quality, including reductions in dissolved oxygen, fish kills, reduced organism abundance and species diversity, contamination of drinking water sources (both surface and groundwater), creation of noxious odors and discolored water in residential areas and parkland, and other effects.

The proposed effluent guidelines and standards address both the wastewater collection practices used by airports, and the treatment of those wastes. Airports within the scope of this proposed rule would be required to collect spent aircraft deicing fluid (ADF) and treat the associated wastewater. Additionally, airports performing airfield pavement deicing would be required to use non-urea-based deicers. The requirements would be implemented in CWA discharge permits.

III. Background

A. Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters.'' (33 U.S.C. 1251(a)). The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S. except as authorized under the CWA. Under section 402 of the CWA, EPA authorizes discharges by a National Pollutant Discharge Elimination System (NPDES) permit. The CWA also authorizes EPA to establish national technology-based effluent limitation guidelines and standards (effluent guidelines or ELGs) for discharges from different categories of point sources, such as industrial, commercial and public sources.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge wastewater indirectly through sewers flowing to publicly owned treatment works (POTWs). *See* section 307(b) and (c), 33 U.S.C. 1317(b) and (c). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers that may pass through, interfere with or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements. *See* 40 CFR 403.5.

Direct dischargers must comply with effluent limitations in NPDES permits. Indirect dischargers, who discharge through POTWs, must comply with pretreatment standards. Technology-based effluent limitations in NPDES

permits are derived from effluent limitation guidelines (CWA sections 301 and 304) and new source performance standards (sec. 306) promulgated by EPA, or based on best professional judgment where EPA has not promulgated an applicable effluent guideline or new source performance standard. Additional limitations based on water quality standards (sec. 303) may also be included in the permit in certain circumstances. The ELGs are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

EPA promulgates national effluent limitation guidelines and standards of performance for major industrial categories for three classes of pollutants: (1) Conventional pollutants (*i.e.,* total suspended solids, oil and grease, biochemical oxygen demand, fecal coliform, and pH); (2) toxic pollutants (*e.g.,* toxic metals such as chromium, lead, nickel, and zinc; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene); and (3) non-conventional pollutants (*e.g.,* ammonia-N, formaldehyde, and phosphorus).

B. NPDES Permits

Section 402 of the CWA requires permits for discharges of pollutants to waters of the United States. In most states, the permits are issued by a state agency that has been authorized by EPA. Currently 46 states and 1 U.S. territory are authorized to issue NPDES permits. In the other states and territories, EPA issues the permits.

Section 402(p) of the Act, added by the Water Quality Act of 1987 (Pub. L. 100–4, February 4, 1987), requires stormwater dischargers ''associated with industrial activity'' to be covered under an NPDES permit. In its initial stormwater permit regulations, called the ''Phase I'' stormwater regulations (55 FR 47990, November 16, 1990), EPA designated air transportation facilities, including both airlines and airports, which have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations as subject to NPDES stormwater permitting requirements. *See* 40 CFR 122.26(b)(14)(viii).

Airport stormwater discharges may be controlled under a general NPDES permit, which covers multiple facilities with similar types of operations and/or wastestreams, or by an individual permit. (An airport may have additional NPDES permits for non-stormwater discharges, such as from equipment repair and maintenance facilities. The following discussion pertains only to stormwater permits.)

1. General Permits

Currently most airport deicing discharges are covered by a general permit issued either by EPA or by an NPDES-authorized state agency. In most areas where EPA is the permit authority, the Multi-Sector General Permit (MSGP) covers airport deicing discharges (73 FR 56572, September 29, 2008). Many NPDES-authorized state agencies have issued general permits in their respective jurisdictions with requirements similar to the MSGP. An airport seeking coverage under a general permit submits a Notice of Intent (NOI) to the permit authority rather than a detailed permit application. By submitting an NOI, the permittee is agreeing to comply with the conditions in the published permit.

For airports, the major requirements of the MSGP are:

- Develop a stormwater pollution prevention plan (SWPPP), including a drainage area site map, documentation of measures used for management of runoff, an evaluation of runway and aircraft deicing operations, and implementation of a program to control or manage contaminated runoff, including consideration of various listed control practices;
- Implement deicing source reduction measures, including minimizing or eliminating the use of urea and glycol-based deicing chemicals; minimizing contamination of stormwater runoff from runway and aircraft deicing operations; evaluating whether over-application of deicing chemicals occurs; and consider use of various listed source control measures;
- For airports using over 100,000 gal. of glycol based deicing chemicals and/or 100 tons or more of urea annually, monitor discharges quarterly for the first four quarters of the permit cycle, for the following pollutants: biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), ammonia and pH;
- If the average of the four monitoring values for any parameter exceeds its benchmark, implement additional control measures where feasible, and continue monitoring;
- Conduct an annual site inspection during the deicing season, and during periods of actual deicing operations if possible; and routine facility inspections at least monthly during the deicing season.

2. Individual Permits

Some EPA and state NPDES-permitting authorities have required certain airports to obtain individual permits. In these situations, an airport must submit a detailed application and the permit authority develops specific requirements for the facility.

Some individual permits contain specialized requirements for monitoring and/or best management practices. Some of these permits also contain numeric water quality-based effluent limitations (WQBELs). Information on water quality-based permitting is available on EPA's Web site at *http://cfpub.epa.gov/npdes/generalissues/watertechnology.cfm*.

C. Effluent Guidelines and Standards Program

Effluent guidelines and new source performance standards are technology-based regulations that are developed by EPA for a category of dischargers. These regulations are based on the performance of control and treatment technologies. The legislative history of CWA section 304(b), which is the heart of the effluent guidelines program, describes the need to press toward higher levels of control through research and development of new processes, modifications, replacement of obsolete plans and processes, and other improvements in technology, taking into account the cost of controls. Congress also directed that EPA not consider water quality impacts on individual water bodies as the guidelines are developed. *See* Statement of Senator Muskie (Oct. 4, 1972), reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972, at 170. (U.S. Senate, Committee on Public Works, Serial No. 93–1, January 1973.)

There are four types of standards applicable to direct dischargers (dischargers to surface waters), and two standards applicable to indirect dischargers (discharges to publicly owned treatment works or POTWs).

1. Best Practicable Control Technology Currently Available (BPT)

Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. EPA may promulgate BPT effluent limits for conventional, toxic, and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the

effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. *See* CWA sec. 304(b)(1)(B). If, however, existing performance is uniformly inadequate, EPA may establish limitations based on higher levels of control than currently in place in an industrial category when based on an Agency determination that the technology is available in another category or subcategory, and can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify additional levels of effluent reduction for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974). Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand measured over five days (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501; 40 CFR 401.16).

3. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of stringency for controlling direct discharge of toxic and nonconventional pollutants. In general, BAT effluent limitation guidelines represent the best economically achievable performance of facilities in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts including energy requirements, and such other factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, EPA determines economic achievability on the basis of total costs to the industry and the effect of compliance with BAT limitations on overall industry and subcategory financial conditions. As with BPT, where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)

New Source Performance Standards reflect effluent reductions that are achievable based on the best available demonstrated control technology. Owners of new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (that is, conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)

Pretreatment standards apply to discharges of pollutants to publicly owned treatment works (POTW) rather than to discharges to waters of the United States. Pretreatment Standards for Existing Sources are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards are technology-based and are analogous to BAT effluent limitation guidelines. The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. These regulations establish pretreatment standards that apply to all non-domestic dischargers. *See* 52 FR 1586 (Jan. 14, 1987).

6. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act calls for EPA to promulgate pretreatment standards for new sources at the same time it promulgates new source performance standards. Such pretreatment standards must prevent the discharge of any pollutant into a POTW that may interfere with, pass through, or may otherwise be incompatible with the POTW. EPA promulgates categorical pretreatment standards for existing sources based principally on BAT technology for existing sources. EPA promulgates pretreatment standards for new sources based on best available demonstrated technology for new sources. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency typically considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

IV. Scope/Applicability of Proposed Rule

EPA solicits comments on various issues specifically identified in this preamble as well as any other issues related to this rule that are not specifically addressed in today's notice.

A. Facilities Subject to 40 CFR Part 449

EPA is proposing to establish effluent limitation guidelines and standards for primary commercial airports that conduct deicing operations and have more than 1,000 annual departures of scheduled commercial jet aircraft. Further information on the rationale for the proposed scope is provided in Section VII.D.1 of this preamble and in both the TDD and the EA.

B. Overview of Technology Requirements

The proposed rule would require an airport subject to this Part to:

- Collect at least a specified proportion (either 20 or 60 percent) of available ADF after it is sprayed on aircraft;
- Meet a specified numeric effluent limit for ADF wastewater collected and discharged on site; and
- Certify that it uses airfield pavement deicers that do not contain urea.

All references to ADF in today's proposed rule are for normalized ADF, which is ADF less any water added by the manufacturer or customer before ADF application.

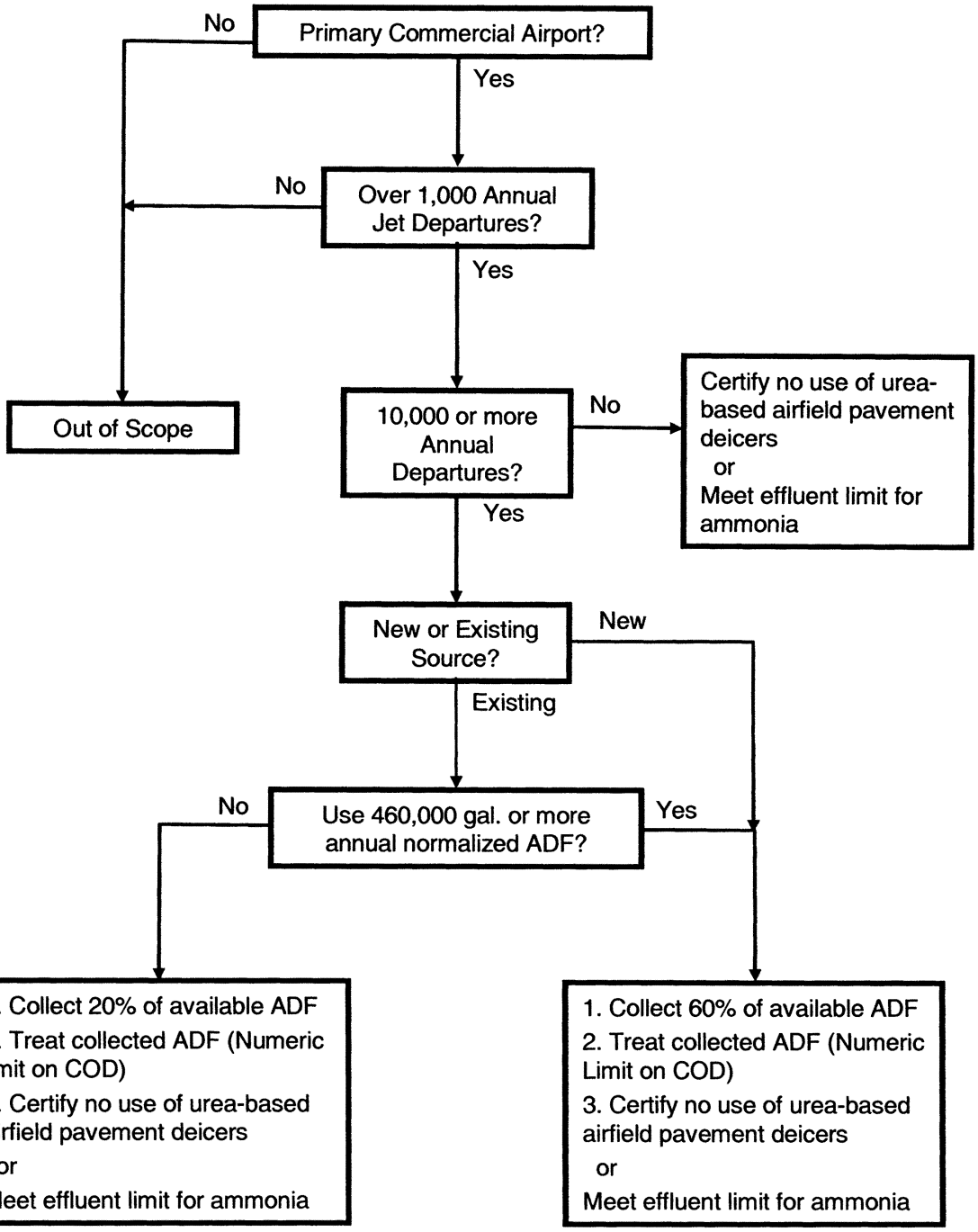
The technologies that serve as the basis for the proposed ELGs are summarized in Table IV–1 and Figure IV–1. These provisions are explained in Section VII of this preamble.

TABLE IV–1—SUMMARY OF PROPOSED AIRPORT DEICING EFFLUENT LIMITATION GUIDELINES AND STANDARDS

Regulatory level	Technology basis	Technical components	
		Airports > 1,000 annual jet departures and >= 10,000 annual departures	Airports > 1,000 annual jet departures and < 10,000 annual departures
BAT	1. 60% or 20% ADF capture.	1. Capture 60% of available ADF (for airports having >= 460,000 gal. ADF usage) or capture 20% (for airports < 460,000 gal. ADF usage).	1. Certify use of non-urea-based pavement deicers or Meet effluent limit for ammonia.
	2. Biological treatment ...	2. Treat wastewater to meet effluent limit for chemical oxygen demand (COD).	
	3. Pavement deicer product substitution.	3. Certify use of non-urea-based pavement deicers or Meet effluent limit for ammonia.	
NSPS	1. 60% ADF capture	1. Capture 60% of available ADF	1. Certify use of non-urea-based pavement deicers or Meet effluent limit for ammonia.
	2. Biological treatment ...	2. Treat wastewater to meet effluent limit for chemical oxygen demand (COD).	
	3. Pavement deicer product substitution.	3. Certify use of non-urea-based pavement deicers or Meet effluent limit for ammonia.	

Note: All references to ADF are for normalized ADF, which is ADF less any water added by the manufacturer or customer before ADF application.

Figure IV-1. Airport Deicing Effluent Guidelines and Standards: Proposed Scope of Regulation



V. Industry Profile

A. Airport Population

The Airport and Airway Improvement Act (AAIA), 49 U.S.C. Chapter 471, defines airports by categories of airport activities, including Commercial Service (Primary and Non-Primary), Cargo Service, and Reliever. These categories are not mutually exclusive; an airport may be classified in more than one of these categories. Another group of generally smaller airports, not specifically defined by AAIA, is commonly known as ''general aviation'' airports. EPA estimates that there are approximately 500 commercial service airports.

Commercial service airports are publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger service. Passenger boardings refer to revenue passenger boardings on an aircraft in service in air commerce, whether or not in scheduled service. The definition also includes passengers who continue on an aircraft in international flight that stops at an airport in any of the 50 States for a non-traffic purpose, such as refueling or aircraft maintenance rather than passenger activity. Passenger boardings at airports that receive scheduled passenger service are also referred to as ''enplanements.''

Primary commercial service airports (primary airports) have more than 10,000 passenger boardings each year. Primary airports are further subdivided into Large Hub, Medium Hub, Small Hub and Non-Hub classifications, based on the percentage of total passenger boardings within the United States in the most current calendar year ending before the start of the current fiscal year.

B. FAA Deicing Requirements

The Federal Aviation Administration requires airlines to deice aircraft and airfield pavement to protect the safety of passenger and cargo operations. FAA regulations in 14 CFR Part 121 require a complete deicing/anti-icing program. The regulations in 14 CFR Parts 121, 125 and 135 regulate takeoff when snow, ice, or frost is adhering to wings, propellers, control surfaces, engine inlets, and other critical surfaces of the aircraft. FAA does not require airlines to use a specific technology when deicing aircraft. In fact, airlines develop their own deicing protocols to meet the requirements of 14 CFR 125.221. Additionally, FAA has released Advisory Circulars (AC) which provide guidance for aircraft and airfield deicing, including AC 20–73A (Aircraft Ice Protection), AC 135–16 (Ground Deicing & Anti-icing Training & Checking), AC 120–58 (Pilot Guide: Large Aircraft Ground Deicing) and AC 150/5300–14B (Design of Aircraft Deicing Facilities). Advisory Circulars are available on FAA's Web site at *http://www.airweb.faa.gov.*

C. Description of Deicing Operations

A major concern for the safety of passengers is the clearing of ice and snow buildup on runways, taxiways, roadways, gate areas, and aircraft. Two basic types of deicing/anti-icing operations are generally performed at an airport: the deicing/anti-icing of aircraft, and the deicing/anti-icing of paved areas, including runways, taxiways, roadways, and gate areas. The most common technique for the deicing/anti-icing of aircraft is the application of chemical deicing/anti-icing agents. Deicing of runways, taxiways, and roadways is most commonly performed using mechanical means, but may also be performed using chemical agents. The anti-icing of paved areas is typically conducted with anti-icing chemicals.

1. Aircraft Deicing

Aircraft deicing involves the removal of frost, snow, or ice from an aircraft. Aircraft anti-icing generally refers to the prevention of the accumulation of frost, snow, or ice. The responsibility for performing deicing/anti-icing varies between airports, but it is usually performed by a combination of individual airlines and support contractors, commonly called fixed-base operators (FBOs) or ground service providers. Airlines typically select procedures for deicing/anti-icing their aircraft, which are then approved by the FAA.

a. Chemical Deicing Practices

In the deicing/anti-icing process, aircraft are usually sprayed with deicing/anti-icing fluids (ADF) that contain chemical deicing agents; however, non-chemical methods are also performed. Deicing/anti-icing occurs when the weather conditions are such that ice or snow accumulates on an aircraft. During snowstorms, freezing rain, or cold weather that causes frost to accumulate on aircraft surfaces including the wings, deicing is necessary to ensure the safe operation of aircraft. Studies have concluded that even a small amount of ice, if located on critical aircraft surfaces (*e.g.,* leading edge of the wing), can cause significant decreases in lift.

The typical deicing season runs from October through April for most airports in the northern U.S. In colder areas, the deicing season may extend over a longer period. In warmer climates, the deicing season may be shorter or deicing may rarely occur. However, it is important to note that deicing may be needed in hot, humid areas at any time. Some aircraft may experience frost build-up after landing at an airport in a hot, humid area. (The phenomenon is similar to frost forming on a cold glass of water exposed to hot, humid air and occurs for the same reason that the cold glass developed frost. Fuel chills when a plane operates at high altitudes where the temperature is very cold. When the plane lands in a hot, humid area, the cold fuel chills the fuel tank. If the tank is very close to the surface of the wing, it causes frost to form on the wing.)

ADF works by adhering to aircraft surfaces to remove and/or prevent snow and ice accumulation. Non-chemical methods include the use of mechanical or thermal means (*e.g.,* infrared heating) to prevent, remove, or melt ice and snow. Two types of deicing are performed: Wet-weather and dry-weather deicing, depending on a number of climatic and operational factors. Wet-weather deicing is performed during storm events that include precipitation such as snow, sleet, or freezing rain. Dry-weather deicing is performed when changes in the ambient temperature cause frost or ice to form on aircraft but no precipitation is present. Dry-weather deicing may also be performed on some types of aircraft whose fuel tanks become super-cooled during high-altitude flight, resulting in ice formation at lower altitudes and after landing. Dry-weather deicing may occur at temperatures up to 55° Fahrenheit (F), but generally requires a significantly smaller volume of deicing fluid than wet-weather deicing.

During typical wet-weather conditions, 150 to 1,000 gallons of ADF may be used on a single commercial jet, while as little as 10 gallons may be used on a small corporate jet. An estimated 1,000 to 4,000 gallons may be needed to deice a larger commercial jet during severe weather conditions. Aircraft anti-icing fluids are applied in much smaller volumes than their deicing counterparts are. A commercial jet requires approximately 35 gallons of fluid for anti-icing after deicing. Generally, dry-weather deicing requires 20 to 50 gallons of deicing fluid, depending on the size of the aircraft.

Chemical aircraft deicers are categorized into four classes. Not all types are currently used. Fluid types vary by composition and allowed holdover time (the estimated time for which deicing/anti-icing fluid will prevent the formation of frost or ice and the accumulation of snow on the treated surfaces of an aircraft). Type I is the most commonly used fluid and is used primarily for aircraft deicing. These types of fluids typically contain glycol as the active ingredient (usually ethylene glycol or propylene glycol), along with water and additives, and remove accumulated ice and snow from aircraft surfaces. Types II, III, and IV were developed for anti-icing. These fluids form a protective anti-icing film on aircraft surfaces to prevent the accumulation of ice and snow. Anti-icing fluids are composed of either ethylene glycol or propylene glycol, a small amount of thickener, water, and additives. The additives in aircraft

deicing and anti-icing fluids may include corrosion inhibitors, flame retardants, wetting agents, identifying dyes, and foam suppressors. Type IV fluids can provide up to a 70 minute holdover time, depending on atmospheric conditions. (Holdover time is the amount of time a given aircraft treatment by ground anti-icing fluid remains effective. Holdover time effectively runs out when frozen deposits start to form or accumulate on treated aircraft surfaces.) Most large airlines use both Type I and Type IV fluids.

Aircraft deicing and anti-icing operations usually occur at terminal gates, gate aprons, taxiways, or centralized deicing pads. Centralized deicing pads may be located near terminals and gates, along taxiways serving departure runways, or near the departure end of runways. Each airport may use only one or a combination of all of these locations for deicing/anti-icing. The amount and type of deicing performed at each location may vary. For example, an airport with deicing pads may allow air carriers to perform minimal deicing at gates, at a level sufficient to move the aircraft safely, and require all other deicing operations to be conducted at a pad.

If deicing is not conducted at the gate, then, prior to takeoff, an aircraft will taxi to an airport-approved deicing/anti-icing location. Depending on the deicing location design, several aircraft may be deiced simultaneously on a single deicing pad. Deicing trucks and/or spray equipment mounted on fixed booms apply the appropriate ADF. One to four deicer trucks may be used for deicing a single aircraft, depending on its size and weather conditions. When holdover times are exceeded prior to takeoff, secondary deicing/anti-icing is necessary. If an aircraft must return to the gate or another designated location for secondary deicing/anti-icing, its departure may be substantially delayed. The need for secondary deicing will likely decrease as more airlines use Type IV fluids to extend the allowable holdover time.

While the FAA has issued regulations and guidance on conducting deicing/anti-icing operations, the aircraft pilot is ultimately responsible for determining whether the deicing performed is adequate. The pilot may inspect the aircraft after deicing and order additional deicing or anti-icing.

Dry-weather deicing, also referred to as clear ice deicing, may be performed whenever ambient temperatures are cold enough to form ice on aircraft wings (below 55° F). Dry-weather deicing is also used to defrost windshields and wingtips on commuter planes and is usually conducted throughout the entire deicing/anti-icing season.

b. Non-Chemical Deicing Practices

Non-chemical deicing methods involve mechanical or thermal means to remove ice and snow from aircraft surfaces. Dry, powdery snow can be swept from aircraft using brooms or brushes. Hot air blowers can also be used to remove snow mechanically with forced air and to melt ice and snow. In addition, some smaller aircraft are equipped with inflatable pneumatic or hydraulic boots that can expand to break ice off the leading edges of wings and elevators.

Mechanical snow removal methods (*e.g.,* using nylon brooms and ropes to remove snow from parked aircraft) are typically only used in the early morning because they are time-intensive and labor-intensive, and would be too disruptive to airline schedules during the day. Mechanical methods are typically also used in conjunction with fluid application and are dependent on climate and operational variables. Personnel must be properly trained and provided with appropriate equipment so as not to damage navigational equipment mounted on aircraft. Airlines typically use brooms to remove as much snow and ice as possible before applying conventional aircraft deicing fluids.

Other non-chemical deicing practices—infrared heating, forced air and hot air systems—are being used at several airports throughout the U.S. These technologies are described in Section VII.B.3, Pollution Prevention Technologies.

2. Airfield Pavement Deicing

Pavement snow removal and deicing/anti-icing removes or prevents the accumulation of frost, snow, or ice on runways, taxiways, aprons, gates, and ramps. A combination of mechanical methods and chemical deicing/anti-icing agents is used for pavement deicing at airports. Runway deicing/anti-icing is typically performed by airport personnel or a contractor hired by the authority. Some ramp, apron, gate, and taxiway deicing/anti-icing may be performed by other entities, such as airlines and FBOs that operate on those areas. Pavement deicing typically occurs during the same season as aircraft deicing, but may be shorter or longer than the aircraft deicing season.

a. Mechanical Methods

Mechanical methods, such as plows, brushes, blowers, and shovels for snow removal, are the most common form of runway deicing, and may be used in combination with chemical methods. Airports generally own multiple pieces of snow removal equipment and have employees trained to operate them. Sand may be used to increase the friction of icy paved areas. Because winter storm events can be unpredictable, personnel trained in pavement deicing/anti-icing may be available at an airport 24 hours a day during the winter season.

b. Chemical Methods

Because ice, sleet, and snow may be difficult to remove by mechanical methods alone, most airports use a combination of mechanical methods and chemical deicing agents. Common pavement deicing and anti-icing agents include potassium acetate, sodium acetate, urea, ethylene glycol-based fluids, propylene glycol-based fluids, and sodium formate. Road salt (*i.e.,* sodium chloride or potassium chloride) may be used to deice/anti-ice paved areas that are not used by aircraft (*e.g.,* automobile roadways and parking areas) but are not considered suitable for deicing/anti-icing taxiways, runways, aprons, and ramps because of their corrosive effects on aircraft.

Many airports perform deicing of heavy accumulations of snow and ice using mechanical equipment followed by chemical applications. Pavement anti-icing may be performed based on predicted weather conditions and pavement temperature. Deicing and anti-icing solutions are applied using either truck-mounted spray equipment or manual methods.

3. Estimates of Deicing Activity

a. Aircraft Deicing Chemical Usage

Airlines use approximately 25 million gallons of ADF annually, consisting of 22.1 million gallons of propylene glycol-based deicers and almost 3 million gallons of ethylene glycol-based deicers. EPA estimates that approximately 320 primary airports conduct deicing operations annually and that approximately 85 percent of this ADF (21.6 million gallons) is used at 110 of the 320 airports.

b. Airfield Pavement Deicing Chemical Usage

Primary airports use approximately 71 million pounds of chemical deicers on airfield pavement (runways, taxiways and ramps) annually. The six most frequently used deicers, with estimated percentages by weight, are as follows: potassium acetate (63 percent); urea (12 percent); propylene glycol-based fluids (11 percent); sodium acetate (9 percent);

sodium formate (3 percent); and ethylene glycol-based fluids (2 percent).

VI. Summary of Data Collection

A. Previous EPA Data Collection Activities

1. 1993 Screener Questionnaire

In 1992, EPA began developing effluent guidelines and standards for the Transportation Equipment Cleaning (TEC) category (40 CFR Part 442). The scope of the TEC regulation at that time included facilities that clean the interiors of tank trucks, rail tank cars, and tank barges; facilities that clean aircraft exteriors; and facilities that deice/anti-ice aircraft and/or airport pavement. Initial data collection efforts for this project related to airport deicing operations included development and administration of a ''screener'' questionnaire that was administered in 1993. The screener questionnaire was developed, in part, to enable EPA to: (1) Identify facilities that perform TEC aircraft operations; (2) evaluate facilities based on wastewater, economic, and operational characteristics; and (3) develop technical and economic profiles of the industry. Subsequent to distribution of the screener questionnaire, EPA decided not to include the aircraft segment as part of the TEC effluent guidelines that were promulgated in 2000 (65 FR 49665, August 14, 2000). The Agency indicated that its recently-issued stormwater regulations and permits under the NPDES program imposed new requirements for airport discharges, and that aircraft cleaning and airport deicing operations were significantly different from other portions of the TEC category.

EPA mailed the screener questionnaire to 760 entities that potentially perform aircraft exterior cleaning and/or aircraft or pavement deicing/anti-icing operations. Following the screener questionnaire mail-out and analyses of responses, EPA estimated that, in 1993, there were 588 entities *(i.e.*, airlines and FBOs) that perform deicing/anti-icing operations.

2. 1998–99 Preliminary Data Summary

EPA conducted a study of airport deicing practices in 1998–99 and published a report in 2000. (Preliminary Data Summary: Airport Deicing Operations (Revised), Document No. 821–R–00–016, August 2000). The study described deicing operations in the industry, wastewater characteristics and procedures for its collection and treatment. The study was conducted to comply with CWA sec. 304(m), which requires the Agency to publish a biennial Effluent Guidelines Plan, and a consent decree in *Natural Resources Defense Council and Public Citizen, Inc.* v. *Browner* (D.D.C. 89–2980, as modified February 4, 1997). As part of the study, EPA distributed short questionnaires to several aviation sectors, including those involved in deicing; conducted site visits to airports; and conducted wastewater sampling episodes.

a. Questionnaires

In 1999, EPA sent questionnaires to airports, an airline industry association, equipment vendors, and publicly owned treatment works (POTW), and requested data about the 1998–99 deicing season. The Airport Questionnaire was sent to nine airports and asked for information on aircraft and airfield deicing activities; wastewater handling and treatment; and airport structure, finances and operations. A questionnaire requesting financial data was sent to an airline industry association, which provided information about the deicing operations of 12 of its members, and eight regional airlines also received questionnaires. The Vendor Questionnaire was sent to nine businesses and requested information about equipment used to collect, control, recycle/recover, treat or reduce the generation of glycol-contaminated wastewater from aircraft and airfield deicing operations. The POTW Questionnaire was sent to nine facilities and requested information about potential pollutants in wastewater discharges from airports, and the potential environmental impacts stemming from POTWs' acceptance of these wastes.

b. Wastewater Sampling

EPA conducted six sampling episodes for the study. Two of these episodes obtained data on ADF, and four episodes obtained data on ADF-contaminated wastewater and final effluent data from airports with various collection and treatment systems.

c. Airport Site Visits

EPA visited 16 airports between 1997 and 1999 (including one visit before the formal commencement of the study). Information gathered included deicing operations, names and quantities of deicing chemical products used, wastewater characterization, treatment technologies and costs, and financial data. The Agency obtained effluent self-monitoring data from some of the airports that were visited.

d. Other Data Sources

EPA collected data on NPDES permits and from the Toxic Release Inventory database, which have wastewater discharge information. EPA also collected data from state, local, and other federal agencies, including the FAA, Department of Transportation and the United States Geological Survey (USGS); and Canadian federal agencies involved with airport environmental issues. These included interviews conducted during site visits, airport effluent monitoring data, airline operations data (*i.e.*, departures and enplanement statistics), and economic and financial information about the industry. All of the collected data are available in the record for this proposed rule.

B. 2006–07 Industry Surveys

For this proposed rule, EPA developed a series of survey questionnaires to compile a complete profile of the industry with regard to type and amounts of deicing chemicals used, collection systems, and wastewater treatment systems. These questionnaires expanded on the Agency's earlier survey efforts by the design of a scientific national statistical sample of airports and development of a reasonable national estimate of deicing activity by major airlines. A comprehensive set of questions and data tables was also developed. In designing the questionnaires, EPA consulted with airport and airline industry representatives, including the American Association of Airport Executives (AAAE), Airports Council International—North America (ACI–NA) and the Air Transport Association (ATA). The Office of Management and Budget (OMB) approved the questionnaires on January 13, 2006, and EPA distributed the questionnaires during 2006 and 2007.

1. Airline Screener

EPA designed a short ''screener'' questionnaire to obtain basic information from air carriers on which organizations actually performed deicing services for a particular carrier, at specified airport locations (*i.e.,* the airline conducted its own deicing, it contracted with another airline, or it used an FBO). EPA used the results of this questionnaire to select respondents for the Detailed Airline Questionnaire. The screener was distributed to 72 airlines and requested information on deicing activities at 149 airports. EPA distributed the screener to the industry in April 2006.

2. Airport Questionnaire

EPA designed the Airport Deicing Questionnaire to serve as the Agency's primary data source for airport-specific

information. The questionnaire requested information on a number of topics including, general airport information, deicing operations, deicing stormwater collection and conveyance, deicing stormwater treatment, sampling data, pollution prevention, receiving waters, and airport financial information.

EPA distributed the Airport Deicing Questionnaire to the industry in April 2006. The questionnaire was sent to 153 airports, including a census of all large and medium hub airports, as well as a sample survey of all Small and Non-Hub Airports. (General aviation airports were not included in the survey, except for a few with large cargo operations, because these airports are used mainly by small private airplanes that typically do not fly during icing conditions, and therefore are sites where little or no ADF use occurs.)

3. Detailed Airline Questionnaire

EPA designed the Detailed Airline Questionnaire in order to learn more about the airlines' role in deicing operations, as well as to get information that is more precise on ADF usage. This questionnaire was EPA's primary data source for airline-specific information. The questionnaire asked questions on topics including deicing operations, ADF purchase and usage, pollution prevention practices, and operational costs. The questionnaire was sent in March 2007 to 58 air carriers, covering deicing operations at 57 airports. This questionnaire requested information on a number of topics including: General airline information, airline deicing practices, pollution prevention practices and deicing costs.

C. Site Visits

In order to become familiar with the day-to-day operations at airports, as well as learn some of the more site-specific issues that arise with deicing, EPA conducted site visits at more than 20 airports. EPA visited airports that had specific treatment technologies in place, in order to learn more about these technologies. Some of the airports included were Denver, Pittsburgh and General Mitchell (Milwaukee). All site visits were documented with Site Visit Reports (SVRs), which are in the record for today's proposed rule (Record Index, Section 2.3).

D. Wastewater Sampling Episodes

EPA collected several wastewater samples for chemical analysis during sampling episodes at six airports to characterize pollutants found in ADF-contaminated runoff, and to assess the performance of treatment systems. The Agency conducted episodes at these six airports in 2005 and 2006: Minneapolis/St. Paul International Airport, Detroit Metropolitan Wayne County International Airport, Albany International Airport, Denver International Airport, Greater Rockford (Illinois) Airport, and Pittsburgh International Airport. At the first two airports, EPA conducted one-day sampling episodes, to provide a general characterization of wastewater from deicing operations. The subsequent four events were multiple-day performance sampling episodes, which were designed to document the performance of wastewater treatment systems.

For each analytical chemical class or parameter, EPA collected 24-hour composite samples when possible, in order to capture the variability in the waste streams containing ADF generated throughout the day. EPA used the data from the laboratory analyses of these samples to develop a list of pollutants of concern, and characterize the raw wastewater at airports. EPA used the data collected from the influent, intermediate, and effluent points to analyze the efficacy of treatment at the facilities, and to develop current discharge concentrations, loadings, and the treatment technology options for the Airport Deicing effluent guideline. EPA used effluent data, along with data provided by industry in the questionnaires and other sources, to calculate the long-term averages and limitations for each of the proposed regulatory options. During each sampling episode, EPA collected flow rate data corresponding to each sample collected and production information from each associated production system for use in calculating pollutant loadings. EPA has included in the public record all information collected for which a facility has not asserted a claim of Confidential Business Information (CBI) or which would indirectly reveal information claimed to be CBI.

After conducting the sampling episodes, EPA prepared sampling episode reports for each facility. These reports included descriptions of the wastewater treatment processes, sampling procedures, and analytical results. EPA documented all data collected during sampling episodes in the sampling episode report for each sampled site. Non-confidential business information from these reports is available in the public record for this proposal. For detailed information on sampling and preservation procedures, analytical methods, and quality assurance/quality control procedures see the Quality Assurance Project Plans and the Sampling and Analysis Plans (Record Index, Section 2.4).

E. Other Data Collection

EPA collected other information from various other data sources including: National Pollutant Discharge Elimination System (NPDES) permits for information on current permit requirements; industry correspondence on technology costs and long-term wastewater monitoring data; and searches of technical and scientific literature, covering current deicing practices and treatment technologies, current airport deicing runoff data, chemical information and environmental impact studies, and current stormwater regulations in the United States and other countries.

F. Summary of Public Participation

EPA has met or corresponded with many airport and airline representatives, citizen and environmental groups, vendors of deicing chemicals and equipment, state permit agencies, other Federal agencies and engineering consulting firms. The Agency has attended conferences on airport deicing and has given presentations at several of those conferences. Correspondence from these organizations about the proposed rule is in the Record for the proposed rule.

VII. Technology Options, Costs, Wastewater Characteristics, and Pollutant Reductions

A. Wastewater Sources and Wastewater Characteristics

1. Aircraft Deicing

Most ADF is applied to aircraft through pressurized spraying systems, mounted either on trucks that move around an aircraft, or on large fixed boom devices located at a pad dedicated to deicing. Airlines typically purchase ADF in concentrated form (normalized) and dilute it with water prior to spraying.

Most of the aircraft deicing fluid is Type I fluid, which is not designed to adhere to aircraft surfaces. Consequently the majority of Type I ADF is available for discharge due to dripping, overspraying, tires rolling through or sprayed with fluid, and shearing during takeoff. Once the ADF has reached the ground, it will then mix with precipitation, as well as other chemicals found on airport pavements. (These chemicals typically include aircraft fuel, lubricants and solvents, and metals from aircraft, ground support and utility vehicles.) Water containing these substances enters an airport's storm drain system. At many airports, the

storm drains discharge directly to waters of the United States with no treatment.

Type IV fluid, an anti-icing chemical, is designed to adhere to the aircraft. Because of this adherence characteristic, EPA estimated that the majority of Type IV fluid is not available for discharge.

For the purposes of this proposed rule, the pollutant loadings are discussed in terms of applied ADF and how much of that is expected to be discharged. A more detailed discussion of loadings estimates is presented later in this section. Given the highly variable nature of storm events, it is difficult to estimate flows or concentrations of ADF-contaminated stormwater generated at an airport. Those factors are greatly dependent on the size of the storm event associated with the discharge, drainage characteristics, ADF collection systems (if present), and airport operations. Additionally, due to the design of drainage systems at some airports, their discharges may occur well after a storm event has completed.

2. Airfield Pavement Deicing

Most solid airfield deicing chemical products are composed of an active deicing ingredient (*e.g.,* potassium acetate, sodium acetate) and a small amount of additives (*e.g.,* corrosion inhibitors). Liquid airfield deicing chemical products are composed of an active ingredient (*e.g.,* potassium acetate, propylene glycol), water, and minimal additives. The airfield deicing products that include salts (*i.e.,* potassium acetate, sodium acetate, and sodium formate) will all ionize in water, creating positive salt ions (K^+, Na^+), BOD_5 and COD load as the acetate or formate ion degrades into carbon dioxide (CO_2) and water. Pavement deicers containing urea will degrade to ammonia, and generate BOD_5 and COD load as well.

Most of EPA's sampling data does not include airfield pavement deicers. However, EPA collected samples from a few locations at Detroit Metro Airport that contain airfield deicing stormwater. Large hub airports, both Detroit Metro and Pittsburgh, provided sampling data associated with stormwater contaminated by airfield pavement deicers. More information on these sampling activities is provided in the TDD. As with the aircraft deicers, the variablity of storm events and drainage systems make it difficult to estimate flows or concentrations of pavement deicing waste streams generated at an airport.

B. Control and Treatment Technologies in the Aviation Industry

The ADF application process has presented a challenge for airports attempting to manage their contaminated stormwater streams. The airlines' process of applying ADF to aircraft through high pressure spraying, combined with their typical practices of spraying the aircraft outdoors in multiple, large unconfined (but usually designated) spaces, results in pollutants being dispersed over a wide area and entering storm drains at multiple locations. This process contrasts sharply with many other industries where pollutants are generated in confined areas, managed through a piping system, and not commingled with precipitation.

EPA has identified several technologies that are available to collect and manage portions of the ADF wastestream. Some of these collection technologies are more effective than others; however, EPA has not identified any single technology that is capable of collecting all applied ADF. Typically, ADF that is not captured becomes available for discharge, either through an airport's drainage system, or from shearing off the aircraft during takeoff.

Once the ADF wastestream is collected, it can be treated, and this process is similar to many other industries that generate wastewater. EPA identified four technologies available for treating ADF wastewater.

EPA also examined pollution prevention technologies, which can reduce or eliminate use of ADF chemicals and urea for pavement deicing.

1. Aircraft Deicing Fluid Collection Technologies

a. Glycol Recovery Vehicle

A glycol recovery vehicle (GRV) is a truck that utilizes a vacuum mechanism to gather stormwater contaminated with ADF resulting from deicing operations. A GRV is a modular technology, in that collection capacity can be increased by using additional units, without the complicating factors of in-ground construction associated with some other technologies. An airport may increase its overall ADF collection capacity by purchasing or leasing larger units and/or additional units.

GRV trucks are typically stationed near the ADF spraying trucks and are deployed either during aircraft deicing activities or, after the aircraft deicing activity has completed. The truck then transports the ADF-contaminated stormwater to an on-site storage facility, after which the material is either treated at the airport or sent off site for treatment. EPA estimates that GRVs typically capture approximately 20 percent of the available ADF when properly operated and maintained.

b. Plug and Pump

The plug-and-pump collection system involves simple alterations to an airport's existing storm drain system, typically the insertion of blocking plugs or similar devices in storm drains, combined with use of GRVs, to contain and collect ADF-contaminated stormwater. Drainage system modifications involve the placement of temporary blocking devices at storm drain inlets, and/or installation of shutoff valves at one or more points in the storm sewer system. Before a deicing event begins, airport personnel activate the blocking devices, which trap the ADF-contaminated stormwater in the collection system. After the deicing activity ceases, the vacuum trucks pump the contaminated stormwater from the storm sewer system and transport the liquid to on-site storage and subsequent treatment. EPA estimates that plug-and-pump systems, which incorporate GRVs, may capture approximately 40 percent of the available ADF when properly operated and maintained.

c. Centralized Deicing Pads

A centralized deicing pad is a facility on an airfield built specifically for aircraft deicing operations. It is typically a paved area adjacent to a gate area, taxiway, or runway, and constructed with a drainage system separate from the airport's main storm drain system. It is usually constructed of concrete with sealed joints to prevent the loss of sprayed ADF through the joints. The pad's collection system is typically connected to a wastewater storage facility, which then may send the wastewater to an on-site or off-site treatment facility.

Some airports use GRVs in combination with centralized deicing pads in order to maximize collection and containment of ADF-contaminated stormwater. Airports typically locate the pads near the gate areas or at the threshold of a runway to minimize delays in aircraft takeoff and to enhance the effectiveness of the ADF applied by limiting time between application and takeoff.

Centralized deicing pads reduce the volume of deicing wastewater by restricting deicing to very small areas, and managing the captured wastewater through a dedicated drain system. EPA estimates that central deicing pads allow airports to capture about 60 percent of the available ADF.

In addition, although the name implies a small collection area, central pads designed to accommodate more than one commercial aircraft generally encompass several acres. A deicing pad is specially graded and designed to capture highly contaminated runoff, which can then be sent to storage ponds, tanks or directly to treatment. By capturing high concentrations of spent ADF, the feasibility of recycling increases. Recovered glycol is typically sold to chemical manufacturers for use in a variety of products, including coatings, paints, plastics and polyester fibers.

d. Summary of ADF Collection Technology Usage

EPA estimates the number of airports that use each of the above collection technologies in Table VII–1. Some airports use more than one technology, and some of the airports in the estimate use the technology for only a portion of their ADF-contaminated stormwater.

TABLE VII–1—ESTIMATED TOTALS OF ADF COLLECTION TECHNOLOGIES USED BY AIRPORTS

Collection technology	Number of airports
Glycol Recovery Vehicle	53
Plug and Pump	29
Centralized Deicing Pad	66

See the Technical Development Document for further explanation of EPA's estimates of the ADF capture rates for the fluid collection technologies.

2. Wastewater Treatment and Recycling Technologies

EPA identified four potential BAT wastewater technologies. Two of these technologies are biological in that they use microorganisms to break down the glycol. The other two technologies are mechanical and produce two wastestreams, one a high concentrated glycol stream, and one that is primarily water for discharge. The high glycol stream can, in some instances, be recycled and used for a variety of products. There have been limited instances in the U.S. of recycled glycol used for ADF formulation.

a. Anaerobic Fluidized Bed

An Anaerobic Fluidized Bed (AFB) treatment system uses a vertical, cylindrical tank in which the ADF-contaminated stormwater is pumped upwards through a bed of granular activated carbon at a velocity sufficient to fluidize, or suspend, the media. A thin film of microorganisms grows on and coats each granular activated carbon particle, providing a vast surface area for biological growth. These microorganisms provide treatment of the ADF-contaminated stormwater. Byproducts from the AFB treatment system include methane, carbon dioxide and new biomass (animal material, *e.g.* bacteria).

Treating wastes using an anaerobic biological system as compared to an aerobic system offers several advantages. The anaerobic system requires much less energy since aeration is not required and the anaerobic system produces less than 10 percent of the sludge of an aerobic process. In addition, because the biological process is contained in a sealed reactor, odors are eliminated. Based on EPA sampling results, the AFB treatment system successfully removed over 98 percent of BOD_5, over 97 percent of COD, and over 99 percent of propylene glycol from the wastestream. This reduced the BOD_5 and COD loads discharged to receiving waters by over 98 and 97 percent, respectively. Two airports in the United States use the AFB technology: Albany County Airport in Albany, New York, and Akron-Canton Regional Airport, Akron, Ohio.

b. Ultrafiltration/Reverse Osmosis

Ultrafiltration/Reverse Osmosis (UF/RO) technology filters ADF-contaminated stormwater at a high temperature (75 °C) using an ultrafiltration membrane as its first stage. Next, the deicing fluid (filtrate) can be dewatered using a reverse osmosis membrane as a second stage. Since the ultrafiltration membrane is effective at removing contaminants, the RO stage is used for dewatering and glycol separation. This process produces a glycol-laden stream that can be distilled in an additional stage to increase its glycol concentration. Concentrated glycol streams can be recycled as a feedstock in chemical manufacturing. The effluent from the UF/RO system contains small amounts of glycol, carbonaceous BOD (cBOD) and COD, and can either be discharged to surface water, or sent to a POTW for further treatment.

Based on EPA sampling results, the RO treatment system successfully removed over 99 percent of BOD_5, over 99 percent of COD, and over 99 percent of propylene glycol. UF/RO technology is used at Pittsburgh International Airport.

c. Mechanical Vapor Recompression and Distillation

Mechanical Vapor Recompression (MVR) followed by distillation is typically used when glycol concentrations in ADF-contaminated stormwater are greater than 5 percent. This type of a system is not generally practical for lower concentration glycol contaminated stormwater, which would typically be discharged directly to a POTW for treatment. The MVR/distillation technology generates a concentrated glycol stream (containing greater than 99 percent glycol) that can be sold as a chemical feedstock. The effluent from the MVR/distillation system contains propylene glycol, cBOD and COD and it must be discharged to a POTW for further treatment.

MVR and distillation is used at Denver International Airport for recycle and recovery of spent ADF. The system first treats ADF-contaminated stormwater using the MVRs, which increase the glycol concentration to approximately 40 percent. Effluent from the MVRs is then treated by distillation to increase the glycol concentration to approximately 99 percent. The glycol product is passed through polishing filters to remove residual contaminants allowing for resale of the product as a chemical feedstock. Overheads (distillate) from both the MVRs and distillation columns contain propylene glycol and they are sent to a POTW for additional treatment.

Based on EPA sampling results, the MVR/Distillation treatment system successfully removed over 93 percent of BOD_5, over 97 percent of COD, and over 98 percent of propylene glycol.

d. Aerated Pond

An aerated pond uses mechanical aerators either to inject air into the wastewater or to cause violent agitation of wastewater and air in order to achieve oxygen transfer to the wastewater. Bacteria are suspended in the wastewater, and aid in the biodegradation of glycol. Contaminated stormwater is retained in the detention pond during the deicing season and discharged later, after microorganisms present in the pond have biodegraded the glycols. The detention pond is monitored and nutrients are added, pH is adjusted, and anti-foaming agents are added as needed. The biodegradation of glycol is temperature-dependant and predominantly occurs during the spring and early summer months when ambient temperatures are higher. When the BOD_5 concentration has been sufficiently reduced, the volume is discharged to surface waters.

Based on EPA sampling results, the aerated pond treatment system successfully removed 100 percent of BOD_5, and over 93 percent of COD. An aerated pond system is currently in use

at Greater Rockford Airport, in Rockford, Illinois.

3. Pollution Prevention Technologies

EPA has identified several technologies that reduce ADF usage to some extent while safely deicing aircraft, and one applicable to airfield pavement deicing, that are in use at airports across the United States. However, there are limited data on the actual pollutant reductions that these technologies may achieve. While the effectiveness or cost-effectiveness of these technologies has not been documented, these technologies can reduce the amount of deicing chemicals required to deicing aircraft and airfields. The reduction of chemicals will not only have a positive environmental effect, but may also be cost-effective, as the decrease in costs of purchased deicing chemicals may offset the cost of the technology itself.

a. Infrared Deicing Systems

A few U.S. airports have used infrared (IR) heating systems for several years. The systems have been demonstrated to deice aircraft effectively, which substantially reduces ADF usage. One type of IR system consists of an open-ended hangar-type structure with IR generators mounted inside, suspended from the ceiling. The IR equipment is designed to use specific wavelengths that heat ice and snow, and minimize heating of aircraft components. The IR energy level and wavelength may be adjusted to suit the type of aircraft. Although the system can deice an aircraft, it cannot provide aircraft with anti-icing protection. Consequently, when the ambient temperature is below freezing, anti-icing fluid is typically applied to the aircraft after it leaves the hangar. Since the aircraft surfaces are dry, the volume of anti-icing fluid required is less than for typical anti-icing operations. In addition, a small amount of deicing fluid may be required for deicing areas of the aircraft not reached by the IR radiation, such as the flap tracks and elevators. The system, therefore, does not completely replace glycol-based fluids, but greatly reduces the volume required.

Documents provided by a vendor describe use of an IR system that reduces the amount of Type I ADF required by up to 90 percent. Two large hub airports, Newark Liberty International, Newark, New Jersey, and John F. Kennedy International Airport, New York, use IR systems for some of their flights. If this technology can be applied widely, it may prove to be a highly effective means of reducing ADF pollution.

EPA has not obtained substantial data documenting the amount of reduced glycol usage from use of IR systems, nor information on the availability of the technology for broader or industry-wide installation. EPA is interested in receiving any available data on those topics to documenting IR costs including (*e.g.*, the capital costs of installing an IR facility, operating and maintenance costs, especially energy costs, glycol used during deicing and siting/sizing requirements for an IR facility). Because IR is not widely available or used, EPA does not propose to identify IR as an available technology for purposes of establishing ELGs. However, the Agency may reconsider this technology, if sufficient data support a conclusion that this technology is available. Specifically, EPA would require information proving that IR is an available technology for a sufficient percentage of an airports total deicing activity, as well as information on the amount of time required for deicing, as well as any sizing and siting requirements for placing an IR facility.

b. Forced Air/Hot Air Deicing Systems

Forced air/hot air deicing systems are currently in operation at a few U.S. airports. These systems use forced air to blow snow and ice from aircraft surfaces. Some systems allow deicing fluids to be added to the forced air stream at different flow settings (*e.g.,* 9 and 20 gpm), while other systems require separate application of deicing fluid. Several vendors are currently developing self-contained, truck-mounted versions of these forced-air systems, and most systems can be retrofitted onto existing deicing trucks.

A similar method to truck-mounted forced-air systems is the double gantry forced-air spray system. The gantries support a set of high- and low-pressure nozzles, which blast the aircraft surfaces with heated air at a pressure of 40 to 500 pounds per square inch. When weather conditions are severe, a small volume of water and glycol may be added to the air stream to remove dense coverings of snow and ice. Airfield use of the gantry system has been limited perhaps because it is a permanently mounted system that has been known to cause delays in aircraft departures.

c. Product Substitution

Another solution to environmental problems associated with deicing chemicals is to replace chemical deicers with more environment-friendly products. In the ADF products category, initially the predominant deicers were based on ethylene glycol, whereas in recent years propylene glycol-based deicers, which are less toxic to mammals, have become more widely used. Chemical manufacturers, the aviation industry and the U.S. Air Force are continuing to explore development of deicers that could generate lower levels of pollutants compared to the glycol-based products.

In the field of airfield pavement deicers, several types of products are available as alternatives to glycol-based and urea-based deicers, such as potassium acetate, sodium formate and sodium acetate.

d. Transportation Research Board Report

The Transportation Research Board (TRB), a division of the National Academies of Science, established a research panel to develop fact sheets on deicing practices to assist airports in reducing their deicing chemical usage and discharges. A report was prepared in 2009 under TRB's Airport Cooperative Research Program (ACRP), titled ''Deicing Planning Guidelines and Practices for Stormwater Management Systems.'' This report (DCN AD01191) and the fact sheets (DCN AD01192) are in the docket for today's proposed rule.

C. Pollutants of Concern

Airport deicing stormwater is generated when airfield and aircraft deicing/anti-icing chemicals mix with snow, freezing precipitation or rainwater. In addition, other airport-related activities, including aircraft fueling and maintenance activities, may contribute pollutants to stormwater. Because of the difficulties in characterizing airport deicing stormwater, EPA evaluated pollutants detected in the stormwater, pollutants present in source water (*i.e.*, prior to contamination with ADF), and pollutants that are present in ADF prior to use to determine which pollutants are present in deicing stormwater. The primary source of information used to identify potential pollutants of concern from deicing stormwater was EPA's sampling episodes, detailed in Section VI, as well as information presented in available NPDES permits and the Airport Questionnaire.

1. Aircraft Deicers

EPA, through its review of sampling data, discussions with experts in the field of chemical deicers, and review of NPDES permits, identified over 90 pollutants associated with ADF-contaminated stormwater.

EPA shortened the list of pollutants to those that were directly associated with aircraft deicing. This was done by reviewing information provided by

experts and excluding pollutants that were thought to be associated with one of the following sources; source water, aircraft and vehicle fueling operations, maintenance-related operations, or runoff from building roofs.

Having identified pollutants that are present in airport deicing stormwater, the Agency next needed to consider which pollutants should be controlled. EPA did not consider a pollutant as a potential pollutant of concern if it possesses the following characteristics:

- The pollutant is present in the deicing stormwater from a source other than deicing chemical use;
- The pollutant is discharged in relatively small amounts and is neither causing nor likely to cause toxic effects;
- The pollutant is detected in the effluent from only a small number of airports and is uniquely related to those facilities; or
- The pollutant cannot be analyzed by EPA-approved or other established methods.

2. Airfield Deicers

While field information on the constituents of airfield deicing and anti-icing chemicals is scarce, EPA determined which chemicals are commonly used based on the Airport Questionnaire responses. EPA did not identify an available technology to collect and treat pavement deicing pollutants, and therefore did not collect wastewater samples from pavement deicing discharges. Some of the most common airfield deicing and anti-icing chemicals include potassium acetate, sodium acetate, urea, sodium formate, and glycols.

3. Summary

After reviewing these criteria, EPA identified 21 chemicals or parameters as pollutants of concern. Based on our knowledge of usage volumes, and known effects, EPA focused on the glycols in ADF fluids, and the ammonia in urea-based pavement deicers. Section VII.D.2 below discusses how EPA determined which of these pollutants of concern should become regulated pollutants in today's proposed rule. *See* the TDD and the EIB for further discussion of pollutants of concern.

D. Options Considered for Proposal

Current airport deicing operations involve application of chemicals to both aircraft and airfield pavement. ADF may be dispersed over a large area due to the high-pressure spraying process used with aircraft as well as shearing during aircraft taxiing and takeoff. Pavement chemicals, while not sprayed at high pressure, are nonetheless similarly dispersed over a large area, namely runways, taxiways and aprons. The deicing chemicals mix with stormwater and are conveyed through a combination of overland flow and conveyance structures (ditches and pipes). At some airports, the contaminated stormwater is discharged untreated directly to waters of the United States. At other airports, the wastewater is treated before discharge, sent to a POTW or off-site waste contractor, and/or discharged to groundwater.

In order to reduce discharges of untreated ADF wastewater for this industry, EPA concluded that the best available technology would need to include two basic components. The first component is a requirement to capture (collect) a certain percentage of available ADF. The second component is a requirement to treat the collected ADF to meet specified end-of-pipe discharge limitations. In many other industrial sectors, wastewater is typically generated and handled in confined systems such as reactors, pipes and pumps. Wastewater flows are carefully managed in these systems, and under normal operations all wastewater is directed to the facility's treatment system or to a POTW. In aircraft deicing operations, the chemicals are sprayed outdoors in a comparatively unconfined, usually designated setting, and there is a high likelihood that some pollutants will bypass the treatment system. Setting a minimum collection rate in the proposed rule, based on available technology, will require an airport to reduce significantly its level of uncontrolled discharges in an economically achievable manner.

1. Regulated Facilities

Early in the regulatory development process, EPA focused on deicing activities at primary airports, particularly those with extensive jet traffic. Operators of general aviation aircraft, as well as smaller commercial non-jet aircraft, typically suspend flights during icing conditions, whereas commercial airlines operating at primary airports are much more likely to deice their jets in order to meet customer demands.

Based on the survey results, EPA estimated that 320 primary commercial airports conduct deicing operations. Any effluent guidelines that EPA might develop for these airports must be ''economically achievable'' as required by the CWA, so the Agency proceeded to analyze various industry characteristics that would be an indicator of affordability for the candidate control and treatment technologies. This included a review of the relative sizes of various airports (based on annual departures), the levels of deicing activity, traffic characteristics (*i.e.*, passenger vs. cargo operations), the extent of pollution controls and treatment in place, and the costs of various technologies. EPA further classified airports based on the number of annual jet departures. EPA found that there were some primary airports, typically smaller airports, with high percentages of non-jet traffic, and so it excluded airports with 1,000 or fewer annual jet departures from the scope of the proposed rule. These airports have a higher proportion of propeller-aircraft flights, which are typically delayed or cancelled during icing conditions (*i.e.*, far less deicing takes place at these airports, and far less deicing fluid is used, than at airports serving more jets). The Agency estimated that the remaining 218 largest primary airports account for approximately 85 percent of the deicing fluid used nationally, and including these airports in the scope of today's proposed rule is economically achievable. Moreover, not applying the 1,000 annual jet departure cutoff would only increase the volume of deicing fluid that is within the scope of today's proposed rule by 1 to 2 percent yet would potentially result in high costs to smaller airports that have minimal pollutant contributions. Accordingly, it is appropriate to establish this exclusion because it avoids projected significant adverse economic impacts on this segment of the industry without excluding from the national standards a significant pollutant load.

2. Regulated Pollutants

As described in Section VII.C, EPA identified 21 pollutants of concern that stem directly from airport deicing operations. EPA estimates, however, that many of these pollutants, such as metals, are generally present in airport stormwater discharges irrespective of deicing activities that are taking place. These pollutants would be also present in discharges at airports where no deicing takes place and as such are beyond the scope of today's proposed rule.

EPA determined that pollutants directly associated with aircraft deicing chemicals could be associated with an indicator pollutant. Initially, both COD and BOD_5 were identified as possible indicator parameters. The Agency determined that COD is the best indicator for the following reasons:

- COD captures the oxygen demand from nitrogen and other organic components of the contaminated

stormwater that may not be represented in a BOD_5 analytical result.

- Toxic aircraft deicing fluid additive compounds in deicing stormwater may have a negative and variable impact on the acclimation of the active cultures used in BOD_5 analysis, making that method less accurate than a COD analysis.
- COD analyses are simple to conduct and can be measured in real time, compared to the 5-day test required by the BOD_5 analytical method.
- The COD analytical method does not require measurement of the receiving water temperature.

Further discussion of analytical methods is provided in a memorandum, ''Regulation of COD for Airport Deicing Operations'' (DCN AD00845) in the docket for today's proposed rule.

While EPA has an understanding generally of ADF composition—*i.e.,* each product is a glycol-based compound with several additives—deicing fluid manufacturers did not provide us with information on specific ADF formulations. These manufacturers declined several requests to provide information on formulations, citing concerns about confidential business information. EPA has learned about a number of the additives, but not necessarily their concentration, from other sources. Because of incomplete information on these ADF additives, EPA is not proposing numeric effluent limits for any of these additives.

Ammonia is the principal pollutant generated by urea-based pavement deicers, and EPA determined that ammonia is an appropriate indicator pollutant for urea-based airfield pavement deicers.

See the TDD and EIB for further information on regulated pollutants.

3. Technology Options Considered for Basis of Regulation

The effluent limitations that EPA is proposing to establish today are based on well-designed, well-operated collection and treatment systems. Below is a summary of the technology basis for the proposed limitations and the alternative options considered by the Agency. As is the case for any effluent guideline containing numeric effluent limitations, a facility would be able to use any combination of wastewater treatment technologies and pollution prevention strategies at the facility to meet effluent limitations.

a. Subcategorization

EPA may divide a point source category into groupings called ''subcategories'' to provide a method for addressing variations among products, processes, and other factors, which result in distinctly different effluent characteristics. *See Texas Oil & Gas Ass'n.* v. *US EPA,* 161 F.3d 923, 939–40 (5th Cir. 1998). Regulation of a category by subcategories provides that each subcategory has a uniform set of effluent limitations that take into account technological achievability and economic impacts unique to that subcategory. In some cases, effluent limitations within a subcategory may be different based on consideration of these same factors, which are identified in CWA section 304(b)(2)(B). The CWA requires EPA, in developing effluent guidelines, to consider a number of different factors, which are also relevant for subcategorization. The CWA also authorizes EPA to take into account other factors that the Agency deems appropriate.

In developing the proposed rule, EPA considered whether subcategorizing the aviation industry was warranted. EPA evaluated a number of factors and potential subcategorization approaches, including the presence of an on-site glycol reclamation facility, amount of ADF applied, number of departures, availability of land to install collection systems, and FAA airport classifications.

Establishing formal subcategories is not necessary for the Airport Deicing category because the proposed rule is structured to address the relevant factors (*i.e.,* amount of ADF applied and number of departures) and establish a set of requirements that encompasses the range of situations that an airport may encounter during deicing operations. Both the aircraft deicing and pavement deicing requirements include an airport size threshold, which excludes smaller facilities. The use of a performance standard, as compared to a technology specification, provides flexibility for airports in meeting the requirements. EPA is proposing to establish a set of effluent limitations that take into account the factors that EPA determined are relevant for subcategorizing this point source category.

b. Aircraft Deicing

EPA is proposing capture and treatment requirements for spent ADF. EPA is not aware of an available and economically achievable technology that is capable of capturing 100 percent of the spent ADF, and therefore the Agency is focusing on collection technologies and their efficacy.

i. ADF Collection

The available technologies for collecting ADF—glycol recovery vehicles, plug-and-pump equipment, and deicing pads—are described above. EPA evaluated various different combinations of these collection technologies for different-sized airports. See Table VII–2. These various options were developed to represent a wide range of collection requirements and corresponding costs. EPA's objective was to find a combination of requirements that would result in the greatest level of pollutant removals while still being economically achievable.

Specifically, EPA finds that the number of aircraft departures is an appropriate criterion for grouping airports by size and applying different collection requirements to the various size groups. EPA's review of airline and airport deicing practices revealed that the amount of ADF required to deice a single aircraft varies widely. This is primarily due to the type of weather conditions to which an aircraft is exposed, or aircraft size. However, the Agency has concluded that an airport's overall ADF usage level directly correlates to the amount of wastewater generated and pollutant loadings. Because direct ADF usage data were not available for every airport, EPA determined that the annual number of aircraft departures at an airport, considered simultaneously with precipitation data, is a reliable predictor of ADF usage, based on extrapolations of data provided in the questionnaires.

Based on the available technologies, EPA developed four ADF collection options as listed in Table VII–2 below as candidates for identification as best available technology for the collection of ADF.

TABLE VII–2—ADF COLLECTION TECHNOLOGY OPTIONS CONSIDERED FOR BAT

Option	Requirement (applies to primary airports with more than 1,000 annual jet departures)	Estimated airports in scope	Technology basis
1	20% ADF Capture (Airports w/10,000 or more annual departures).	110	Glycol recovery vehicle (GRV).

TABLE VII–2—ADF COLLECTION TECHNOLOGY OPTIONS CONSIDERED FOR BAT—Continued

Option	Requirement (applies to primary airports with more than 1,000 annual jet departures)	Estimated airports in scope	Technology basis
2	40% ADF Capture (Airports w/10,000 or more annual departures).	110	Plug & Pump.
3	60% ADF Capture (Airports w/460,000 gals. or more annual ADF usage and 10,000 or more departures) + 20% ADF Capture (Airports w/10,000 or more annual departures and less than 460,000 gals. annual ADF usage).	110 (14 @ 60% + 96 @ 20%) ..	Centralized Deicing Pad + GRV.
4	60% ADF Capture (Airports w/460,000 gals. or more ADF usage) + 20% ADF Capture (Airports w/1,000 or more jet departures).	218 (14 @ 60% + 204 @ 20%)	Centralized Deicing Pad + GRV.

Note: All references to ADF are for normalized ADF, which is ADF less any water added by the manufacturer or customer before ADF application.

Not all airports estimated to be in the scope of this proposed rule would incur ADF collection costs under it, because many of these airports already have ADF collection systems in place (Section VIII.C below). For example, of the estimated 14 airports that would have to meet the 60 percent ADF collection requirement in this proposal, seven already have installed deicing pads that would capture at least 60 percent of the ADF.

ii. Treatment

All airports subject to the ADF collection requirement would also be required to treat their ADF wastewater prior to discharge, unless they send this wastewater to a POTW or commercial treatment/recycle facility. EPA examined the four wastewater treatment technologies described above in Section VII.B.2 as candidates for the model BAT technology.

Under this proposal, the collected ADF wastewater would need to be treated to a specified numeric effluent limit for COD. This limit would be based on the long-term averages of effluent from the treatment system identified at BAT (*see* Section VII.E.2 below).

Further discussion of other ADF treatment technologies that EPA considered can be found in the TDD.

c. Airfield Pavement Deicing

In general, airports discharge airfield pavement deicing chemicals without treatment due to the difficulty and expense required in collecting and treating the large volumes of contaminated stormwater generated on paved airfield surfaces. EPA is not aware of an available, economically achievable means for controlling these pollutants through collection and use of a conventional, end-of-pipe treatment system. It may be possible, however, to reduce or eliminate certain pollutants by modifying deicing practices, such as using alternative chemical deicing products. In particular, EPA has identified ammonia as the primary pollutant of concern from airfield deicing, while COD from airfield deicing is also a pollutant of concern, and both of these pollutants are a byproduct of urea-based pavement deicers.

Accordingly, to address discharges of ammonia from airfield pavement, EPA identified one candidate for best available technology, namely, discontinuing the use of urea-based pavement deicers and using alternative pavement deicers instead. EPA researched product substitution for urea-based deicers and found that airfield pavement deicers other than urea are widely available in the market and that these alternate deicers do not produce ammonia. Eighty-nine percent of primary airports currently use airfield pavement deicers that do not contain urea. The most widely used substitute product, potassium acetate, accounts for 64 percent (by weight) of the annual airfield pavement deicer usage in the U.S. Urea stood out as an airfield deicer that was not predominantly used in the industry to begin with. Where it is still used, one of the main reasons for its use appears to be low cost compared to other products. Alternatives to urea are available that are equally effective and safe, and would greatly reduce discharges of ammonia from airfield deicing. These alternative airfield deicers include potassium acetate, sodium formate and sodium acetate. In suggesting these alternative deicers, EPA considered environmental impacts and safety issues. The Agency solicits specific data on those issues. EPA has also determined that the use of substitute airfield deicers would be economically achievable in the industry (*see* Section VIII below).

Discontinuing the use of urea-based deicers would greatly reduce ammonia discharges from airfield runoff, but it would not eliminate them entirely because of the background levels of ammonia present in the general runoff from airfields. One method of ensuring that airports discontinue use of urea-based airfield deicers is to require them to certify that they use an alternative deicer. Alternatively, EPA could set a numeric BAT limit on ammonia based on no use of urea that accounts for the remaining sources of ammonia in airport discharges. Product substitution would also result in significant reductions of COD discharges. *See* the further discussion of this issue in the options selection discussion in the next section below.

E. BAT Options Selection

EPA is proposing to identify Best Available Technology Economically Achievable based on Option 3 in Table VII–2. Specifically, this BAT option has the following three components: collection of ADF sprayed onto aircraft based on either GRV or deicing pads (depending on the amount of ADF used), treatment of the collected ADF, if appropriate, based on anaerobic fluidized bed technology, and certification of non-urea-based airfield pavement deicing.

Under Option 3, all primary airports that have over 1,000 annual jet departures and 10,000 or more annual departures would be required to collect at least 20 percent of all available spent ADF. This collection requirement is based on the estimated performance of glycol recovery vehicles. A subset of this group, those primary airports that have more than 1,000 annual jet departures, 10,000 or more annual departures and use 460,000 or more gallons of normalized ADF annually, would be required to collect at least 60 percent of all available spent ADF. (As defined at proposed § 449.2, normalized ADF is ADF less any water added by the manufacturer or customer before ADF application.) This collection requirement is based on the estimated performance of centralized deicing pads, which are present at 8 of the 14

primary airports currently meeting the departure/annualized ADF usage criteria noted above. Primary airports with less than 10,000 annual departures would not be required to collect or treat their spent deicing fluid.

The proposed rule would reduce pollutant discharges by 44.6 million pounds annually, comprised of 39.9 million pounds of COD (from both ADF and urea reductions) and 4.7 million pounds of ammonia (from urea alone). The proposed BAT requirements for ADF would reduce the aviation industry's discharges of COD associated with ADF by 27.9 million pounds per year. This represents almost a 22 percent reduction in discharges of ADF-correlated COD relative to current practices used by airlines and airports that conduct deicing. Additionally, the proposed BAT requirements for airfield pavement deicing would reduce discharges of COD (from urea deicers) by 12.7 million pounds per year, and reduce discharges of ammonia by 4.7 million pounds per year.

EPA finds that the proposed BAT technologies are generally available to be installed or used by those in the industry. Further, as will be discussed in more detail in Section VIII below, EPA has determined that the proposed BAT technologies are economically achievable. The Agency also examined the non-water quality environmental impacts of the rule and found them to be acceptable. The technology basis for each requirement—ADF collection, treatment of the collected ADF, and non-urea-based airfield pavement deicing—is discussed below.

1. ADF Collection

For each of the four options in Table VII–2, EPA finds that the collection technology is widely available to the industry. *See* the summary of collection technologies used by airports in Table VII–1. EPA finds that for the top fourteen airports in terms of annual ADF usage, collection of ADF based on the use of deicing pads is technologically available. EPA's record indicates that at least seven of the fourteen airports already have installed deicing pads. For the remaining seven, EPA examined what appeared to be the most land-constrained airports and using a formula based on number of departures and number of runways, estimated the amount of land that would be required for installation of deicing pads. EPA then reviewed airport site plans provided in the questionnaires and determined that these constrained airports have sufficient land to install the necessary collection technologies. *See* the TDD for further discussion on the estimated land availability for deicing pads. Therefore, the Agency determined that economic achievability is the controlling factor in identifying which option represents BAT for collection of ADF.

EPA rejected Option 2, Plug-and-Pump technology, as a basis for BAT for ADF collection. Although Plug-and-Pump is estimated to capture 40 percent of spent ADF, as compared to the other options considered, the equipment has comparatively high operating and maintenance costs. In many cases, EPA estimated that Plug-and-Pump costs would be higher than the cost of deicing pads for a comparable airport, yet deicing pads achieve greater pollutant removals than Plug-and-Pump. Overall, Option 2 achieves lower levels of pollutant removals, and it would impose higher costs than Option 3. Therefore, EPA finds that Option 2 is not the best available technology for ADF collection.

Of the remaining options, Options 1 and 3 are economically achievable while Option 4 is not. Therefore, EPA proposes to identify Option 3 as BAT because it achieves the greatest level of pollutant removals among the remaining options and is economically achievable by the industry. The 60 percent ADF capture and treatment standard for the 14 airports at which the largest ADF usage occurs is expected to result in approximately a 70 percent increase in pollutant removals compared to Option 1 (an increase from 26.4 million pounds to 44.6 million pounds of COD and ammonia removals; see Section 13 of the TDD). Thus, EPA projects that Option 3 will result in significantly greater pollutant removals but little increase in the economic impacts of the rule compared to Option 1. Under Option 3, only two additional airports would incur costs beyond Option 1 that would exceed 3 percent of operating revenue. These two airports are among the largest airports in the U.S. and therefore have the greatest ability to take on these additional costs without undue financial burden. See Section VIII below for EPA's analysis of economic achievability.

Although EPA's analysis indicates that airports have sufficient land to install deicing pads, the Agency invites commenters to provide site-specific data and documentation on any space limitations that would affect an airport's ability to install deicing pads, along with recommendations for alternative ADF collection techniques if deicing pads are not feasible.

EPA is also proposing to allow credit for facilities that might adopt new technologies, such as infrared heating, that use less ADF, but may not change the percent of ADF captured. See proposed § 449.20(b)(2)(i)(C).

2. Treatment

The Agency proposes to identify Anaerobic Fluidized Bed (AFB) as the best available treatment technology for reductions of COD. EPA finds this technology to be widely available to the industry. It is currently in use at two hub airports, Albany International (New York) and Akron-Canton Regional (Ohio).

The other three wastewater treatment technologies that EPA considered were less effective at pollutant removal compared to AFB systems. In addition, treating spent ADF with the mechanical methods, UF/RO and MVR/DC results in a concentrated waste stream that also must be disposed of. While these technologies have potential as a part of an airport's pollutant control strategy, they are not as effective as AFB when used as stand-alone treatment options, i.e. the pollutant removals they achieve are not as great as the removals achieved by AFB systems.

The second biological control option, the aerated pond, was not selected as the technology basis for BAT for mainly logistical reasons. The ponds require large areas for installation, and the normal operations of these systems require treatment for many months after the end of the annual deicing season, before the wastewater can be discharged. Additionally, FAA discourages the installation of new stormwater detention ponds at airports, as they can be a lure for migratory birds. In those situations, birds and aircraft are safety hazards to each other. For airports with existing detention ponds, however, where adequate storage capacity is available, aerated pond systems may be able to provide efficient treatment that meets the standard.

EPA has determined that AFB, as the proposed best available treatment technology for reductions of COD, will also achieve significant reductions of many of the other known pollutants associated with ADF, including 97 percent removal of propylene and ethylene glycol. The AFB treatment system removes over 75 percent of many phenol-ethoxylate compounds as well. Moreover, choosing to set a numeric limit on COD provides an approach that is both effective and is relatively easier and more inexpensive for airports to comply with than a numeric limit on glycols, the active ingredient of aircraft deicing fluids, would be. Monitoring costs for COD are modest relative to some other parameters considered by EPA. Permittees may conduct

monitoring with the use of portable COD meters, which provide immediate, real-time information on the efficacy of their treatment systems and facilitate timely adjustments of system operation where necessary. Overall, EPA's economic analysis shows that the use of AFB technology for treating spent ADF would be economically achievable in the industry. See Section VIII below for more information on economic achievability.

3. Airfield Pavement Deicers

In addition to the requirements that EPA is proposing for ADF sprayed onto airplanes, EPA is also proposing today to identify BAT for the control of deicers that are applied directly to airfield pavement areas. Specifically, as described in Section VIII.D.3, for airfield pavement deicers, EPA is proposing to identify a BAT of discontinuing use of urea-based pavement deicers in favor of alternative, less toxic products that are not harmful to aircraft. Thus, BAT would be based on product substitution rather than treatment of the wastestream that runs off from airfield pavements. To demonstrate that they have used only non-urea based pavement deicers, permittees would be required to submit a certification to that effect.

EPA considered two possible methods for eliminating discharges of ammonia associated with the application of urea-based pavement deicers. One option would be to set a performance-based numeric limit on discharges of ammonia that could be met by using non-urea-based deicers. A second option would require airports to certify that they do not use urea-based airfield deicing products. EPA is proposing today to adopt the certification option. EPA is proposing the certification because it ensures compliance while minimizing compliance costs. Certification allows a facility to demonstrate compliance with this product substitution-based BAT without the expense of conducting monitoring activities. Collecting and analyzing samples of airfield runoff would also present significant practical difficulties. Measuring ammonia discharges from airfield pavement is generally difficult due to the design of airport drainage systems. Wastestreams from multiple areas of an airport may be combined into a single pipe, which complicates the calculation of pollutant concentrations. In addition, the ''building block'' approach, which has been used to calculate combined wastestream concentrations for other industrial categories, is generally very difficult to perform at airports, due to the variability and unpredictability of the volume of stormwater runoff. Therefore, as a practical matter, a permittee who wanted to take samples and demonstrate compliance with a numeric limit for ammonia would need to show that the ammonia limit is met for all deicing runoff, not just airfield discharges.

While EPA is proposing to identify product substitution as BAT, in order to allow flexibility to regulated facilities, the Agency is also proposing a compliance alternative to the certification requirement. This provision would accommodate facilities that might wish to continue using urea-based deicers and install treatment to eliminate urea-based ammonia discharges instead. Facilities that elect to comply using the compliance alternative would be required to monitor and comply with a proposed ammonia limit. To establish the proposed compliance alternative limitation for ammonia, the Agency had to take into account the ammonia that is a by-product of an AFB wastewater treatment system. This is because AFB discharges could have higher ammonia concentrations than that of background levels found in airfield runoff. While this results in a proposed compliance alternative ammonia effluent limit higher than concentrations in airfield runoff where AFB technologies are not used, the Agency estimates that these concentrations are lower than those from airfield pavement discharges where urea-based deicers are used. *See* ''Evaluation of Proposed Compliance Alternative Ammonia Limitations with Respect to Airport Deicing Stormwater Typical Ammonia Discharges,'' DCN AD01194, for additional discussion.

Although EPA has developed compliance alternative ammonia effluent limitations for this proposal, it estimates that the cost associated with capturing and treating these waste streams would be prohibitively high for most airports. Therefore, EPA anticipates that most or all airports would choose the certification option rather than the ammonia numeric limits option in order to avoid compliance monitoring. EPA requests comment on implementation challenges associated with and the extent to which regulated facilities may select the compliance alternative. To the extent that comments indicate the compliance alternative would not be utilized, EPA might not include it in the final rule.

F. NSPS

EPA evaluated which technologies should be identified as the ''best available demonstrated control technologies'' for purposes of setting new source performance standards under CWA section 306. Among the collection technologies that EPA considered, deicing pads capture the greatest level of available ADF and are widely available in the industry. Among the treatment technologies considered, treatment of the captured ADF with an anaerobic fluidized bed system represents the greatest level of removals of the pollutants of concern and is widely available for use in connection with new airports and new runways at existing airports. In considering economic impacts, EPA believes that a standard based on the use of deicing pads for ADF collection followed by treatment with an AFB system would not represent a barrier to entry for new sources in this industry. See the economic analysis discussion in Section VIII. Accordingly, EPA proposes to base NSPS for aircraft deicing on these technologies. As with the BAT requirement for existing sources, the proposed NSPS would require dischargers to collect 60 percent of available spent ADF, and treat the collected wastewater to a specified numeric limit for COD.

Additionally, EPA considered which technology should be considered the basis for setting NSPS with respect to airfield deicing. EPA determined that, just as with existing sources, all new sources would be capable of eliminating the use of urea for airfield deicing in favor of substitute deicing products. Product substitution represents the greatest level of reduction in ammonia among the available technologies considered and product substitution does not appear to represent a barrier to entry. See the economic analysis discussion in Section VIII. Accordingly, EPA proposes to identify elimination of urea followed by product substitution of non-urea-based airfield deicers as the best demonstrated available control technology for purposes of all new sources.

Based on this identified technology, all new sources would be required to meet the same certification requirement proposed for BAT. In addition, as proposed today for existing sources, EPA proposes the same compliance alternative ammonia effluent limitations for new sources.

For the purpose of this regulation, EPA proposes that a ''New Source'' would include, first, a new airport. The cost of construction of even small airports is significantly greater than the costs associated with collection and/or treatment of spent deicing fluids. Accordingly, meeting the new source requirements proposed today would not be a barrier to entry for them

economically. See further discussion in Section VIII below.

In addition, EPA proposes to specify that a new runway at an existing airport is also a new source. EPA anticipates that few new airports will be constructed in the foreseeable future, and that most of the anticipated increase in airport capacity will be accomplished through the expansion of existing airports. The term ''new source'' is defined in EPA regulations at 40 CFR 122.2 and 122.29. EPA proposes to specify in the final rule that a new runway meets the terms of those regulations for being defined as a new source, because in EPA's view a new runway is a ''structure, facility or installation from which there is or may be a discharge of pollutants'' (§§ 122.2 and 122.29(a)(2)) and because a new runway is ''substantially independent of an existing source at the same site'' (§ 122.29(b)(iii)). EPA does not believe in general that new runways will be significantly integrated with existing airport facilities in a way that should prevent them from being identified as new sources (*see* § 122.29(b)(iii)). In addition, it is possible that permit authorities, on a case-by-case basis, would be able to deem other types of construction activity for aircraft movement areas to constitute a new source as well. For example, a permit authority might deem the substantial improvement or replacement of an existing runway to be a new source if that activity is deemed to ''totally replace the process or production equipment that causes the discharge of pollutants'' (*see* § 122.29(b)(ii)). In all of the situations discussed above, the new runway or other runway construction activity would be deemed to be a new source only if it meets all of the criteria in the regulations cited above for definition as a new source.

G. BPT and BCT

The CWA provides for two increasingly stringent levels of technology-based controls on discharges of pollutants. *See EPA* v. *National Crushed Stone Association,* 449 U.S. 64 (1980). BPT represents the first level of control applicable to all pollutants. BCT and BAT represent the second level of control for conventional and toxic/nonconventional pollutants, respectively. EPA considered whether in this rule, it was necessary to establish BPT and BCT limits, given that ADF and pavement deicing fluid will be controlled at the more stringent BAT level. Because the BAT controls in this rule also control the same pollutants as would be controlled by BPT or BCT limits, it is not necessary for EPA to analyze options and propose BPT and BCT effluent limitation guidelines for the Airport Deicing Category. EPA recognizes that it has proposed, in the past, all three levels of control, BPT, BCT and BAT for various industries even where the same pollutants and wastestream were at issue. In this rule however, the Agency solicits comments on this approach because it represents significant resource savings for EPA in terms of analysis and rulemaking process while not sacrificing any environmental protection. Additionally, EPA is not establishing BCT limitations for this industry because these limitations apply only to conventional pollutants such as BOD_5 and total suspended solids and this effluent guideline regulates only non-conventional pollutants (chiefly COD and ammonia).

H. Pretreatment Standards

Some airports in the U.S. discharge ADF-contaminated runoff to POTWs. EPA does not have any information indicating that POTWs currently have problems of pollutant pass-through, interference or sludge contamination stemming from these discharges. For this reason, the Agency is not proposing PSES or PSNS. EPA is aware that high concentration or ''slug'' discharges of deicing wastewater can create POTW upset, and many of the airports that discharge to POTWs have airport-specific requirements on allowable BOD_5 or COD discharge loading per day. They may also have requirements for discharging at various concentration levels over time. Airports usually meet this requirement by storing deicing stormwater in ponds or tanks and metering the discharge to meet the POTW permit requirements.

I. Compliance Costs

1. Overview

EPA estimated industry-wide compliance costs for this proposed rule. This section summarizes EPA's approach for estimating compliance costs, while the TDD provides detailed information on these estimates. All final cost estimates are expressed in terms of 2006 dollars and represent the cost of purchasing and installing equipment and control technologies, annual operating and maintenance costs, and associated monitoring and reporting requirements.

EPA estimated compliance costs associated with today's proposal using data collected through survey responses, site visits, sampling episodes, specific airport requests and information supplied by vendors. As applicable, EPA estimated the costs for an airport to comply with today's proposal initially, as well as maintaining equipment and performing required monitoring or other activities to demonstrate ongoing compliance. These costs may include upgrading/installing and operating a collection system and/or a treatment system, chemical analysis for compliance as well as the costs associated with substituting potassium acetate in place of urea as a chemical airfield deicer. EPA's cost estimates represent the incremental costs for a facility when its existing practices would not lead to compliance with today's proposed rule.

EPA calculated costs based on a computerized design and cost model developed for each of the technology options considered. EPA developed facility-specific costs for each of the Airport industry questionnaire respondents (149 facilities), where each facility was treated as a ''model'' airport. Because the questionnaire respondents represent a subset of the industry, EPA subsequently modeled the national population by adjusting the costs upward to estimate the entire affected airport population.

The questionnaire responses provided EPA with information on three consecutive deicing seasons (2002–2005) for each of the model facilities. Some portions of EPA's costing effort reflect the airports' operations as reported for the three seasons. For example, estimates of applied deicing chemicals were taken as an average of the years for which the information was reported. In instances where aspects of an airport's operation changed over the three-year period, EPA used the most recent information. For example, if an airport installed a deicing pad in 2005, EPA's costing estimates would reflect any incremental changes required above the current ADF collection rate, to meet the collection rate in the proposed rule.

2. Approach for Developing Aircraft Deicing Costs

Under this proposed rule, an airport would be required to collect a percentage of its sprayed ADF, and treat that wastewater to comply with numeric effluent limitations. EPA estimated the costs for an airport to comply with collection and treatment requirements, as well as performing required monitoring to demonstrate compliance. These costs include estimates of upgrading airports' current collection systems, installing the required technology to treat the wastewater, maintaining equipment and conducting chemical analyses for compliance.

EPA first established existing conditions for each model airport based on information and site plans submitted as part of the Airport Questionnaire. EPA then determined what upgrades, if any, would be required to comply with today's proposal. In general, when an airport lacked a comparable collection system to the one used as the basis for the options considered in today's proposal, EPA included costs for installation/implementation of one of the following collection technologies: GRVs, GRVs used in conjunction with plug-and-pump systems, or deicing pads.

For estimating wastewater treatment costs, EPA assumed costs for storage of anticipated volumes of collected ADF. Airport-specific costs were assessed for storage options, including ponds, permanent tanks (both underground and aboveground), or mobile/temporary fractional distillation tanks.

EPA based its selection of a particular storage option on an airport's current storage facilities, and on what would be the easiest for that airport to implement. The Agency assumed that it is likely that an airport with a pond already in place would use that for storage, as opposed to constructing permanent tanks; and assumed that an airport with limited available land would install an underground tank.

Based on questionnaire responses and engineering judgment, EPA assessed the current level of treatment for each model facility that discharges directly to waters of the U.S. Except in limited circumstances, when a model facility was determined to require additional treatment, EPA assigned costs associated with installing an AFB treatment system as the most likely means of compliance.

Of the direct discharging model facilities that were modeled for treatment costs, EPA assumed that approximately five percent would use off-site hauling for waste treatment, based on the Agency's estimate that this percentage will find this choice to be the most cost-effective alternative. These facilities have relatively limited deicing operations and off-site hauling is more cost-effective than installing an on-site biological treatment system. Additionally, an on-site biological treatment system would require a regular wastestream flow in order to keep the biological system functioning properly, and an airport with limited deicing operations may have trouble maintaining a regular wastestream.

EPA recognizes that an airport may decide to use a POTW rather than directly discharging its wastewater. While this may be a lower cost alternative in some cases, EPA did not estimate costs for such a change, because the Agency does not have enough information about the capacity of specific POTWs to receive these volumes of wastewater. EPA also was not able to determine if a specific POTW would be unwilling to accept the wastewater from a particular airport, and for other reasons, such as inconsistencies with its future growth plans. For these reasons, EPA did not include this alternative in its model.

An airport that has upgraded its collection and treatment systems may have additional monitoring costs. While the permit authority determines the required monitoring frequency for an individual permittee, EPA estimated the overall costs of the anticipated monitoring requirements associated with the proposed rule. EPA estimated the cost per airport for the ADF collection requirement, and the cost of analyzing COD in the treated effluent. For costing purposes, EPA assumed that an airport would take a 24-hour composite sample and analyze that for COD, and perform that analysis five times per week throughout the deicing season. EPA made a similar assumption for purposes of computing the proposed weekly average effluent limitation. As a conservative estimate, EPA assumed a six-month deicing season for all modeled facilities. Additionally, EPA assumed that the model facility would perform an assessment of their collection system once every permit cycle.

3. Approach for Estimating Airfield Pavement Deicing Costs

Under today's proposal, in addition to the requirements set forth for capture/treatment of aircraft deicing fluid, an airport would be required to certify it uses non-urea-based airfield deicers. Through the results of the Airport Questionnaire, EPA learned that 29 model facilities (a subset of the 149 model facilities referenced above) use urea for airfield pavement deicing. As detailed in Section VII.D.3, EPA based its certification requirement on product substitution. EPA calculated the cost for these 29 model facilities to substitute the urea used for deicing with another widely available pavement deicer that does not produce ammonia in the wastewater. EPA chose to model the substitution costs on what it would cost to switch to potassium acetate, specifically because that product accounts for 64 percent of the applied chemical airfield deicer usage (by weight) in the U.S.

EPA identified 16 airports that used both urea and potassium acetate for airfield deicing, and 8 of these airports provided usage data. The Agency calculated that the average cost of urea was $274.24/ton and the average cost of potassium acetate was $3.16/gallon. The questionnaire responses indicated that between 2002 and 2005 an average of over 7 million pounds of urea were used annually, costing an estimated $1.06 million.

Urea deicers are applied at a different rate to have an efficacy equivalent to potassium acetate. EPA had to determine what amount of potassium acetate would be required to replace the estimated 7 million pounds of urea used annually. EPA could not locate any information on the relative application rates between potassium acetate and urea directly; however, we did develop a comparison to sodium acetate, another solid pavement deicer. Both urea and potassium acetate application rates vary depending on the weather conditions and the thickness of the ice layer at the time of application. Using the information available, EPA assessed comparable application rates and costs between urea and potassium acetate to treat 1,000 ft^2 of area for thin ice conditions at 32 °F and 1-inch-thick ice conditions at less than 10 °F. DCN AD00843 provides additional details about the calculations on product substitution.

Using the reported urea usage in the Airport Questionnaire, EPA estimated the airfield area that was annually deiced at each model facility. Finally, using the estimated model facility airfield area in conjunction with the estimated $2.32/1,000 ft^2 cost of potassium acetate, EPA was able to calculate the cost per model facility to perform airfield deicing with potassium acetate. This cost was compared to the questionnaire reported urea costs to determine the incremental costs of switching chemical airfield deicers.

4. Calculation of National Costs

EPA categorized all of the costs as either capital costs (one-time costs associated with planning or installation of technologies), or as operations and maintenance (O&M) costs (costs that occur on a regular ongoing basis such as monitoring or annual purchases of deicing materials).

For each model facility, EPA calculated an annualized cost based on the sum of all the associated O&M costs as well as amortized capital costs. Capital costs were amortized over the lifespan of the capital improvement, as reported by the facility. No capital costs were amortized over more than 20 years, even if an estimated lifespan of an airport exceeded 20 years. Finally, EPA

combined the amortized costs with the annual O&M to calculate the total annual cost of the regulation for that model facility.

EPA then utilized statistical weights assigned to each of the 149 model facilities in order to calculate a national estimated cost of $91.3 million for complying with the proposed rule. Further discussion of all of the calculations discussed above can be found in the TDD.

J. Approach to Estimating Pollutant Reductions

1. Overview

The pollutants of concern associated with airfield and aircraft deicing and anti-icing chemicals are discussed earlier in this preamble. These chemicals commingle with stormwater and they may be discharged to the environment. These discharges are of environmental concern because the biodegradation of deicing chemicals results in oxygen depletion in the receiving water body. Moreover, some of these pollutants, such as ammonia, have toxic properties. The oxygen demand of compounds can be measured as five-day biochemical oxygen demand (BOD_5) and chemical oxygen demand (COD), or calculated as theoretical oxygen demand (ThOD).

Pollutant loadings from airport deicing operations are challenging to estimate because they are highly variable and airport-specific. Because the use of deicing and anti-icing chemicals is weather dependent, the pollutant loadings at each airport vary based on weather conditions. The pollutant loadings also vary from airport to airport based on each airport's climate. In addition, the amount of applied chemical that is discharged to surface water is airport specific, based on the existing stormwater separation, collection, and/or containment equipment present at each airport.

Due to the variable nature of these pollutant loads, EPA developed an estimation methodology based on the usage of ADF and airfield chemicals at the airports responding to the survey questionnaires. The methodology takes into account EPA's existing data sources and provides a better estimate of the loadings than those based on sporadic monitoring data alone.

2. Sources and Use of Available Data

While developing the pollutant loading models, EPA considered the following data sources:

- Pavement deicing chemical usage/purchase information for the 2002/2003, 2003/2004, and 2004/2005 deicing seasons, as reported by airport authorities in the Airport Deicing Questionnaire;
- ADF purchase information for the 2002/2003, 2003/2004, and 2004/2005 deicing seasons, as reported by air carriers in the Airline Deicing Questionnaire;
- Standard airport information available from the FAA and the Bureau of Transportation Statistics (BTS), including the number of operations and departures by airport;
- Weather information for each airport from National Oceanic and Atmospheric Administration (NOAA), including temperature, freezing precipitation, and snowfall data;
- Existing airport stormwater collection and containment systems, as reported by airport authorities in the Airport Deicing Questionnaire;
- Standard chemical information about ADF and pavement deicing chemicals, including molecular formulas and densities; and
- Analytical data from EPA sampling episodes of airport deicing operations.

a. Baseline Loading Calculations

To estimate pollutant loadings from deicing operations, EPA analyzed airports' questionnaire responses and information provided during the site visits. The Agency estimated the total amount of pavement deicing chemicals and ADF used based on data collected in the Airport and Airline Questionnaires.

In the Airport Questionnaire, EPA requested that airport authorities report the purchase/usage amount, concentration, and brand name of pavement deicing materials. EPA evaluated each reported chemical to determine the most appropriate way to estimate the average amount used over the past three winter seasons. EPA also requested the purchase amount, concentration, and brand names of ADF chemicals in the Airline Questionnaire.

The responses to the Airline Questionnaire provided sufficient data to estimate ADF usage at 56 airports. In some cases, data were not available for every airline operating at a particular airport. In these instances, EPA extrapolated the amount of ADF used by the reporting airlines to estimate the total amount of ADF used by the entire airport. This was done based on the number of airport operations (departures) at the reporting airlines and the total amount of airport operations. In addition to the ADF data reported in the Airline Detailed Questionnaire, 10 airports reported total gallons of ADF usage to EPA in their comment section of the Airport Deicing Questionnaire. These ADF data were combined with the ADF data reported in the Airline Deicing Questionnaires, resulting in estimates of total ADF usage for 66 airports.

Using the Airline and Airport Questionnaire ADF purchase data, airport departure data, and climate data, EPA developed a relationship between the estimate of amount of ADF used, the climate and size of each airport. EPA used this equation to estimate the total gallons of ADF used at airports that did not have available ADF data in the Airport or Airline Questionnaires.

Once the amount of ADF applied at each airport had been determined, EPA needed to determine the amount of ADF available for direct discharge. EPA assumes that 80 percent of applied Type I and Type II ADF falls onto the pavement at the deicing area and is available for discharge. EPA assumes that 10 percent of Type IV ADF falls to the pavement in the deicing area and is available for discharge; the remaining 90 percent adheres to the plane. (See the TDD for more information on these estimates.) The total amount of applied ADF was multiplied by the appropriate percent available for discharge to determine the amount of ADF that is available for discharge. Note that compliance capture requirements in the proposed rule are specified as percentages of ADF available for discharge, not percentages of total ADF applied.

Evaluating the amount of ADF available for discharge, coupled with the estimated baseline collection rate, would result in the total amount of discharged ADF. After excluding the ADF removed via baseline capture, EPA calculated the amount of COD and BOD_5 loading associated with the degradation of the applied deicing/anti-icing chemicals. EPA later decided that COD was a more accurate and practical indicator to regulate than BOD_5 (see the discussion in Section 7 of the Technical Development Document).

Airfield pavement deicing chemicals are applied at various airside areas where differing activities occur. Theoretically, the amount of pavement deicers being discharged could range from approximately zero percent, for chemicals that infiltrate highly permeable soils in unpaved areas during a thaw, to virtually 100 percent for paved areas near storm drains. In general, soil in unpaved areas is frozen during deicing season and is impermeable, promoting the overland flow of stormwater and pollutants to surface waters. Estimating the amount or proportion of pavement deicers discharged at a particular airport is

difficult without performing a detailed study at the airport. EPA has not received any such detailed studies, nor other information from airports indicating that pavement deicers are absorbed into soil during the deicing season. Therefore, the Agency assumed for this rulemaking that 100 percent of pavement deicers are discharged to surface waters. This means the estimates of baseline pollutant loadings and removals associated with pavement deicing are upper bound estimates.

EPA calculated the amount of pollutant loadings discharged to surface waters by using standard published chemical information and stoichiometric equations. This methodology is preferable to using empirical data because it can be applied to all deicing chemicals being used by the aviation industry. In addition, this methodology allows for a clear presentation of the calculations and assumptions used. EPA confirmed the validity of the COD concentrations for propylene glycol and ethylene glycol calculated using this methodology against the available empirical data. See Section 10 of the TDD for more information on calculations of baseline loadings due to airfield deicers.

b. Calculation of Pollutant Removals

EPA estimated the amounts of COD that would be reduced by the proposed rule, by estimating the existing capture and treatment levels at individual airports and comparing that to the levels that would be required by the proposed rule. If a particular airport would be subject to a collection requirement of 20 percent under the proposed rule and it currently is estimated to capture a greater proportion, then no load removals were estimated for that airport. Additionally, if an airport was estimated to use urea for pavement deicing, EPA assumed that the airport would use product substitution to meet the proposed effluent limit. The ammonia and COD loads associated with urea were calculated and then EPA computed the total load reduction by subtracting the ammonia loadings and the COD loadings of the substitute product, potassium acetate. (Although some studies indicate that alternative pavement deicers can be toxic to aquatic organisms, the combined impact of the COD content, toxicity, and nutrient content of urea is greater than effects associated with alternative pavement deicers.)

These calculated loading reductions, for both airfield and aircraft deicing chemicals, were then extrapolated by multiplying the direct discharge loads or load removals by the airport survey weighting factors to determine national loads for the entire industry for baseline and each regulatory scenario. EPA estimates the total annual pollutant removal for the proposed rule at 44.6 million pounds, comprised of 39.9 million pounds of COD and 4.7 million pounds of ammonia. The pollutant removal estimates for the other regulatory options range from 26 million pounds to 46 million pounds.

K. Approach to Determining Long-Term Averages, Variability Factors and Effluent Limitation Guidelines and Standards

This section describes the statistical methodology used to develop the proposed daily maximum and maximum for weekly average effluent limitations for BAT and new source performance standards for COD. EPA also used the same statistical methodology to develop the daily maximum limitation/standard for ammonia that is a proposed compliance alternative when urea is applied to runways. For simplicity, the following discussion uses the term ''limitation'' to refer to effluent limitations, standards, and the compliance alternative. EPA has proposed the same limitations for each level of recovery requirements, because the treatment technology and performance are the same regardless of the amount of fluid recovered.

The following sections describe the data selection criteria; the statistical percentile basis of the proposed limitations; rationales for proposing certain limitations; the calculations; the recommended long-term average value for treatment operations; and the engineering evaluation of the model technology's ability to achieve the levels required by the proposed limitations.

1. Criteria Used To Select Data as the Basis of the Proposed Limitations

Typically, in developing effluent limitations for any industry, EPA qualitatively reviews all the data before selecting a subset as the basis of the limitations. EPA typically uses four criteria to assess the data. One criterion generally requires that the influent and effluent represent only wastewater from the regulated operations (*e.g.,* deicing), and do not include wastewater from other sources (*e.g.,* sanitary wastes). A second criterion typically ensures that the pollutants were present in the influent at sufficient concentrations to evaluate treatment effectiveness. A third criterion generally requires that the facility must have the technology and demonstrate good operation. A fourth criterion typically requires that the data cannot represent periods of treatment upsets or shutdown and start-up periods. (Shutdown periods can result from upset conditions, maintenance, and other atypical operations.)

EPA has adapted the application of the fourth general criterion for data corresponding to start-up periods to reflect some unique characteristics of treating discharges from aircraft deicing operations. Most industries incur start-up conditions only during the adjustment period associated with installing new treatment systems. During this acclimation and optimization process, the concentration values tend to be highly variable with occasional extreme values (high and low). After this initial adjustment period, the systems should operate at steady state for years with relatively low variability around a long-term average. Because start-up conditions reflect one-time operating conditions, EPA generally excludes such data in developing the limitations. In contrast, EPA expects airports to encounter start-up operations at the start of every deicing season because they probably will cease treatment operations during warmer months. Because this adjustment period will occur every year for the Airport Deicing Category, EPA is proposing to include start-up data in the data set used as the basis of the limitations. However, through its application of the other three criteria, EPA would exclude extreme conditions that do not demonstrate the level of control possible with proper operation and control even during start-up periods.

In part, by retaining start-up data for limitations development, the limitations will be achievable because EPA based these limits on typical treatment during the entire season. Once the treatment system reaches steady state, EPA expects a typically well-designed and operated system to run continuously until the end of the deicing season. Conversely, EPA might determine that systems that operated only during relatively short periods, such as during each winter storm event (*i.e.,* of only several days duration), might be poorly operated because the model technology requires more time to reach steady state. In other words, it would be ineffective and disruptive to turn the system on and off throughout the deicing season, particularly for biological systems, such as the model technology, and EPA may reject data if it determines that it reflects this type of operation.

2. Data Used as Basis of Proposed Limitations

Of the effluent data available to EPA, 2,562 concentration values for COD and

5 concentration values for ammonia met the requirements in the criteria and are the basis of the proposed limitations. The concentration values are measurements of effluent collected from Albany Airport's anaerobic treatment system. The 2,562 COD values were collected by the airport during its daily monitoring of COD over ten deicing seasons (*i.e.,* December 1, 1999 through April 10, 2009). The five ammonia values were collected by EPA during its sampling episode (February 5 through February 9, 2006). (As explained in Section VII.E.3, EPA transferred the ammonia data from the anaerobic fluidized bed (AFB) technology because an AFB system by design creates ammonia as a by-product of wastewater treatment. Consequently, AFB discharges could have higher ammonia concentrations than typically found in airfield runoff when urea is not present. If the treated aircraft deicing effluent then were discharged through the same pipe as the runway runoff, the airport might have difficulties complying with the ammonia limitation.)

For the final rule, EPA might further explore factors contributing to variability observed in the available data, assess whether some modes of operations do not reflect the performance expected from the model technology (as required by criterion 3), and thus decide whether to exclude any of the corresponding data as the basis of any limitation.

EPA is soliciting additional data on airport discharges (see Section XIV for a detailed request for data). When applying the data selection criteria for the final limitations, EPA will consider new information from commenters and other sources. Consequently, EPA may reach new conclusions about whether some or all of the proposal data should be included or excluded as the basis of the final limitations; and/or revisions to its statistical approach are appropriate. As a result of its evaluation of the new information, EPA may promulgate final limitations that are more or less stringent than the proposed limitations.

3. Statistical Percentile Basis for Limitations

EPA uses a statistical framework to establish limitations that facilities are capable of complying with at all times. Statistical methods are appropriate for dealing with effluent data because the quality of effluent, even in well-operated systems, is subject to a certain amount of fluctuation or uncertainty. Statistics is the science of dealing with uncertainty in a logical and consistent manner. Statistical methods together with engineering analysis of operating conditions, therefore, provide a logical and consistent framework for analyzing a set of effluent data and determining values from the data that form a reasonable basis for effluent limitations. Using statistical methods, EPA has derived numerical values for its proposed daily maximum limitations and weekly average limitations.

The statistical percentiles are intended, on one hand, to be high enough to accommodate reasonably anticipated variability within control of the facility. The limitations also reflect a level of performance consistent with the CWA requirement that these limitations be based on the best technologies that are properly operated and maintained.

In establishing daily maximum limitations, EPA's objective is to restrict the discharges on a daily basis at a level that is achievable for an airport that targets its treatment system design and operation at the long-term average while allowing for the variability around the long-term average that results from normal operations. This variability means that at certain times airports may discharge at a level that is greater than the long-term average. This variability also means that airports may at other times discharge at a level that is considerably lower than the long-term average. To allow for possibly higher daily discharges, EPA has established the daily maximum limitation at a relatively high level (*i.e.,* the 99th percentile). EPA has consistently used the 99th percentile as the basis of the daily maximum limitation in establishing limitations for numerous industries for many years and numerous courts have upheld EPA's approach.

EPA has not promulgated weekly average limitations for other industries, and thus, is soliciting comment on its approach for this industry. Because EPA typically establishes limitations based upon statistical percentile estimates, it is proposing to do so for the weekly average limitation. In its derivation of the weekly average limitation for COD, EPA used an estimate of the 97th percentile of the weekly averages of the daily measurements. This percentile basis is the midpoint of the percentiles used for the daily maximum limitation (*i.e.,* 99th percentile of the distribution of daily values) and the monthly average limitation (*i.e.,* 95th percentile of the distribution of monthly average values). Courts have upheld EPA's use of these percentiles, and the selection of the 97th percentile is a logical extension of this practice. Compliance with the daily maximum limitation is determined by a single daily value; therefore, EPA considers the 99th percentile to provide a reasonable basis for the daily maximum limitation by providing an allowance for an occasional extreme discharge. Because compliance with the monthly average limitation is based upon more than one daily measurement and averages are less variable than daily discharges, EPA has determined that facilities should be capable of controlling the average of daily discharges to avoid extreme monthly averages above the 95th percentile. In a similar manner to the monthly average limitation, compliance with the weekly average limitation also would be based upon more than one daily measurement. However, the airport would monitor for a shorter time and thus would have fewer opportunities to counterbalance highly concentrated daily discharges with lower ones. For this reason, EPA is proposing and seeks comment on the choice to use a larger percentile for the weekly average limitation than the one used for the monthly average limitation. Consequently, EPA is proposing the 97th percentile as an appropriate basis for limiting average discharges on a weekly basis. EPA also considers this level of control in avoiding extreme weekly average discharges to be possible for airports using the model technology.

4. Rationale for Proposing Limitation on Weekly Averages Instead of Monthly Averages for COD in Effluent Discharges

From a monitoring perspective, EPA considers the weekly average limitation to be a better fit than the monthly average limitation for the circumstances associated with monitoring during the deicing season. In this situation, the weekly average limitation would apply to every week that the treatment system operates during the deicing season.

When it establishes monthly average limitations, EPA's objective is to provide an additional restriction to help ensure that facilities target their treatment systems to achieve the long-term average. The monthly average limitation requires facilities to provide on-going control that complements controls imposed by the daily maximum limitation. To meet the monthly average limitation, a facility must counterbalance a value near the daily maximum limitation with one or more values well below the daily maximum limitation. To achieve compliance, these values must result in a monthly average value at or below the monthly average limitation.

The deicing season is unlikely to start at the beginning of a calendar month and close exactly at the end of a calendar month. This means that the facility would be monitoring at a reduced frequency during those two

months. Increasing or decreasing monitoring frequency does not affect the statistical properties of the underlying distribution of the data used to derive the limitations. However, monitoring less frequently theoretically results in average values that are more variable. For example, monthly average values based on 10 monitoring samples per month would be (statistically) expected to include some averages that are numerically larger (as well as some that are numerically smaller) than monthly average values based upon 20 monitoring samples. Because of this reduced monitoring, an airport might have trouble in complying with the monthly average limitation even with an otherwise well-operated and controlled system. In other words, because it was not monitoring as frequently, the airport would have fewer opportunities to counterbalance high concentrations with lower values.

A weekly average limitation preserves EPA's intent for an additional restriction beyond the daily maximum limitation that supports EPA's objective of having airports control their average discharges at the long-term average. EPA is proposing and soliciting comment on use of a weekly average instead of a monthly average limitation because it appears to be a better fit for this industry from a monitoring perspective. However, two factors may warrant another approach in the final rule. First, a week may be too short a period to ensure that airports will optimize their systems appropriately over a longer period to achieve the long-term average. Second, the industry and permit writers are unlikely to have experience with weekly average limitations and may prefer other alternatives. Other approaches may include the monthly average limitation and/or the annual average limitation sometimes used for intermittent dischargers in other industries. For example, for the Pulp, Paper and Paperboard Category (40 CFR Part 430), EPA promulgated an annual average limitation that was set equal to the value of the long-term average derived from the data used to develop the daily maximum and monthly average limitations for continuous dischargers. (It does not have an allowance for variability.) EPA solicits comment on whether weekly average limitations, monthly average limitations or some other approach would be appropriate to ensure that airports have well-operated, maintained, and controlled treatment systems that discharge at a level consistent with the long-term average.

5. Rationale for Proposing a Limitation Only for Daily Discharges of Ammonia in Effluent Discharges

EPA believes that it appropriate to rely on a daily maximum limitation to ensure that airports appropriately control ammonia levels as airports might have difficulties in complying with any average limitation due to monitoring less frequently than assumed in the statistical calculations (see discussion related to monitoring for COD). Unlike COD, EPA is not proposing a weekly ammonia effluent limitation. The technology basis for the COD effluent limitations would operate throughout the deicing season with continuous discharges allowing for weekly monitoring. In contrast, urea is applied to airfield pavement as needed, and discharges would occur for a short time after the initial application, as the urea works its way through the stormwater collection and any associated treatment system that may be present. Most airports would have non-continuous and somewhat infrequent urea discharges. Consequently, it would be difficult to assume a single value for the monitoring frequency that could reasonably be applied to all airports, regardless of climatic conditions. In developing the average limitations, this assumed monitoring frequency is used in the statistical calculations. Although EPA has concerns about establishing average limitations on a national basis, a permit authority may choose to establish weekly or monthly average limitations for a specific airport, and would presumably assume a monitoring frequency based upon local climatic conditions.

Additionally, EPA expects airports to select product substitution (*i.e.,* non-urea deicers) rather than the compliance alternative that requires collection and treatment of runway runoff. Thus, it is possible that no airports will be subject to any limitation on ammonia discharges. For the final rule, after reviewing any supplementary information and comments, EPA may reevaluate whether weekly and/or monthly average limitations are necessary for proper control of ammonia.

6. Calculation of Limitations for COD and Ammonia

For COD, EPA used nonparametric statistical methods to estimate the percentiles used as the basis of the daily maximum and weekly average limitations. A simple nonparametric estimate of a particular percentile (*e.g.,* 99th) of an effluent concentration data set is the observed value that exceeds that percent (*e.g.,* 99) of the observed data points.

For the proposed daily maximum limitation for COD, EPA used the nonparametric method to derive a 99th percentile of the more than 1200 daily measurements for each unit, and then set the proposed limitation equal to the median of the two 99th percentile estimates, or 271 mg/L. The median is, by definition, the midpoint of all available data values ordered (*i.e.,* ranked) from smallest to largest. In this particular case, because there are two units, the median is equal to the arithmetic average (or mean).

For the weekly average limitation of COD, EPA first calculated, for each unit, the arithmetic average of the measurements observed during each week, excluding weekends (to be consistent with the assumed monitoring costs, although permit authorities may specify different monitoring requirements). EPA then used the nonparametric method to derive a 97th percentile of the more than 200 weekly averages for each unit, and set the proposed limitation equal to the median of the two 97th percentile estimates, or 154 mg/L.

For comparison purposes, EPA tentatively estimated 112 mg/L as the 95th percentile of the monthly averages using a statistical model based upon the lognormal distribution. If EPA were to establish a monthly average limitation, it would examine the statistical properties of the data to determine the appropriate model and statistical assumptions.

For ammonia, EPA used a parametric approach in estimating the 99th percentile based upon the data collected during EPA's 4-day sampling episode. The calculations assume the ammonia concentrations can be modeled by a lognormal distribution. EPA's selection of parametric methods, such as the lognormal distribution, in developing limitations for other industries is well documented (*e.g.,* Iron and Steel (40 CFR Part 420), Pulp, Paper and Paperboard (40 CFR Part 430), Metal Products and Machinery (40 CFR Part 438) categories). Variance estimates based upon parametric methods can be adjusted for possible biases in the data. The proposed limitation of 14.7 mg/L includes such an adjustment for possible bias from positive autocorrelation. When data are positively autocorrelated, it means that measurements taken close together in time are more closely interrelated than measurements taken farther apart in time. The adjusted variance then better reflects the underlying variability that would be present if the data were

collected over a longer period. For comparison purposes, EPA estimated values of 9.75 and 6.98 mg/L for the weekly average limitation and monthly average limitation.

7. Derivation of Long-Term Average for COD and Ammonia: Target Level for Treatment

Due to routine variability in treated effluent, an airport that discharges consistently at a level near the values of the daily maximum limitation or the weekly average limitation, instead of the long-term average, may experience frequent values exceeding the limitations. For this reason and as noted previously in this section, EPA recommends that airports design and operate the treatment system to achieve the long-term average that it derived for the model technology. Thus, a well-operated and designed system will be capable of complying with the proposed limitations.

For COD, EPA recommends that airports target treatment systems to achieve the long-term average value of 41 mg/L, which is the median of the 50th percentiles, of 37 and 45 mg/L, of the daily values from the two units. The daily allowance for variability, or the ratio of the limitation to the long-term average, is 6.6. (EPA usually refers to this allowance as the ''variability factor.'') In other words, the daily maximum limitation of 271 mg/L is about seven times greater than the long-term average achievable by the model technology. The weekly variability factor is 3.8.

For ammonia, EPA derived its recommended long-term average value of 5.24 mg/L from the (statistical) expected value of the lognormal distribution. The daily maximum limitation of 14.7 mg/L is about three times greater than the long-term average, of 5.24 mg/L, achievable by the ADF treatment model technology. Ammonia is generated as a by-product of the model technology, and EPA expects the concentrations of ammonia to have similar variability to what is being treated (*i.e.*, COD). In contrast to the COD limitations, which are based on a mixture of start-up and steady state periods, the ammonia limitation is based upon data collected only during steady state operations. EPA requests additional data that reflect ammonia discharges during start-up operations.

8. Engineering Review of Proposed Limitations

In conjunction with the statistical methods, EPA performs an engineering review to verify that the limitations are reasonable based upon the design and expected operation of the control technologies and the facility conditions. During the site visit and sampling trip at the Albany treatment plant, EPA confirmed that the airport used the model technologies, specifically AFB. EPA subsequently contacted the plant personnel to obtain more information about the installation and operation of the model technologies. EPA used this engineering information to select the subset of data from which to develop the proposed limitations. In doing so, EPA excluded one extreme value because plant personnel considered it to be atypical, and likely, the result of high solids content. Plant personnel also noted that they had removed and reinstalled the carbon for one unit prior to the last deicing season. Because the performance for the next deicing season was among the best demonstrated for this system EPA concluded that the data with the new carbon characterized variability that operators could expect from periodic maintenance for long-term operation.

As part of this engineering review, EPA concluded that the values of the limitations were consistent with the levels that are achievable by the model technologies. Next EPA compared the value of the proposed limitations to the data values used to calculate the limitations. None of the data selected for ammonia were greater than its proposed daily maximum limitation which supports the engineering and statistical conclusions that the limitation value is appropriate. Because of the statistical methodology used for the COD limitations some values were greater than the proposed limitations. Of the 2,562 data points selected for COD, 27 data points had daily values that were greater than the proposed daily maximum limitation of 271 mg/L. Of the 460 weekly averages, 14 averages had values that were greater than the proposed weekly average limitation of 154 mg/L. Of those 14 averages, 11 were during weeks when the unit also had one or more daily values that were greater than the daily maximum limitation. EPA considered, from an engineering perspective, whether any factors were likely to have led to the larger daily discharges of COD. These factors included deicing season, influent concentrations, and start-up operations. In evaluating the impact of the deicing seasons, EPA concluded that the higher values did not seem to be predominant in any one season. In particular, the higher values occurred one to seven times in each of eight seasons. In evaluating influent concentrations, EPA found that influent concentrations were generally well-controlled into the treatment plant. In general, the treatment systems adequately treated even the extreme influent values, and the high effluent values did not appear to be the result of high influent discharges. In considering start-up operations, EPA noted that the higher values occurred in every month from December through May, except in April, and thus, the limitations appear to provide adequate allowance for start-up operations.

For the final rule, EPA may further assess the range of the operating conditions and resulting performance of the treatment units used at the Albany airport that were the basis of the COD limitation. For example, EPA may contact this airport about the 27 COD values greater than the proposed daily maximum limitation. In the final rule, EPA may consider adjustments (upward or downward) to the limitations to ensure that they adequately reflect normal operations of the model technology. These final limitations may require some dischargers to improve treatment systems and/or operations to meet consistently the effluent limitations. EPA determined that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect the best available technology.

L. Complying With Regulatory Requirements

1. Compliance Dates

EPA proposes that the compliance date for today's proposed requirements will be 30 days after promulgation. Permits issued after this date will need to include limits consistent with the final rule.

2. Determination of Number of Annual Departures

Airports, in determining whether they are subject to this proposed rule, will need to refer to the number of annual departures over a five-year period prior to submittal of a permit application or NOI. Air traffic controllers tabulate departure data, which are then compiled in the BTS T–100 database (available at *http://transtats.bts.gov*). These data, along with ADF usage data collected pursuant to proposed § 449.20(a), will allow permittees, permit authorities, and the public to easily determine which ADF collection requirements would apply to a particular airport.

3. Alternate Means of Demonstrating Compliance

a. ADF Collection Requirement

EPA is aware that the ADF collection requirement differs from traditional end-of-pipe effluent limitations with regard to a mechanism for demonstrating compliance. Compliance with the collection requirement cannot be determined through end-of-pipe sampling and analysis. Additionally, the amount of ADF available for collection can vary depending on the weather and icing conditions at the time of application. EPA is proposing three procedures for demonstrating compliance with the ADF collection requirement.

The first procedure would require an airport to certify to the permitting authority that it is operating its collection system in accordance with specifications for the applicable technology described at proposed § 449.20(b)(1). The proposed specifications describe operating practices for the technologies. As long as these technologies are operated and maintained as required, the permittee will be deemed in compliance with the associated collection rate. The only reporting requirement for this procedure would be for the permitted facilities to certify to the permit authority that it is operating according to the specifications.

It is not practical for EPA to provide operating specifications for all potential collection technologies. In the instance where an airport wants to perform ADF collection with a technology other than those described in the regulations, under proposed § 449.20(b)(2) the permit authority may consult with the permittee and specify, on a case-by-case basis, an alternative ADF collection technology as the manner in which the permittee must demonstrate compliance with its capture requirement. Under this provision, the Director would also be able to specify alternate operating parameters for one of the technologies listed in the proposed rule, in consultation with the permittee. As part of the permit application, the permittee would be required to demonstrate, to the Permit authority's satisfaction, that the specified technology is designed to achieve the capture requirement as set forth in today's proposal. Again, the only reporting requirement for this scenario would be for the permitted facilities to certify to their permit authorities that they are operating and maintaining their permitted technology as required.

A third procedure, under proposed § 449.20(b)(3), would be for the permitted facility to periodically monitor, through a mass balance analysis or other means deemed acceptable by the permitting authority. The permittee would report, at a frequency determined by the permit authority, the amount of ADF sprayed and the amount of available ADF collected, in order to determine the percentage of available ADF collected.

b. Ammonia Limits

While EPA proposed a non-urea-based airfield deicing certification requirement, it is also proposing that an airport may choose a compliance alternative in which it would monitor all runway outfalls to demonstrate compliance with a proposed alternative compliance ammonia limit. However, as described further in Section VII.E.3, EPA anticipates that most if not all permittees would certify rather than choose the proposed compliance alternative ammonia limitation.

VIII. Economic Analysis for Airports

A. Introduction

EPA's economic analysis assesses the costs and impacts of the proposed effluent guidelines on the regulated industry. This section explains EPA's methodology and the results of its economic analysis. The EA contains more detailed results of this analysis.

B. Economic Data Collection Activities

EPA obtained the following data submitted by airlines to the Bureau of Transportation Statistics (BTS):

- Aircraft departures, enplaned passengers, and cargo by airport of origination, destination, airline, aircraft, and service type (passenger or cargo only) maintained in the Form 41 Traffic Database;
- Air carrier summary traffic and capacity statistics such as available seat-miles, available ton-miles, revenue seat-miles, and revenue ton-miles maintained in the Form 41 Traffic Database;
- Operating revenues, profits, and net income for large certificated carriers maintained in the Form 41 Financial Database;
- Operating revenues, profits, and net income for small certificated and commuter air carriers submitted by airlines to the BTS and maintained in the Form 298c Financial Database. These financial data are confidential business information and cannot made public until three years after the reporting year. EPA obtained them through a special request to the BTS, and they will not be included in the rulemaking public docket.

EPA obtained data on airport revenues, expenses and other financial information that were submitted under FAA's Financial Reporting Program by commercial service airports receiving Airport Improvement Program (AIP) grants. As noted in Section VI above, EPA surveyed: All U.S. primary airports with more than 30,000 annual departures by commercial air carriers; a sample of small hub and non-hub primary airports with fewer than 30,000 commercial air carrier annual departures (excluding Alaska); and selected General Aviation/Cargo airports and Alaskan airports. The Airport Questionnaire collected data on airport ownership, financial management, signatory airlines, sources of capital funding, and non-airline aircraft operations. These data were collected to provide EPA with a context to understand better the data that were obtained through the Financial Reporting Program.

In addition, EPA surveyed a sample of airlines that operated at each of the surveyed airports; all airlines with more than 20,000 annual departures at a surveyed airport received a questionnaire, as well as a sample of airlines with more than 1,000 annual departures at each surveyed airport. The Airline Questionnaire collected data on deicing operations at each airport, including the airline's deicing budget, costs included in the budget, whether the airport is an operational hub for the airline, and whether its aircraft were deiced by another airline or a fixed base operator providing ground services at that airport.

EPA also used journal articles, academic publications, and data and reports from trade organizations, FAA, DOT, and other government agencies and other publications to inform the analysis of the effluent guidelines.

C. Annualized Compliance Cost Estimates

EPA estimates that 218 primary airports that perform deicing operations and have more than 1,000 annual jet departures will be regulated by the proposed rule. EPA estimated the economic cost to each potentially affected airport of complying with the BAT limitations being proposed today using the BAT technologies identified by EPA in this proposal. Thus, EPA assumed that airports would:

- Discontinue urea usage for airfield deicing and use substitute deicing products instead;
- Collect at least 60 percent of applied ADF and treat to the specified numeric discharge limit using anaerobic fluidized bed technology if the airport

has more than 10,000 annual departures, and on average 460,000 or more gallons of ADF is applied annually at the airport;

• Collect at least 20 percent of applied ADF and treat to the specified numeric discharge limit using anaerobic fluidized bed technology if the airport has more than 10,000 annual departures, and on average less than 460,000 gallons of ADF is applied annually at the airport.

Because many airports do not meet the above criteria, EPA estimates that approximately 164 primary airports, 135 non-primary airports, and almost 3,000 general aviation airports are not regulated under the proposed rule.

EPA projects that 70 of the 218 in-scope airports would incur costs under this proposal associated with deicing of aircraft. EPA's assessment of the remaining 148 airports indicates they are already in compliance with the performance standard, and therefore would not incur additional costs because of this proposal. The technologies that are the basis for today's proposal are projected to cost affected airports $714.0 million in total capital costs over the 20-year analytic period. EPA believes the effective service life of deicing pads is at least 20 years, but the effective service life of GRV and plug-and-pump technologies is 10 years. (Plug-and-pump technologies are not part of the proposed option.) Therefore, for any airport modeled using GRV and/or plug-and-pump technologies, EPA incorporated capital expenditures in year 10 for replacement in addition to the initial capital expenditure. The total capital cost figure in Table VIII–1 includes all initial and replacement capital expenditures. However, because the replacement capital expenditures occur 10 years after promulgation, the discounted present value (PV) of those expenditures is less than their current value. Thus, the PV of capital costs is also presented in Table VIII–1 to allow a fair comparison between technologies requiring replacement with those only requiring initial investment over the 20-year analytic period. The PV of capital costs under the proposed option 3 is $701.7 million over the 20-year analytic period.

The annual cost of operating and maintaining the technologies identified as BAT for aircraft deicing for this proposed rule, which includes the cost of using potassium acetate instead of urea to deice airfield pavement, is estimated at $45.9 million. Adding this operation and maintenance cost to the $45.4 million in capital costs of installing deicing pads at the seven airports who are not currently meeting the 60 percent capture requirement, the rule would have a total annualized cost of $91.3 million ($2006). Of the 70 airports projected to incur costs under this proposed rule: 40 airports only incur costs associated with the urea ban, 17 airports only incur costs associated with the collection and treatment of ADF, and 13 airports incur costs associated with both the urea ban and ADF collection and treatment. Table VIII–1 presents projected costs for the proposed rule, as well as the other three options examined (see Section VII.D.3).

TABLE VIII–1—BAT COSTS TO AIRPORTS THAT DEICE AIRCRAFT AND AIRFIELD PAVEMENT

[2006 $ millions—218 airports] [a]

Option	Airports incurring costs	Total capital costs	Present value of capital costs	Annualized capital costs	Annual O&M costs	Total annualized costs
1	67	$311.4	$299.5	$19.2	$17.1	$36.4
2	75	457.8	435.2	28.0	82.1	110.1
3 [b]	70	714.0	701.7	45.4	45.9	91.3
4	121	871.8	848.7	54.9	50.0	105.0

[a] EPA used a discount rate of 5.25% as provided by the airport industry. *See* Section 5 of the Economic Analysis for further information.
[b] Proposed option.

D. Economic Impact Methodologies

EPA's analysis of the economic impacts of the proposed effluent guidelines and new source performance standards for airport deicing operations examined the impacts of the proposed regulations on the economic viability of airports and their customer airlines. We note that there are a number of distinguishing features of this industry that make the analysis here different from the type of more traditional analysis EPA would perform for a for-profit manufacturing industry.

First, almost all potentially affected airports are publicly owned and operated by local, county, or state governments, or by quasi-governmental authorities created to operate the airport. As governmental or quasi-governmental entities, airports do not earn a profit or loss in the traditional financial sense; in fact, many airports have been operated with the expectation that they will break even financially, with airline customers legally required to cover expenditures in excess of costs.

Second, if compliance costs are passed through to airlines serving the affected airports, those airlines would likely determine economic achievability on a route and/or airport basis, as well as how that route/airport fits into the airline's entire route structure. Further, a decision to drop a route at one airport if the route is no longer financially viable may affect the financial viability of connecting routes associated with the same or different airports. However, airline cost and revenue data are only available at the airline level, not on a route-specific basis.

Third, recent years have been financially difficult for the air transportation industry. In aggregate, airlines earned negative operating profit (operating revenues less operating expenses) from 2001 through 2004, and negative net income from 2001 through 2005. A comparison of the expected compliance costs of this proposed regulation with industry profits is not a useful benchmark here (as it usually would be for evaluating the impacts of effluent guidelines on for-profit industries in better financial condition) where many airlines are actually losing money prior to this proposal.

1. Cost Annualization

The first step in projecting the economic and financial impacts of this proposed rule on airports is cost annualization. For each airport, EPA projected the capital and operating and maintenance costs of the technology basis for each ADF target removal percentage over 20 years, discounted future costs using an airport-specific opportunity cost of capital, and annualized those costs to represent 20 equal annual cost payments incurred by the airport. Based on their expected service lives, the capital cost estimates incorporate periodic replacement of

GRVs and plug-and pump-technologies. For the purposes of projecting capital costs, EPA expects both these technologies will require replacement after 10 years, while a deicing pad is expected to last 20 years before requiring replacement. The method for projecting each airport's capital and operating costs is described in Section VII.I.

EPA assumed airports will issue tax-exempt, fixed coupon rate serial General Airport Revenue Bonds (GARBs) to fund capital expenditures. EPA assumed airports will issue bonds equivalent to the net present value of capital costs plus 3 percent to account for bond issuance costs. Capital costs were annualized using each airport's nominal bond rate for its most recent GARB issue. This was converted to a real rate using an average annual inflation rate of 2.3 percent over the last 5 years. The average nominal discount rate for costed airports was 5.25 percent, which is equivalent to 2.87 percent after accounting for inflation. Costs were annualized over 20 years. Table VIII–1 presents the total net present value and annualized value of capital costs as well as the operating and maintenance costs for each option.

2. Impacts

Because airports are generally non-profit government or quasi-government (e.g., port authorities) enterprise funds, the effect of an effluent guideline on airport income statements and balance sheets is not equivalent to the impact on income of a for-profit private-sector business. Therefore, EPA chose to examine the financial impacts of the proposed effluent guidelines using two measures. First, EPA compared airport revenues with annualized compliance costs. Second, because EPA expects many, if not all, airports will fund capital expenditures by issuing debt (GARBs), EPA examined the impact of additional debt on each airport's debt service coverage ratio.

a. Revenue Test

EPA's *Guidelines for Preparing Economic Analyses* (2000) recommends the ''revenue test'' as a measure for impacts of programs that directly affect government and not-for-profit entities. The revenue test compares the annualized compliance costs of the regulation with the revenues of the governmental entity. The guidance suggests evaluating the affordability of a regulatory option as follows:

- If annualized compliance costs are less than 1 percent of revenues, the option is generally considered affordable;
- If annualized compliance costs are greater than 1 percent, but less than 3 percent of revenues, the option may be considered affordable if only a few entities are affected and the majority incurs costs less than one percent of revenues;
- If annualized compliance costs are greater than 3 percent of revenues, the option is not generally considered affordable.

EPA found that only one surveyed airport is privately owned, and because that airport is not a commercial service airport, it would not be within the scope of coverage of today's proposed rule. All other surveyed airports are owned by state, city or county governments, or by airport or multi-port authorities. Thus, use of the revenue test is appropriate to measure impacts to airports. EPA used operating revenues as reported on Form 127 of the FAA's Airport Financial Reporting Program as the denominator for the revenue test ratio, and annualized compliance costs for each option as described under Cost Annualization (*see* Section VIII.D.1) as the numerator for the ratio.

b. Debt Service Coverage Ratio

When creating quasi-governmental agencies such as port authorities, the legislation that created the agency typically includes a lower limit on the authority's debt service coverage ratio (DSCR). Airports owned and operated directly by a state or local government might also have direct limits on airport debt (if the airport has authority independent of the city or county government to incur debt). The authority will be in default on all bond issues if its DSCR falls below the relevant benchmark. Review of Comprehensive Annual Financial Reports (CAFR) for affected airports shows that the ratio of net revenues to debt service for any given year cannot fall below 1.25.

EPA assumed capital financing will occur through the issue of GARBs; this can only be done if the additional debt does not cause the issuer's DSCR to fall below the benchmark. Therefore, EPA estimated the post-regulatory DSCR for each airport incurring capital expenditures under the proposed rule.

From the Airport Questionnaire responses, EPA collected each airport's current DSCR, and the net revenues and debt service used to calculate that ratio. For airports that belonged to multi-airport systems under the same ownership, DSCR was reported at the level of the entire system. Therefore, EPA aggregated compliance costs for all affected airports in the system, and performed a single calculation for the entire system. EPA calculated the post-regulatory DSCR in two ways: (1) Assuming costs are passed through to airlines in the form of higher landing fees, and (2) assuming no costs are passed through. Some evidence suggests airports do not pass through 100 percent of costs, at least in the short run, if there is concern an airline might withdraw service if the airport increases fees. This might occur if the airport has nearby competitors, or if airline finances are fragile. Therefore, EPA wanted to determine if an airport would be in danger of default on its debt even if it was unable to pass through compliance costs to its airline customers.

Assuming 100 percent cost pass-through from airports to airlines, EPA estimated the post-regulatory DSCR by: (1) Adding the net increase in landing fees associated with compliance (that is, total annualized compliance costs less incremental annual deicing operating and maintenance costs) to pre-regulatory airport net revenues, and (2) adding the annualized value of capital compliance costs to the debt service figure. Assuming no cost pass-through from airports to airlines, EPA estimated the post-regulatory DSCR by: (1) Subtracting incremental annual deicing operating and maintenance costs from pre-regulatory airport net revenues, and (2) adding the annualized value of capital compliance costs to the debt service figure.

3. Cost Pass-Through

Historically, most or all airport costs are eventually paid for by airlines and the airlines' customers. Airlines paid airports for operating costs through rates and charges, and for airport capital expansion through aviation user taxes that formed the basis for AIP grants or by providing the revenue stream to finance bond issues. In recent years, airports have developed new revenue streams from concessions, parking, and car rentals. In addition, much capital expenditure is now funded through Passenger Facility Charges (PFCs), although airlines view PFCs as similar to other fees that affect ticket prices, and thus reflect costs passed through to them and their passengers. Although these recent trends have modified airport finance, EPA's overall understanding is still that in the long run, a large percentage of airport costs are passed through to airlines and airline passengers in the form of increased fees.

However, in the short run, cost pass-through (CPT) from airports to airlines might be significantly smaller than 100 percent. For example, due to the severe financial distress experienced by

airlines in the wake of 9/11, a Department of Transportation report showed that airports suspended or reduced airline rates and charges, contributed discretionary cash flow to reduce airline charges, and found other means of reducing (or at least refrained from increasing) airport costs to airlines. In addition, airports compete among themselves for airline service. Anecdotally, some airports in relatively close proximity to other significant airports have indicated to EPA that they are reluctant to increase airline rates and charges for fear of losing traffic to competitors.

Although the general economic pressures that affect an airport's ability to pass through costs are well understood, EPA found no studies that have attempted to quantify this relationship. Therefore, to study the range of possible impacts, EPA has chosen to model CPT in the form of three scenarios: the two endpoints of the spectrum (0 percent and 100 percent CPT), and an intermediate scenario of 50 percent CPT.

In addition, airlines pass through costs to passengers in the form of higher ticket prices. The ability of airlines to do this depends largely on market-specific factors such as the desirability of an airport as a final destination, whether the trip to that final destination is for business or pleasure, and whether other airports with acceptable standards of airline service are close to that destination. If an airport serves a highly desirable final destination, with a high percentage of business travel, and no alternative airports nearby, airlines might be able to pass through significant costs to their passengers. However, although studies have measured the intensity of demand for airline services in general, there are very few studies examining airport-specific demand factors.

In addition, the ability of airlines to pass through costs to passengers also depends on the supply of air transportation services. In some respects, airline tickets have become something of a commodity, where passengers largely base their choice on ticket price. This acts to drive prices down to a similar low level. The results of this might be observed in the recent behavior of airlines. With airline fuel costs projected to increase by 50 to 70 percent in 2008, airlines have found it difficult to raise fares, at least in the short run. Announced fare increases by one airline have not been followed by others, forcing the airline raising its fares to return them to their initial level. While airlines have recently started charging or increasing fees for checked bags, phone reservations, and in-flight meals and snacks, these fees are expected to cover only a fraction of increased fuel costs. Thus, it appears that at least in the short run, it is difficult in today's business climate for airlines to pass through a significant percentage of costs to their passengers.

E. Selection, Costs and Impacts of BAT Options

Table VIII–2 summarizes the projected annualized compliance costs and the number and percent of in-scope airports projected to incur compliance costs greater than 3 percent of operating revenues under each option analyzed by EPA.

TABLE VIII–2—SUMMARY OF IMPACTS UNDER ANALYZED OPTIONS

Option	Total annualized compliance costs (2006 $millions)	In-scope airports with projected compliance costs exceeding 3% of operating revenues [a] [b]	
		Number	Percent
1	$36.4	9	4.2
2	110.1	20	9.2
3 [c]	91.3	11	5.1
4	105.0	58	26.6

[a] Assuming zero percent cost pass-through.
[b] Impacts were not projected for 3 airports under Options 1 through 3, and 5 airports under Option 4. All 5 airports are owned by the Alaska Department of Transportation and Public Facilities. Impacts to these airports could not be projected because the airport owner does not maintain airport-specific revenue figures.
[c] Proposed option.

Under Option 2, airports are projected to incur the largest total annualized costs of all four options examined, yet projected removals of COD are less than under either Option 3 or Option 4 (*see* Section 13 of the TDD). Because Option 2 costs more but would remove fewer pounds of pollutants than either Option 3 or Option 4, EPA eliminated Option 2 as a candidate for selection as best available technology for this ELG.

EPA also rejected Option 4 as a candidate for selection as BAT, because more than one-quarter of in-scope airports (*i.e.,* 59 out of 218 in-scope airports) are projected to incur costs exceeding 3 percent of operating revenue under this option. The difference between Option 3 and Option 4 is that Option 4 would extend the 20 percent ADF capture and treatment rate requirement from primary commercial service airports with more than 10,000 annual departures to primary commercial service airports with more than 1,000 annual departures (*see* Table 4–1 in the EA). Extending the capture requirement would cause 51 small airports with relatively low operating revenues that were not projected to incur costs under Option 3 to incur compliance costs under Option 4. Forty-seven of these 51 airports are projected to incur costs exceeding 3 percent of revenues (*see* Table 5–5 in the EA), which means that these entities would experience a heavy economic burden if required to meet this option, as described above. Based on the large number of airports that EPA projects would experience this heavy economic burden, EPA determined that Option 4 is not economically achievable.

Under Option 3, the proposed regulations would require the 14 airports where average ADF usage has been estimated to exceed 460,000 gallons annually to capture and treat 60 percent of ADF. Airports with greater than 10,000 annual departures but less than 460,000 gallons of ADF usage would be required to meet a 20 percent ADF capture and treatment rate. Under Option 1, the regulations would require all airports with greater than 10,000 annual departures to meet the 20 percent ADF capture and treatment rate. Thus, the difference between Option 1 and Option 3 in projected compliance costs, economic impacts, and pollutant

removals is entirely attributable to the stricter standard for the 14 airports with the largest ADF usage; this stricter standard would add a projected $54.9 million in annualized compliance costs to the rule.

EPA determined that both options are economically achievable. The 9 airports projected to incur costs exceeding 3 percent of operating revenues under Option 1 would incur identical impacts under Option 3. Due to the 60 percent ADF capture and treatment standard, two additional airports are projected to incur costs exceeding 3 percent of operating revenues under Option 3 (*see* Table 5–5 in the EA). However, as discussed in Section 2.6 of the EA, very large airports such as these have significantly better access to financial resources than smaller airports and serve more passengers and aircraft. Thus, they are less vulnerable to a potential loss of service in response to increased rates and charges and earn higher revenue flows. Consequently, EPA believes these airports will be less affected than smaller airports by compliance costs that comprise a similar percentage of revenues. In addition, both of these airports are currently undergoing significant capital expansion and improvement programs; as part of these programs both airports are installing deicing pads, however EPA's costing assumed no deicing pads. Although EPA does not have sufficient information to determine if these pads will enable the airports to meet the 60 percent capture and treatment target without further capital expenditure, their installation should decrease the incremental costs necessary to reach that standard relative to those estimated for our analysis.

Airports with less than 10,000 total annual departures have been excluded from ADF collection and treatment requirements based on possible economic achievability concerns. EPA's analysis shows that approximately 46 percent of the next approximately 100 airports (in terms of ADF usage) would incur costs of greater than 3 percent of their revenue if required to comply with these additional requirements. Moreover, airports with less than 10,000 annual departures are smaller airports and may have greater difficulty raising funds to meet these ADF requirements. For these reasons, we have decided to exclude airports with less than 10,000 total annual departures from the ADF collection and treatment requirements of this proposed rule.

As a check on whether Option 3 is the best combination of technologies to be selected as BAT, EPA also examined whether there might be an additional option that would result in more removals than Option 3 (but less than Option 4) while still being economically achievable. Option 3 would impose a 60 percent capture requirement on the 14 airports that are the largest by ADF usage. EPA therefore considered whether the 60 percent requirement could be extended to additional airports beyond the top 14 (*i.e.,* extended to airports with somewhat less ADF usage) without going beyond the limits of economic achievability. EPA reviewed the projected costs of installing deicing pads at airports with less than 460,000 gallons of annual ADF usage as well as those airports' operating revenues. From this review, EPA concluded that the set of airports immediately following the ''top 14'' by ADF usage would incur significantly greater economic impacts relative to their resources than would the top 14 airports. Specifically, of those airports that would incur costs under today's proposal, 5 of the first 6 airports that immediately follow the top 14 by ADF usage would be projected to incur costs greater than 3 percent of revenues and therefore would incur a heavy economic burden. In addition, 29 of the 57 airports in all that follow the top 14 by ADF usage would be projected to incur costs over 3 percent of revenues. This confirms, in EPA's view, that imposing the 60 percent requirement on only the top 14 airports under Option 3 is the appropriate cutoff point for determining economic achievability for this industry. Moreover, these additional airports, if subjected to a 60 percent capture requirement, would be expected to achieve few additional pounds of pollutant removals relative to Option 3. This additional analysis confirms EPA's proposal to identify the Option 3 technologies as the BAT basis for this effluent limitation guideline. *See* ''Regulatory Option Development for the Airport Deicing Operations Rulemaking Proposal'' (DCN AD01168) in the docket for additional information.

Tables VIII–3 through VIII–5 below present more detailed estimated costs and impacts of the options that EPA considered for BAT.

Table VIII–3 presents the results of the revenue test for affected airports. Under Option 3, 174 of 218 in-scope airports (80 percent) are projected to incur zero annualized compliance costs or annualized compliance costs composing less than 1 percent of revenues. Of the remainder, 11 (5 percent) are projected to incur costs exceeding 3 percent of revenues, and 29 (13 percent) are projected to incur costs exceeding 1 percent, but less than 3 percent of revenues.

TABLE VIII–3—FINANCIAL IMPACTS OF BAT OPTIONS ON AIRPORTS THAT DEICE

[2006 $ millions—218 airports]

Option	Total annualized costs	Number of airports with ratio of annualized compliance costs to operating revenues of: [a]			
		Less than 1%	Between 1% and 3%	Greater than 3%	Not analyzed [b]
1	$36.4	178	27	9	3
2	110.1	165	30	20	3
3 [c]	91.3	174	29	11	3
4	105.0	130	25	58	5

[a] Number of airports may not sum to 218 due to rounding.
[b] Airports incurred compliance costs but financial impacts could not be analyzed due to lack of airport revenue data.
[c] Proposed option.

Tables VIII–4 and VIII–5 present the projected impact of the rule on the ability of the airports to finance their debt. To complete this analysis, EPA first had to distinguish multiple airport owners from single airport owners. Multiple airport owners might incur costs for several airports, and debt is typically held at the ownership level, not at the level of the individual airports. EPA used question B–4 of the Airport Deicing Questionnaire to

identify all multiple airport owners, and how many airports under that ownership received a survey.

EPA found 10 airport owners received surveys for 31 airports; of these, 9 airport owners received surveys for 21 airports that were determined to be in-scope of the proposed regulation. All results for multiple airport owners are presented unweighted because each airport was individually identified and therefore does not represent any other airports but itself with respect to ownership. EPA aggregated projected costs for all in-scope airports under that ownership pattern and analyzed them using the owning organization's debt service coverage ratio obtained from the Comprehensive Annual Financial Report. The remaining 93 (unweighted) in-scope airports were evaluated individually as single-owner airports. Although EPA did not stratify the survey based on ownership, and therefore the survey weights cannot be considered statistically reliable for determining the count of single-owner airports, the weights generally reflect the relative frequency of single airport ownership. EPA presents both the weighted and unweighted results for this group of airports.

Some airports did not provide sufficient data to analyze impacts on the DSCR. This could occur because: (1) The airport does not use debt to finance capital projects, (2) data were not provided through the survey or the airport's annual financial report, or (3) data are available but the pre-regulatory DSCR is less than 1.25. For single-owner airports, the impact on DSCR could be projected for all airports expected to incur capital costs under the proposed option. Among multi-airport owners, the impact on DSCR could be projected for all except one airport owner that was expected to incur capital costs for three airports under the proposed option. This airport owner is described in greater detail below.

Table VIII–4 presents the projected impact of the rule on the ability of single airport owners to finance their debt. Assuming no costs are passed through to their air carrier customers, two airports are projected to incur costs under the proposed rule that would result in their post-regulatory debt service ratio falling below the threshold that indicates default. However, one of these airports installed a deicing pad after the survey was submitted, and therefore would incur lower compliance costs than projected here. Under the proposed rule, no single airport owners are projected to be in danger of default when 100 percent of compliance costs are assumed to be passed through to airline customers.

TABLE VIII–4—IMPACT OF FINANCING BAT OPTIONS ON AIRPORT DEBT SERVICE COVERAGE RATIO—SINGLE AIRPORT OWNERS

[192 airports]

Option	Incur costs	Not analyzed [a]	Owners with pre-regulatory DSCR >1.25 & post regulatory DSCR <1.25	
			100% CPT	0% CPT
1	54	6	0	3
2	62	6	1	7
3 [b]	55	6	0	3
4	99	42	0	3

[a] Of the 218 airports (weighted), 192 were estimated to be both in-scope, and the only airport controlled by its ownership. These columns represent the number of those 192 airports projected to incur costs under each option, and of those airports incurring costs, the number that cannot be analyzed due to lack of sufficient data.

[b] Proposed option.

Table VIII–5 presents the projected impact of the rule on the ability of the owner to finance debt for the 6 multi-airport systems that own the 13 airports projected to incur costs under the proposed rule. For the 5 airport systems owning the 10 airports projected to incur costs for which the DSCR analysis could be performed, none of the four options considered for the proposed rule are projected to have an impact on the ability of airport authorities to finance debt.

EPA could not analyze one multi-airport system, which is responsible for five airports projected to incur costs under at least one option. This is the Rural Aviation System of the Alaska Department of Transportation and Public Facilities, which owns 256 rural airports. EPA projects that three of those airports would be affected by the proposed rule. The Alaska Rural Aviation system does not use debt financing; therefore, it has no DSCR to analyze. Instead, it relies on state and federal grants to fund capital expenditures.

TABLE VIII–5—IMPACT OF FINANCING BAT OPTIONS ON AIRPORT DEBT SERVICE COVERAGE RATIO—MULTI AIRPORT OWNERS

[9 airport authorities owning 21 in-scope airports] [a]

Option	Incur costs [b]		Not analyzed [b]		Owners with pre-regulatory DSCR >1.25 & post regulatory DSCR <1.25	
	Owners	Airports	Owners	Airports	100% CPT	0% CPT
1	5	11	1	3	0	0
2	5	11	1	3	0	0
3 [c]	6	13	1	3	0	0

TABLE VIII–5—IMPACT OF FINANCING BAT OPTIONS ON AIRPORT DEBT SERVICE COVERAGE RATIO—MULTI AIRPORT OWNERS—Continued

[9 airport authorities owning 21 in-scope airports] [a]

Option	Incur costs [b]		Not analyzed [b]		Owners with pre-regulatory DSCR >1.25 & post regulatory DSCR <1.25	
	Owners	Airports	Owners	Airports	100% CPT	0% CPT
4	6	16	1	5	0	0

[a] Because these airports and their ownership were individually identified, the results cannot be assumed to represent any airport owners other than themselves. Therefore, these results are not weighted.

[b] Of 114 surveyed airports (unweighted), 21 (unweighted) under the control of 9 distinct ownership authorities were determined to be in-scope of the proposed rule. These columns represent the number of those airports and the number of airport ownership authorities projected to incur costs under each option, and of those airports incurring costs, the number that cannot be analyzed due to lack of sufficient data.

[c] Proposed option.

In light of the foregoing analysis, EPA does not believe that the projected impacts of the rule on the ability of airports to finance their debt are significant enough to change our proposed findings on which BAT options are economically achievable.

F. Economic Impacts for New Sources

As explained in Section VII.F above, EPA has determined that the proposed NSPS would not impose a barrier to entry, in both the new runway and new airport scenarios. The costs for a centralized deicing pad are estimated at ten percent or less of the total cost for a new runway, and this proportion is even smaller when compared to the cost of building a new airport. An analysis of these costs is contained in the record for today's proposal.

G. Cost and Pollutant Reduction Comparisons

EPA compared the projected compliance costs for the proposed rule with the estimated reduction in pollutants resulting from the effluent guidelines. Table VIII–6 presents projected compliance costs and estimated pounds of COD and ammonia removed from airport stormwater under the proposed rule. Option 3 is expected to reduce COD and ammonia loads by 45.2 million pounds at an annualized cost of $91.3 million, for a cost of $2.02 per pound of pollutant removed.

TABLE VIII–6—POLLUTANT REMOVALS, COSTS AND COST-EFFECTIVENESS OF BAT OPTIONS FOR AIRPORTS THAT DEICE

Option	Total pollutant removals (million lb)	Total annualized costs (2006 $ mil.)	Cost/lb pollutant removed
1	26.6	$36.4	$1.37
2	36.6	110.1	3.01
3 [a]	45.2	91.3	2.02
4	47.4	105.0	2.22

[a] Proposed option.

EPA has reviewed the relative cost per pound of pollutants removed in previous effluent guidelines and has found that the cost per pound presented in today's proposal is similar or less expensive than many guidelines promulgated to date including: Aluminum Forming, $2.42/Lb; Landfills, $15.00/Lb and; Waste Combustors, $38.83/Lb.

H. Small Business Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; hereinafter referred to as RFA), acknowledges that small entities have limited resources, and makes it the responsibility of regulating federal agencies to avoid burdening such entities unnecessarily. The ultimate goal of RFA is to ensure that small entities do not incur disproportionate adverse economic impacts as a result of a regulation. The first step in this process is to determine the number and type of small entities potentially affected by the regulation.

The RFA (5 U.S.C. 601) defines three types of small entities: small business, small not-for-profit organization, and small governmental jurisdictions. To determine airport ownership, EPA examined FAA Airport Data (Form 5010) and the Contact Information data file for National Flight Data Center (NFDC) facilities, which list the owner of each airport. EPA matched all 153 surveyed airports (representing 359 airports, both in-scope and out-of-scope) to their owners and determined that with the exception of one privately owned airport, ownership is composed of states, county, city governments, and single and multi-purpose port authorities. Single and multi-purpose port authorities are quasi-governmental agencies created by governmental legislation to maintain and operate airports, shipping ports, and other government-owned facilities such as bridges.

The RFA defines a small government entity as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. After matching each airport-owning governmental entity with its population, EPA estimates that:

- 16 surveyed airports representing 76 airports are owned by small government entities
- 8 surveyed airports representing 34 airports owned by small government entities are in the scope of the proposed rule.

Although many Alaskan airports are relatively small when measured by service level, most of these airports are owned by the State of Alaska and therefore are not considered small for

the purposes of the RFA; 10 of the 11 surveyed Alaskan airports are not small by this standard.

EPA projected impacts on these small government entities that own airports using the revenue test described in Section VIII.D.2. EPA found that 3 of the 34 in-scope airports owned by small government entities are expected to incur annualized compliance costs exceeding three percent of airport operating revenues. These results are presented in Table VIII–7.

TABLE VIII–7—FINANCIAL IMPACTS OF BPT/BAT OPTIONS ON SMALL AIRPORTS THAT DEICE [a]

[2006 $ millions—34 airports]

Option	Total annualized costs	Number of airports with ratio of annualized compliance costs to operating revenues of:			
		Less than 1%	Between 1% and 3%	Greater than 3%	Not analyzed [b]
1	$1.8	23	8	3	0
2	4.8	23	8	3	0
3 [c]	1.8	23	8	3	0
4	3.0	23	0	11	0

[a] An airport is considered small if the governmental entity that owns the airport serves a region with less than 50,000 people.
[b] Airports incurred compliance costs but financial impacts could not be analyzed due to lack of airport revenue data.
[c] Proposed option.

As privately owned, for-profit businesses, air carriers are subject to the small business definitions set forth by the Small Business Administration's size standards. For EPA's purposes, the size standards for the North American Industrial Classification System (NAICS) Scheduled Passenger and Freight Air Transportation (NAICS 481111 and 481112) sectors are appropriate for determining potentially affected small airlines. Thus, air carriers with fewer than 1,500 employees will be considered small for the purposes of this analysis.

Available employment data for air carriers are provided by the BTS in their Employment Statistics—Certificated Carriers report. This data set does not contain records for all affected air carriers. For some air carriers with missing data, EPA obtained employment figures from annual reports or the annual report of the Regional Airline Association. For the remaining carriers, EPA compared their departure and enplanement data to the same data for air carriers with employment data. EPA determined that annual departures could be used as a suitable proxy for size. Using BTS T–100 data, EPA found 139 U.S. air carriers had at least one departure from an in-scope airport in 2006. Based on employment, or annual departures for air carriers without employment data, EPA estimates that of these 139 U.S. air carriers operating from in-scope airports in 2006, 36 are not small (27.5 percent) and 103 (72.5 percent) are small business owned.

IX. Airline Impacts

The economic and operational structure of airport deicing differs significantly from most industries for which EPA has promulgated effluent limitations and guidelines. For most industries, EPA evaluates direct impacts to affected entities, and only secondarily considers impacts on those entities' suppliers and customers. In the case of airport deicing, the airport is typically the holder of the NPDES permit and thus responsible for collection and treatment of ADF-contaminated stormwater; air carriers that use the airport are occasionally co-permittees, but never the principal permittee at the airport. However, the air carrier (or a contractor to the air carrier such as another airline or an FBO) is the entity that uses the ADF at the airport under rigorous safety guidelines set by the FAA. Furthermore, in the long run, air carriers (and their passengers) pay for much of the airport's infrastructure and operating expenses. Therefore, EPA has chosen to evaluate these secondary impacts of the proposed regulation on air carriers in addition to airports.

EPA examined impacts to airlines with compliance costs passed through from airports in the form of higher landing fees. EPA compared compliance costs with airline operating revenues (''sales test''); this test was supplemented with a comparison of compliance costs with operating profit and net income for those airlines with positive earnings. EPA also analyzed the impact of costs relative to common air carrier benchmarks for unit measures of cost and capacity such as cost per available seat-mile. EPA examined impacts of the preferred option on airline operating revenue between 2004 and 2006. Only in 2005, and for only one airline out of roughly 120 during that period were compliance costs greater than three percent of operating revenue. EPA does not believe that these impacts are significant enough to change our findings on which BAT options are economically achievable. For a more detailed discussion of these impacts, see Sections 3.3 and 5.3, respectively, of the EA.

X. Environmental Assessment

A. Environmental Impacts

EPA has evaluated environmental impacts associated with the discharge of wastewater from airport deicing activities (Environmental Impact and Benefit Assessment for Proposed Effluent Guidelines and Standards for the Airport Deicing Category (EIB)). As discussed in Section VII.E, deicing wastewater discharges can increase the loadings of multiple pollutants to receiving surface waters.

The most widely recognized pollutant from deicing activity is oxygen-demanding material, measured as either COD or BOD_5. All primary ingredients in both aircraft and airfield deicers exert oxygen demand. Propylene glycol and ethylene glycol are the primary ingredients in aircraft deicers. Acetate salts, formate salts, propylene glycol, ethylene glycol and urea are the primary ingredients in airfield deicers. Propylene glycol and ethylene glycol, in particular, exert extremely high levels of oxygen demand when they decay in the environment. Acetates, formates, and urea exert lower, though still significant, levels of oxygen demand.

Acetate or formate salts, the primary ingredients in many airfield deicers, also contain potassium or sodium. Potassium and sodium can raise overall salinity levels or cause ion imbalances in surface waters. Urea, another primary airfield deicer ingredient, decomposes in water to produce ammonia, a toxic compound, and nitrates, a nutrient pollutant that can increase the

incidence of organism blooms in surface waters.

Aircraft and airfield deicers also contain additives in addition to the primary ingredients. These additives serve a variety of purposes such as reducing fluid surface tension, thickening, and fire and corrosion inhibition. Because deicer manufacturers consider the identity and quantity of additives in their formulations to be proprietary information, EPA was unable to obtain complete information on the nature and use of these additives.

EPA was able to obtain some limited information through various public sources, and identified several additives with toxic properties. These include nonylphenol ethoxylates, alcohol ethoxylates, triazoles, and polyacrylic acid. Because deicer formulations change periodically, some of the additives EPA identified may not be present in current formulations. Nevertheless, the properties of the additives EPA identified may be indicative of deicer additive properties in general. EPA solicits additional information on the identity of deicer ingredients, and on the quantities in which they are used in current formulations. EPA also solicits information about potential environmental impacts associated with ingredients in deicer formulations.

Airports in the United States discharge deicing wastewater to a wide variety of waterbody types including streams, rivers, lakes and estuaries. Many airports discharge deicing wastewater to small streams with limited waste dilution and assimilation capacities. Impacts from deicing wastewater discharges have been documented in a variety of surface waters adjacent to or downstream of a number of airports in the United States. Some locations experienced acute impact events, whereas other locations have chronically degraded conditions. Observed impacts to surface waters include both physical and biological impacts. Some surface waters have been listed as impaired under section 303(d) of the CWA because they do not meet applicable state water quality standards. Physical impacts include elevated levels of glycol, salinity, ammonia, and other pollutants; depressed oxygen levels; foaming; noxious odors; and discoloration. Biological impacts include reduced organism abundance; fish kills; modified community composition; and reduced species diversity.

Deicing wastewater discharges have impaired both aquatic community health and human uses of water resources. Available documentation indicates multiple cases of hypoxic conditions and severe reduction in aquatic organism levels in surface waters downstream of deicing wastewater discharge locations. Documented human use impacts include contamination of surface drinking water sources, contamination of groundwater drinking water sources, degraded surface water aesthetics due to noxious odors and discolored water in residential areas and parklands, and degradation of fisheries.

B. Environmental Benefits

EPA has evaluated environmental benefits associated with regulatory proposals to reduce the discharge of pollutants from airport deicing activities. This assessment is described in detail in the EIB. The proposed BAT requirement would decrease COD discharges associated with airport deicing activities by approximately 39.9 million pounds per year. The proposed BAT requirement would also reduce ammonia discharges by 4.7 million pounds. The proposed rule would also reduce loadings of additives in aircraft deicer formulations to the environment.

EPA estimates that a reduction in pollutant loadings will take place at approximately 70 airports around the country. The decline in pollutant loadings will reduce environmental impacts to surface waters adjacent to and downstream of these airports. A variety of surface waters have improved in quality after reductions in deicing pollutant loadings. Documented improvements have included abatement of noxious odors, decline in fish kill frequency, and partial recovery of community species diversity, and organism abundance in small water bodies.

Today's proposed rule would decrease pollutant loadings to multiple surface waters currently listed as impaired under sec. 303(d). The proposal will also reduce pollutant loadings to surface drinking water intakes, parks, and residential areas downstream of airports. Groundwater aquifers will also benefit. *See* the EIB for additional details.

XI. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Clean Water Act require EPA to consider non-water-quality environmental impacts (including energy requirements) associated with effluent limitations guidelines and standards. To comply with these requirements, EPA considered the potential impact of the collection and treatment technologies on energy consumption, air emissions, and solid waste generation. EPA prepared these analyses only for technologies associated with the BAT and NSPS requirements.

A. Energy Requirements

Net energy consumption considers electrical requirements for pumping collected fluid from centralized deicing pads, and electrical requirements for operating the anaerobic fluidized bed (AFB) bioreactors and the aerated ponds and fuel requirements for glycol recovery vehicles (GRVs). Detailed calculations regarding net energy consumption for the collection and treatment technologies are provided in a separate memorandum entitled ''Energy Requirements for ADF Contaminated Stormwater Collection and Treatment Alternatives'' (DCN AD011167), available in the public record for this rule.

To estimate incremental electrical requirements associated with pumping collected ADF to either tanks or ponds, EPA assumed airports would continuously operate three 40-horsepower (hp) electric motors during each deicing day. EPA also conservatively assumed that all airports would use pumps rather than allow ADF-impacted stormwater to flow by gravity to holding tanks or ponds. Using that assumption, EPA estimated the total incremental electrical usage associated with the proposed rule would be approximately 1.2 million kilowatt hours per year (kWh/yr).

EPA developed another relationship between electrical use and chemical oxygen demand (COD) removal by the AFB bioreactors based on information provided by Albany International Airport. Using the information from Albany Airport, EPA estimated the electrical requirement for COD removal and used that rate to estimate electrical usage associated with COD removal.

The AFB treatment systems also generate biogas that can be used as a source of heat when burned in facility boilers or when converted to electricity using technologies such as microturbines or fuel cells. To estimate the potential electricity that could be generated if all AFB treatment systems installed microturbines to generate electricity, EPA developed a relationship between biogas generation and COD removal based on data provided by Albany Airport. EPA used these data to determine the potential energy of the associated biogas.

The comparison of the potential electrical generation from converting biogas to electricity to the electrical requirements for AFB operation

indicates that treatment of ADF-contaminated stormwater could generate nearly the same amount of electricity that is needed to operate the treatment systems. Based on this analysis, there will not be a net increase in electricity to operate the collection and treatment systems for ADF-contaminated stormwater.

EPA also analyzed fuel use by GRVs collecting ADF-contaminated stormwater. EPA used Airport Questionnaire data for diesel fuel costs for GRVs, and then estimated an average diesel fuel use based on the unit cost for diesel fuel of $2.07/gal.[1] EPA then estimated annual fuel usage per gallon of applied ADF to be 0.08 gal/gal ADF applied. Using this relationship, EPA estimated total incremental No. 2 diesel fuel consumption at all in-scope airports installing additional collection equipment to be 604,000 gallons per year.

EPA compared incremental diesel fuel use by GRVs at all airports to diesel fuel use on a national basis. Approximately 25.4 million gallons per day of No. 2 diesel fuel was consumed in the United States in 2005. The diesel fuel requirement associated with this proposed rule is less than 0.005 percent of the annual amount of diesel fuel consumed.

B. Air Emissions

Additional air emissions as a result of the proposed rule could be attributed to added diesel fuel combustion by GRVs collecting ADF-contaminated stormwater, from additional jet engine taxi time related to deicing pads, and from anaerobic treatment of ADF. Emissions from these sources are discussed below.

1. Emissions From GRV Collection

As discussed in Section XI.A above, EPA conservatively estimated that GRVs collecting ADF-contaminated stormwater at airports will consume an additional 604,000 gallons per year of No. 2 diesel fuel. To estimate air emissions related to combustion of No. 2 diesel fuel in the internal combustion engines on GRVs, EPA used published emission factors for internal combustion engines. The Agency selected emission factors for gasoline and diesel industrial engines because EPA assumed this class to be a more representative population of engines. To estimate emissions from the GRVs, EPA first converted the additional 604,000 gallons of diesel fuel to million British Thermal Units (MMBtu) and then applied the appropriate emission factors. The calculated annual emissions indicate that an additional 4,781 tons per year of carbon dioxide (CO_2) will be emitted from GRVs combusting additional diesel fuel to comply with the proposed rule. Carbon dioxide is the primary greenhouse gas attributed to climate change, and the 6,900 additional tons per year that would be associated with the proposed rule is very small relative to other sources. For example, in 2006, industrial facilities combusting fossil fuels emitted 948 million tons of CO_2 equivalents. An additional 6,900 tons per year from GRVs is less than a 0.001 percent increase in the overall CO_2 emissions from all industrial sources.

2. Emissions From Transportation to Aircraft Deicing Pads

To estimate aircraft emissions associated with the additional time spent taxiing to and from newly installed deicing pad and idling during deicing, EPA used the seven busiest airports where deicing pads would likely be installed to comply with the proposed rule. To estimate aircraft emissions for each airport from transportation to newly installed deicing pads, input files such as departure information, types of aircraft being deiced, and deicing days were compiled and applied to the Emissions and Dispersion Modeling System (EDMS), an emission-estimating tool developed by the FAA for activities relative to airports. Typically, the EDMS input file quantifies aircraft activity relative to an aircraft's landing and takeoff (LTO) cycle. The cycle begins when the aircraft approaches the airport on its descent from cruising altitude, then lands and taxis to the gate, where it idles during passenger deplaning. The cycle continues as the aircraft idles during passenger boarding, taxis back out onto the runway, takes off, and ascends (climbout) to cruising altitude. Thus, the six specific operating modes in an LTO cycle are as follows:

- Approach;
- Taxi/idle-in;
- Taxi/idle-out;
- Idling;
- Takeoff; and
- Climbout.

The LTO cycle provides a basis for calculating aircraft emissions. During each mode of operation, an aircraft engine operates at a specific power setting and fuel consumption rate for a given aircraft make and model. Emissions for one complete cycle are calculated using emission factors for each operating mode for each specific aircraft engine combined with the typical period of time the aircraft is in the operating mode.

For this assessment, EPA ran the EDMS model using default time-in-mode values for each component of the LTO cycle. Next, the Agency adjusted the time-in-mode values in the model to account for additional time spent traveling to the deicing pad (15 minutes), engine idling while deicing (30 minutes), and taxing away from the deicing pad (15 minutes) and reran the model with these adjusted time-in-mode values. Then, EPA subtracted the baseline model run from the second model run to estimate the additional emissions associated with deicing.

EPA then adjusted these values to reflect the snow or freezing precipitation (SOFP) days for each airport by multiplying the annual values by the SOFP days divided by 365 days per year.

EPA also estimated total annual LTO aircraft emissions for the seven airports to compare aircraft emissions associated only with deicing. The calculations indicate that the proposed rule could increase carbon monoxide emissions from aircraft at the impacted airports by as much as 6.9 percent due to additional ground-time needed for pad deicing. Although the annual percentage increase in criteria pollutant emissions from the seven airports included in this analysis is a concern, the actual increase in emissions (*e.g.,* 903 tons per year of carbon monoxide) is insignificant when compared to total criteria pollutant emissions for the aircraft sector. For example, in 2002, EPA estimated total carbon monoxide emissions from the aircraft sector at approximately 260,000 tons. The increase in criteria pollutant emissions resulting from additional aircraft deicing time account amounts to less than a 0.3 percentage increase in the aircraft sector annual criteria pollutant emissions.

3. Emissions From AFB Treatment Systems

Anaerobic digestion of glycols found in ADF contaminated stormwater generates biogas containing approximately 60 percent methane and 40 percent carbon dioxide. Airports installing AFBs for treatment of ADF contaminated stormwater are expected to burn a portion of the gas in on-site boilers in order to maintain reactor temperature. The remainder of gas can be either combusted in a microturbine for electricity generation or flared. Regardless of the combustion technology, nearly all biogas generated by AFBs is converted to carbon dioxide, the primary greenhouse gas. EPA calculates 17,300 additional tons per

[1] This diesel fuel price was the average reported by the Energy Information Administration for the 2004–05 winter season, the same period that EPA is analyzing for airport deicing activity.

year for 60% ADF capture, which is very small relative to other sources. For example, in 2006, industrial facilities combusting fossil fuels emitted 948 million tons of CO_2 equivalents. An additional 17,300 tons per year of carbon dioxide from AFB treatment is less than 0.002 percent of the annual industrial carbon dioxide emissions nationwide.

C. Solid Waste Generation

AFB bioreactors will generate sludge that will require disposal, likely in an off-site landfill. To estimate annual sludge generation by the AFB bioreactors that may be installed at airports to treat ADF-contaminated stormwater, EPA first estimated the potential COD removal for the proposed collection and treatment scenarios and then applied published anaerobic biomass yield information to estimate total sludge generation on a national basis. The biomass yield calculation, which simply multiplies the COD removal by the yield, is a rough method of estimating sludge generation and does not account for other factors such as degradation or inorganic material (*e.g.,* AFB media) that may be entrained into the sludge. However, this method does provide an order of magnitude estimate of sludge generation that can be compared to other types of common biological treatment systems to determine if AFB sludge generation would be unusually high at airports treating ADF-contaminated stormwater.

To provide some perspective on the potential total amount of biomass produced annually by the AFB biological reactors treating ADF-contaminated stormwater, EPA compared the most conservative biomass generation estimate with its national biosolids estimates for all domestic wastewater treatment plants throughout the United States. Approximately 8.2 million dry tons of biosolids will be produced in 2010. EPA estimates that AFB bioreactors treating ADF-contaminated stormwater will increase biosolids generation in the United States by less than 0.01 percent.

XII. Regulatory Implementation

A. Relationship of ELGs to NPDES Permits

Effluent guidelines act as a primary mechanism to control the discharge of pollutants to waters of the U.S. Once finalized, the regulations would be applied to airports through incorporation in individual or general NPDES permits issued by EPA or authorized states or tribes under section 402 of the Act.

The Agency has developed the limitations for this proposed rule to cover the discharge of pollutants for this point source category. In specific cases, the NPDES permit authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if state water quality standards or other provisions of state or federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants to achieve compliance), the permit authority must apply those effluent limitations or standards.

For individual permits, ELG provisions are typically incorporated when those permits are renewed, although permit authorities may require modification upon promulgation.

B. Best Management Practices

Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize the Administrator to prescribe BMPs as part of effluent guidelines and standards or as part of a permit. EPA's BMP regulations are found at 40 CFR 122.44(k). Section 304(e) of the CWA authorizes EPA to include BMPs in effluent limitation guidelines for certain toxic or hazardous pollutants to control ''plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.'' CWA section 402(a)(1) and NPDES regulations (40 CFR 122.44(k)) also provide for best management practices to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. In addition, section 402(a)(2), read in concert with section 501(a), authorizes EPA to prescribe as wide a range of permit conditions as the Administrator deems appropriate in order to ensure compliance with applicable effluent limitations and standards and such other requirements as the Administrator deems appropriate.

Dikes, curbs, and other control measures are being used at some airport facilities to contain leaks and spills as part of good ''housekeeping'' practices. However, on a facility-by-facility basis a permit writer may choose to incorporate BMPs into the permit. *See* the TDD for this proposed rule for a detailed discussion of pollution prevention and best management practices used by airports.

C. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of the streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

D. Variances and Modifications

The CWA requires application of effluent limitations established pursuant to section 301 or pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines and pretreatment standards for categories of existing sources for toxic, conventional, and nonconventional pollutants.

1. Fundamentally Different Factors Variance

EPA, with the concurrence of the State, may develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance. EPA, in its initial implementation of the effluent guidelines program, provided for the FDF modifications in regulations. These were variances from the BCT effluent limitations, BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Association* v. *Natural Resources Defense Council,* 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new sec. 301(n) of the Act. This provision explicitly authorizes modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources, if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment

standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) information submitted during rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.,* volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, based on one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.,* inability to install equipment within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers. The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The criteria for applying for and evaluating applications for variances from categorical pretreatment standards are included in the pretreatment regulations at 40 CFR 403.13(h)(9). In practice, very few FDF variances have been granted for past ELGs. An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Economic Variances

Section 301(c) of the CWA authorizes a variance from the otherwise applicable BAT effluent guidelines for nonconventional pollutants due to economic factors. The request for a variance from effluent limitations developed from BAT guidelines must normally be filed by the discharger during the public notice period for the draft permit. Other filing periods may apply, as specified in 40 CFR 122.21(m)(2). Specific guidance for this type of variance is provided in ''Draft Guidance for Application and Review of Section 301(c) Variance Requests,'' August 21, 1984, available on EPA's Web site at *http://www.epa.gov/npdes/pubs/OWM0469.pdf.*

3. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and has been assigned EPA ICR No. 2326.01. Proposed § 449.20 would require airports to collect ADF usage data and demonstrate compliance with requirements for ADF capture and urea-based pavement deicers.

EPA estimates it would take an annual average of 14,213 hours and $706,051 for airport respondents, and 11,440 hours and $377,420 for airline respondents to collect and report the information required by the proposed rule. This estimate is based on average labor rates from EPA's airport questionnaire for the airport personnel involved in collecting and reporting the information required. EPA estimates it would take an average of 218 hours and $7,195 for permit authorities to review the information submitted in response to requirements in the proposed rule as part of permit applications, renewals, and NOIs. EPA estimates that there would be no start-up or capital cost associated with the information described above. Burden is defined at 5 CFR 1320(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 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–OW–2004–0038. 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 Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 28, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by September 28, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, EPA determined that all airports expected to be within scope are owned by government entities. The RFA defines a small government entity as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 (5 U.S.C. 601(5)). After matching each airport-owning governmental entity with its population, EPA estimates that 34 (8 unweighted) of 218 (114 unweighted) airports in the scope of the proposed rule, or 16 percent, are owned by small government entities. EPA projected impacts on these small airports using the revenue test described in Section VIII.D.2. EPA found that 3 of the 34 small in-scope airports are expected to incur annualized compliance costs exceeding three percent of airport operating revenues. After considering the economic impact of today's proposed rule on small entities, including consideration of alternative regulatory approaches, I certify that this action will not have significant economic impact on a substantial number of small entities.

EPA undertook a number of steps to minimize the impact of this rule on small entities. According to the FAA National Plan of Integrated Airport Systems (2007–2011), there are approximately 2,800 public use general aviation and reliever airports in the U.S., some of which have substantial cargo service. Many, if not most, of these airports are likely to be owned by small government entities. Also likely to be owned by small governmental entities are approximately 135 non-primary commercial service airports. EPA has chosen not to regulate any general aviation, reliever, or non-primary commercial service airports under the proposed regulation. EPA also estimates that in addition to the 34 small government-owned primary commercial airports, another 42 primary commercial airports are owned by small government entities, but will be out-of-scope of the proposed regulation because little or no ADF is used at those airports.

D. Unfunded Mandates Reform Act

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. As explained in Section VIII and the TDD, the annual cost of the proposal is $91.3 million. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

By statute, a small government jurisdiction is defined as a government with a population less than 50,000 (5 U.S.C. 601). Because all in-scope airports are owned by a government or governmental agency, the definition for a small airport is identical for the purposes of both UMRA and SBREFA. If the rule exceeds annual compliance costs of $100 million in aggregate all provisions of UMRA will need to be met. If the rule does not exceed $100 million in aggregate costs, but small airports are significantly or uniquely affected by the rule, EPA will be required to develop the small government agency plan required under sec. 203 because these airports are owned by small governments.

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. The scope of the proposed rule focuses on the airports that are the largest users of ADF. The proposed rule is not projected to exceed $100 million in aggregate annual compliance costs. Further, as discussed in Section XIII.C above, EPA has determined the rule will not have significant economic impact on a substantial number of small entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not alter the basic state-federal scheme established in the Clean Water Act under which EPA authorizes states to carry out the NPDES permit program. EPA expects the proposed rule would have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and state governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Today's proposed rule contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

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

EO 13045 (62 FR 19885, April 23, 1997) applies to rules that are economically significant according to EO 12866 and involve a health or safety risk that may disproportionately affect children. This action is not subject to EO 13045 because it does not satisfy either criterion.

H. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, as described in Section XI of today's proposal. EPA determined that the additional fuel usage would be insignificant, relative to the total fuel consumption by airports and airlines, and the total annual U.S. fuel consumption.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub. L. 104–113, section 12(d); 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Agency is not aware of any consensus-based technical standards for the types of controls contained in today's proposal. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of 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. The proposal would increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The proposed rule will reduce the negative effects of discharges from airports to the nation's waters, to benefit all of society, including minority communities.

XIV. Solicitation of Data and Comments

A. General and Specific Comment Solicitation

EPA solicits comments on issues specifically identified in the preamble as well as any other issues that are not specifically addressed in today's notice. Comments are most helpful when accompanied by specific examples or supporting data. In addition, EPA solicits information and data on the following topics.

1. Airport-specific data on current ADF capture rates.

2. Technology-specific data on ADF capture rates.

3. Available ADF is defined at proposed 40 CFR 449.2 in terms of percentages. EPA solicits comments and data to support any alternative figures or flexibility for a permit writer to modify these percentages on a case-by-case basis. In addition, please provide comment on whether the permit writer should have the flexibility to modify the 80 percent default based on site-specific conditions and please suggest appropriate criteria on which to base the decision.

4. The identity and amount of the chemicals in formulations of ADF.

5. EPA invites comment on other possible minimum threshold criteria for the scope of the rule, such as the amount of ADF used, or number of deicing operational days. Please provide a rationale for any suggested alternate criteria.

6. Detailed information on additional best management practices that improve collection of ADF, and/or control and treatment of ADF discharges.

7. Information on start-up and O&M costs of pollution prevention technologies that improve collection of ADF or reduce use of ADF, such as infrared heating systems, and similar information about technologies that improve the cost-effectiveness of aircraft deicing and anti-icing practices.

8. Information about deicing practices at military facilities, including ADF usage, other operational characteristics and environmental impacts to help us decide whether to include them in the scope of this rule. If EPA decides to expand the scope, it may solicit additional public comment on the application of these requirements to military facilities.

9. Recommended operational practices for GRVs and deicing pads.

10. For the ADF collection requirement in proposed § 449.10, EPA may extend the usual 30-day compliance date to allow the additional time typically needed by publicly owned airport authorities to arrange financing for capital improvements. The extended compliance date could be as much as three years from date of promulgation. The Agency invites comment on the appropriate compliance period for this provision, and recommendations for interim measures.

11. Site-specific data and documentation on space limitations, available adjacent land and possible cost, along with recommendations for alternative ADF collection techniques, if deicing pads are not feasible.

12. Environmental impacts or safety issues associated with use of alternative pavement deicers instead of urea-based deicers.

13. To what extent, if any, do airports anticipate they will choose to monitor their discharges for ammonia rather than certify non-use of urea?

14. Deicing for safe taxiing. For airports choosing to comply with technology specifications as proposed in § 449.20(b)(1), the proposed rule would require all deicing activities to be conducted in locations were the ADF is actively collected, either by GRV or centralized pads, depending on the specific requirements. However, there may be situations where ice build-up prevents an aircraft from taxiing to the location where collection is conducted. For such situations, the proposed rule would allow up to 25 gallons of normalized ADF to be applied to allow for safe taxiing, without actively collecting the spent ADF. This volume is based on a current requirement at Denver International Airport. EPA requests comment on whether this is the appropriate ADF amount.

15. The alternative technology provisions in proposed § 449.20(b)(2) would require approval by the permit authority. EPA requests comment on whether any airports intend to use these provisions, and whether these provisions would be burdensome to permit authorities.

16. Criteria used to select data as the basis of the proposed effluent limitations for COD and the compliance alternative for ammonia. EPA also requests comment on whether data from start-up conditions should be included as a basis of the limitations.

17. Substitution of the weekly average effluent limitation for the monthly average effluent limitation for COD. EPA is proposing this substitution because of compliance monitoring concerns. EPA requests comments that identify other alternatives that may better address the issues with compliance monitoring, but still provide ongoing incentive for airports to target the system performance to the long-term average concentration of COD.

18. EPA requests comment on whether there are situations, such as extreme weather, in which operational or safety concerns would pose a challenge to the complete elimination of urea use for airfield pavement deicing. If so, please provide specific data or information documenting these concerns.

19. EPA requests comment on its proposal to treat new runway construction at existing airports as new sources. EPA specifically requests comment on its proposed determination that a new runway would be ''substantially independent of an existing source at the same site.'' EPA also requests any data relevant to the question of whether the proposed NSPS would pose a barrier to entry for new runway construction (*e.g.,* at smaller airports within the rule scope) or otherwise pose a barrier to entry for new sources.

20. EPA requests comment on whether there are situations where it may or may not be achievable for an airport with one or more deicing pads to use them for all commercial flights without exception. Should some provision be included in the rule to accommodate such situations? Commenters should give specific examples of such situations and explain clearly why it would not be feasible or economically achievable to use deicing pads for all commercial flights without exception.

21. EPA requests comment on whether there are airports in semi-warm climates for which de-icing is only required occasionally (at most several days per year), and whether it would be appropriate to make some provision for such airports, such as including a criterion related to ADF usage, number of de-icing days, or departures during certain seasons, in the scope criteria for the rule. In suggesting any such criteria, commenters should be mindful of implementation issues, such as availability and verification of appropriate data.

XV. Guidelines for Submission of Analytical Data

EPA requests that commenters on today's proposed rule submit analytical, flow, and aircraft departure data to supplement data collected by the Agency during the regulatory development process. To ensure that EPA may effectively evaluate these data, EPA suggests these guidelines for submission of data.

A. Types of Data Requested

EPA requests paired influent and effluent treatment data for each of the technologies identified in the technology options (*see* Section VII.B) as well as any additional technologies applicable to the treatment of deicing and anti-icing wastewater. EPA prefers paired influent and effluent treatment data, but solicits unpaired data as well. EPA will not evaluate data from systems treating only non-deicing wastewater (*e.g.,* sanitary wastewater).

For the systems treating deicing wastewater, EPA requests paired influent and effluent treatment data from samples of flowing wastewater streams. This includes end-of-pipe treatment technologies and in-process treatment, recycling, or water reuse. If commenters submit only effluent data, commenters should provide evidence that the influent is highly concentrated. EPA also prefers individual measurements, rather than averages, to better evaluate variability, but will consider averages if individual measurements are unavailable. EPA prefers that the measurements are for 24-hour composite samples, but also will consider data for grab samples.

EPA prefers that commenters submit data in an electronic format. In addition to providing the measurement of the pollutant in each sample, EPA requests that sites provide the detection limit (rather than specifying zero or ''ND'') if the pollutant is not detected in the wastestream. Identify each measurement with a sample collection date, the sampling point location, and the flow rate at that location. For each sample or pollutant, identify the analytical method used.

In support of the treatment data, commenters should submit the following items if they are available: A process diagram of the treatment system that includes the sampling point locations; treatment chemical addition rates; laboratory reports; influent and effluent flow rates for each treatment unit during the sampling period; sludge or waste oil generation rates; a brief discussion of the treatment technology sampled; and a list of deicing operations contributing to the sampled wastestream. If available, information and/or estimates of capital cost, annual (operation and maintenance) cost, and treatment capacity should be included for each treatment unit within the system. If specific flows or costs are not available but can reasonably be estimated, commenters should provide the assumptions used for the estimation procedure.

B. Analytes Requested

EPA considered metal, organic, conventional, and other nonconventional pollutant parameters for regulation. Based on analytical data collected, EPA initially identified 21 pollutants of concern for deicing operations (*see* Section VII.C and the TDD). The Agency requests analytical data for any of the pollutants of concern and for any other pollutant parameters that commenters believe are of concern. Of particular interest are COD, BOD_5, glycols, ammonia as nitrogen, and pH data. Commenters should submit data acquired with EPA or equivalent methods (generally, those approved at 40 CFR Part 136 for compliance monitoring), and should document the analytical method used for all data submissions.

C. Quality Assurance/Quality Control (QA/QC) Requirements

Although EPA requests and prefers that submissions of analytical data include any available documentation of QA/QC procedures, EPA will consider data submitted without detailed QA/QC information. If commenters sample wastewaters to respond to this proposal, EPA encourages them to provide detailed documentation of the QA/QC checks for each sample. EPA also requests that collection and analysis of ten percent field duplicate samples to assess sampling variability, and data for equipment blanks for volatile organic pollutants when automatic compositors are used to collect samples.

Appendix A: Abbreviations and Definitions Used in This Document

ADF—Aircraft deicing fluid (includes anti-icing fluid)
AFB—Anaerobic fluidized bed treatment technology
AIP—Airport Improvement Program
BAT—Best available technology economically achievable, as defined by sec. 301(b)(2)(A) and sec. 304(b)(2)(B) of the CWA
BOD_5—Biochemical oxygen demand
CAFR—Comprehensive annual financial reports
COD—Chemical oxygen demand
CPT—Cost pass-through
CWA—Clean Water Act
DSCR—Debt service coverage ratio
FAA—Federal Aviation Administration
FBO—Fixed base operator
GARB—General airport revenue bonds
LTO—Landing and takeoff cycle
Net income—Operating profit minus interest, taxes, depreciation, and non-operating profits and losses
NOI—Notice of Intent to discharge under a general permit (40 CFR 122.28(b)(2))
NSPS—New Source Performance Standards, as defined by sec. 306 of the CWA
O&M—Operations and maintenance
Operating profit—Revenues minus cost of providing those services
Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters

PFC—Passenger facility charges
Revenues—Money received for services rendered
RFA—Regulatory Flexibility Act
RPM—Revenue passenger miles
RTM—Revenue ton miles
SOFP—Snow or freezing precipitation

List of Subjects in 40 CFR Part 449

Environmental protection, Airport deicing, Airport, Airline, Waste treatment and disposal, Water pollution control.

Dated: August 17, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding part 449 to read as follows:

PART 449—AIRPORT DEICING POINT SOURCE CATEGORY

Subpart A—Airport Deicing Category

Sec.
449.1 Applicability.
449.2 General definitions.
449.10 Effluent limitations reflecting the best available technology economically achievable (BAT).
449.11 New source performance standards (NSPS).
449.20 Monitoring, reporting and recordkeeping requirements

Subpart B—[Reserved]

Authority: 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361 and 1370.

Subpart A—Airport Deicing Category

§ 449.1 Applicability.

This part applies to discharges of pollutants from deicing operations at Primary Airports with at least 1,000 annual scheduled commercial air carrier jet departures.

§ 449.2 General definitions.

The following definitions apply to this part:

Aircraft deicing fluid (ADF) means a fluid applied to aircraft to remove or prevent any accumulation of snow or ice on the aircraft. This includes deicing and anti-icing fluids.

Airfield pavement means all paved surfaces on the airside of an airport.

Airside means the part of an airport directly involved in the arrival and departure of aircraft, including runways, taxiways, aprons and ramps.

Annual jet departures means the average number of commercial jet aircraft that take off from an airport on an annual basis, as tabulated by the Federal Aviation Administration, calculated over the five-year period prior to submittal of a permit application or NOI.

Annual normalized ADF usage means the average amount of normalized aircraft deicing fluid used annually, calculated over the five year period prior to submittal of a permit application or Notice of Intent.

Available ADF means 80 percent of the sprayed deicing fluid and 10 percent of the sprayed anti-icing fluid.

Certification statement means a written submission to the Director stating that the discharger does not use airfield deicing products that contain urea.

COD means Chemical Oxygen Demand.

Deicing for safe taxiing means the minimal extent of deicing activity that would remove snow or ice to the level needed to prevent damage to a taxiing aircraft, and that is performed at a location not having ADF collection equipment.

Deicing operations mean procedures and practices to remove or prevent any accumulation of snow or ice on:

(1) An aircraft; or

(2) Paved surfaces within an airport's aircraft movement area (runway, taxiway, apron, or ramp).

New source. For the purpose of the definitions at 40 CFR 122.2 and 40 CFR 122.29(b)(1), a new source includes:

(1) Any new Primary Airport constructed after [date of promulgation]; and

(2) Any new runway constructed at a Primary Airport, the deicing operations associated with the departures on the new runway and the deicing of paved surfaces associated with the new runway.

Normalized aircraft deicing fluid means ADF less any water added by the manufacturer or customer before ADF application.

Notice of Intent (NOI) means a Notice of Intent to discharge under a general permit, as described at 40 CFR 122.28(b)(2).

Percent capture requirement means the requirement in §§ 449.10 and 449.11 for the permittee to collect at least 60 percent or 20 percent (as applicable) of the available ADF.

Primary Airport means an airport defined at 49 U.S.C. 47102 (15).

§ 449.10 Effluent limitations representing the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this part must comply with the following requirements representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) *Collection of runoff from aircraft deicing.* (1) All dischargers subject to this Part, with 10,000 or greater annual departures and annual normalized ADF usage of 460,000 gallons or greater, must collect at least 60 percent of available ADF and comply with applicable discharge standards in paragraph (b) of this section.

(2) All dischargers subject to this part, with annual departures of 10,000 or greater, and annual normalized ADF usage less than 460,000 gallons, must collect at least 20 percent of the available ADF and comply with applicable discharge standards in paragraph (b) of this section for all the collected ADF.

(b) *Treatment of collected runoff from aircraft deicing.* Except for ADF collected and transported to off-site treatment facilities, any existing point source subject to this Part must achieve the numeric effluent limitations in Table I. These limitations must be met for all ADF collected pursuant to paragraphs (a) and (b) of this section. Compliance must be measured at the outfall of the on-site treatment system utilized for meeting these limitations:

TABLE I—BAT LIMITATIONS

Wastestream	Pollutant or pollutant property	Daily maximum mg/L	Weekly average mg/L
Aircraft Deicing	COD	271	154

(c) *Airfield pavement discharges.* Except as provided in § 449.10(d), any discharger subject to this Part must certify that it does not use airfield deicing products that contain urea. The responsible officer as defined in 40 CFR

122.22 must sign this certification statement.

(d) *Compliance alternative for airfield BAT requirements.* A discharger may select and implement the following compliance alternative, which is deemed to meet the relevant BAT requirement specified in paragraph (c) of this section:

(1) Airfield pavement discharges must achieve the numeric limitations for ammonia in Table II.

TABLE II—BAT LIMITATIONS

Wastestream	Pollutant or pollutant property	Daily maximum mg/L
Airfield Pavement Deicing	Ammonia as Nitrogen	14.7

§ 449.11 New source performance standards (NSPS).

New sources subject to this Part must achieve the following new source performance standards:

(a) *Collection of runoff from aircraft deicing.* All new sources subject to this Part, with annual departures of 10,000 or greater, shall collect at least 60 percent of available ADF and comply with applicable discharge standards in paragraph (b) of this section for all collected ADF.

(b) *Treatment of collected runoff from aircraft deicing.* Except for ADF collected and transported to off-site treatment facilities, any new source subject to this Part must achieve the new source performance standards in Table III. These standards must be met for all ADF collected pursuant to paragraph (a) of this section. Compliance must be measured at the outfall of the on-site treatment system utilized for meeting these standards:

TABLE III—NSPS

Wastestream	Pollutant or pollutant property	Daily maximum mg/L	Weekly average mg/L
Aircraft Deicing	COD	271	154

(c) *Airfield pavement discharges.* Except as provided in § 449.11(d), any new source subject to this Part must certify that it does not use airfield deicing products that contain urea. The responsible officer as defined in 40 CFR 122.22 must sign this certification statement.

(d) *Compliance alternative for airfield NSPS requirement.* A discharger may select and implement the following compliance alternative, which is deemed to meet the relevant NSPS requirement specified in paragraph (c) of this section:

(1) Airfield pavement discharges must achieve the numeric limitations for ammonia in Table IV.

TABLE IV—NSPS

Wastestream	Pollutant or pollutant property mg/L	Daily maximum mg/L
Airfield Pavement Deicing	Ammonia as Nitrogen	14.7

(2) [Reserved]

§ 449.20 Monitoring, reporting and recordkeeping requirements.

(a) *Reporting ADF use.* Dischargers subject to § 449.10 or § 449.11 must report the annual normalized ADF usage when submitting a permit renewal application.

(b) *Demonstrating the percent of ADF collected.* Except as provided in 40 CFR 125.30 through 125.32, the Director shall select one of the following three methods and specify it in the permit as the required method for the permittee to demonstrate compliance with the percent capture requirement in § 449.10 or § 449.11 as applicable.

(1) The permittee shall demonstrate that it is operating and maintaining one of the following ADF collection technologies according to the technical specifications set forth in paragraphs (b)(1)(i) and (ii) of this section. These technical specifications shall be expressly set forth as requirements in the permit. This demonstration constitutes compliance by the permittee with the applicable percent capture requirement without the permittee having to determine the numeric percentage of ADF that it has collected.

(i) *Glycol Recovery Vehicle (GRV).* Operation of a GRV in accordance with these technical specifications is sufficient to demonstrate compliance with a requirement to collect at least 20 percent of the available ADF:

(A) All deicing activities shall take place in an area where available ADF is actively collected by GRVs, unless deicing for safe taxiing is also required. When deicing for safe taxiing is required, the volume of ADF used must not exceed 25 gallons of normalized ADF per aircraft.

(B) An emulsifier must be used to aid in ADF recovery, in accordance with manufacturer requirements.

(C) ADF collection by GRV shall commence as soon after deicing activities begin, and as is practicable and safe.

(D) The permittee shall ensure that GRVs are maintained in accordance with the manufacturer's specifications and shall inspect them at the beginning and end of each deicing season to verify that proper maintenance is taking place.

(ii) *Centralized Deicing Pad.* Operation of a centralized deicing pad

collection system in accordance with these technical specifications is sufficient to demonstrate compliance with a requirement to collect at least 60 percent of the available ADF.

(A) All aircraft deicing shall take place on a centralized deicing pad, with the exception of deicing for safe taxiing.

(B) The volume of ADF used while deicing for safe taxiing shall not exceed 25 gallons of normalized ADF per aircraft.

(C) Drainage valves associated with the centralized deicing pad shall be activated to collect spent ADF before deicing activities commence.

(D) Deicing facilities shall be sized to accommodate the airport's peak hourly departure rate.

(E) The minimum width of the centralized deicing pad shall equal the upper wingspan of the most demanding airplane design group using the deicing pad.

(F) The minimum length of the centralized deicing pad shall equal the fuselage length of the most demanding aircraft using the pad.

(G) Each centralized deicing pad must be equipped with a fluid collection system, such as a perimeter trench and diversion valve, to capture spent ADF and ADF-contaminated water.

(2) *Alternate technology or specifications.* (i) The Director, on a case-by-case basis, may require:

(A) The use of a different ADF collection technology from the technologies specified in paragraph (b)(1) of this section; or

(B) The use of the same technology, but with different specifications for operation and maintenance; or

(C) The use of an alternative pollution prevention technology that may result in a reduction of applied ADF relative to current practices at the facility. At the Director's discretion, this reduction may be applied towards the collection requirement.

(ii) The Director shall set forth technical specifications for proper operation and maintenance of the chosen collection technology and these technical specifications must be expressly included as requirements in the permit. The permittee must demonstrate compliance with these requirements. This demonstration constitutes compliance by the permittee with the percent capture requirement without the permittee having to determine the numeric percentage of ADF that it has collected. Before the Director may specify an alternate technology under this subsection, the permittee must demonstrate to the Director's satisfaction that the alternate technology will achieve the percent capture requirement applicable under the permit.

(3) The permittee shall be required to monitor periodically, by means deemed acceptable by the Director, and at a frequency determined by the Director, the amount of ADF sprayed and the amount of available ADF collected in order to determine the compliance with the percent capture requirement.

(c) Airfield pavement discharge certification. Except as provided in §§ 449.10(d) and 449.11(d), dischargers subject to § 449.10 or § 449.11 must submit a certification statement that they do not use airfield deicing products that contain urea. The discharger must provide the certification statement to the Director when submitting a permit renewal application and on an annual basis.

(d) *Monitoring requirements.* Dischargers subject to § 449.10 or § 449.11 must conduct compliance monitoring to demonstrate compliance with the COD limitation.

(1) If a discharger chooses to comply with the compliance alternative specified in §§ 449.10(d) or 449.11(d), the discharger must conduct compliance monitoring to demonstrate compliance with the alternative ammonia limitations.

(e) *Recordkeeping.* The permittee must maintain on-site, for a period of five years from the date they are created, records documenting compliance with paragraphs (b) through (d) of this section.

Subpart B—[Reserved]

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Federal Register

Friday,
August 28, 2009

Part VI

The President

Proclamation 8402—Women's Equality Day, 2009

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Friday, August 28, 2009

Presidential Documents

Title 3—

The President

Proclamation 8402 of August 25, 2009

Women's Equality Day, 2009

By the President of the United States of America

A Proclamation

Today, our country renews its commitment to freedom and justice for all our citizens. As we prepare to celebrate this women's day of equality, we reflect on the sacrifices once made to allow women and girls the basic rights and choices we freely exercise today. The future we leave to our daughters and granddaughters will be determined by our willingness to build on the achievements of our past and move forward as one people and one Nation. The fight for women's equality is not a woman's agenda, but an American agenda.

We honor the resilience, accomplishments, and history of all women in the United States. We celebrate the courageous women who fought to uphold a fundamental principle within our Constitution—the right to vote—and in so doing, protected the cornerstone of our vibrant democracy. These visionaries of the Seneca Falls Convention of 1848 sought to ensure that our country lived up to its founding ideals. Although only one, Charlotte Woodward, at the age of 81, had the opportunity to exercise her newfound right, the struggle reminds us that no righteous cause is a lost one. We also commemorate women like Frances Ellen Watkins Harper, a poet and lecturer who formed the National Association of Colored Women; Antonia Pantoja, a tireless advocate of education equality within the Latino community; Sarah Winnemucca, a voice for peace within the Native American community; and Patsy Mink, author of Title IX and the first woman of color and Asian American woman elected to the United States Congress. These women's talents, and the contributions of countless others, built upon the framework of 1848 and forged paths for future generations.

Our Nation has come a long way since that ground-breaking convention in New York. Women have occupied some of the most significant positions in government. They have delivered justice from the bench of our highest court, fought for our country in foreign lands, discovered cures to diseases, and joined the ranks of the greatest business leaders of our time. Female college graduates now outnumber their male counterparts. Women have sought equality through government, demonstrated by the signing of the Lilly Ledbetter Fair Pay Act of 2009, and the establishment of the White House Council on Women and Girls. They have sought equality through advocacy, exemplified by the efforts of thousands of women's organizations. America has made significant progress toward becoming the fair and just society the suffragists once envisioned.

Yet, today, our work remains unfinished. Far too many adult women remain mired in poverty. Women are still subject to pervasive discrimination at school and harassing conduct in the workplace. Women make, on average, only 78 cents for every dollar paid to men. Underrepresented in many facets of our economic and public life, from government to boardrooms to the sciences, women have yet to eradicate all barriers to professional development.

We stand at a moment of unparalleled change and a time for reflection and hope. We cannot allow the vibrant energy and passionate commitment of our trailblazing women to fade, and we can never forget the responsibility

we bear to the ideals of liberty and equality for all. Each generation of successful women serves as a catalyst to empower, enlighten, and educate the next generation of girls and boys, and we must devote ourselves to promoting this catalyst for change now and in the future.

On this Women's Equality Day, we resolve to continue the important work of our Nation's foremothers and their successors, and turn their vision of a more equal America into our reality.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2009, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and recommit themselves to the goal of true gender equality in this country.

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

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Federal Register

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Part VII

The President

Proclamation 8403—Death of Senator Edward M. Kennedy

Federal Register
Vol. 74, No. 166
Friday, August 28, 2009

Presidential Documents

Title 3—

The President

Proclamation 8403 of August 26, 2009

Death of Senator Edward M. Kennedy

By the President of the United States of America

A Proclamation

Senator Edward M. Kennedy was not only one of the greatest senators of our time, but one of the most accomplished Americans ever to serve our democracy. Over the past half-century, nearly every major piece of legislation that has advanced the civil rights, health, and economic well-being of the American people bore his name and resulted from his efforts. With his passing, an important chapter in our American story has come to an end.

As a mark of respect for the memory of Senator Edward M. Kennedy, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on August 30, 2009. I also direct that the flag of the United States shall be flown at half-staff until sunset on the day of his interment. I further direct that the flag shall be flown at half-staff for the same periods at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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