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# Federal Register

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8425 of September 30, 2009**

## National Breast Cancer Awareness Month, 2009

**By the President of the United States of America**

**A Proclamation**

In 2009, more than 190,000 women are expected to be diagnosed with breast cancer, and more than 40,000 women are expected to die from this disease. It is the most common non-skin cancer and the second leading cause of cancer-related death among women in the United States. As we observe National Breast Cancer Awareness Month, we salute the brave Americans who are fighting this disease, including families and friends, advocates, researchers, and health care providers. We also pause to remember and pray for those we have lost to breast cancer.

Many Americans know someone who survived breast cancer due to early detection or improved treatment, and we must continue to discover ways to prevent, detect, and treat this disease. For us to better understand how breast cancer develops, to prevent recurrence, and to enhance the quality of life for survivors, we must support critical research programs. The National Institutes of Health, Department of Defense, and the Centers for Disease Control and Prevention will invest over $1 billion in research this year. Strengthening our knowledge of breast cancer development can lead to improvements in prevention and treatment.

Screening and early detection are essential to our Nation's fight against breast cancer. The National Cancer Institute recommends that women age 40 and older have mammograms every 1 to 2 years. Women who are at greater risk should talk with their health care providers about whether to have mammograms before age 40 and how often to have them. My Administration is committed to requiring insurance companies to cover mammograms with no extra charges, and prohibiting the denial of coverage based on pre-existing conditions, including breast cancer.

Breast cancer health disparities also present a serious challenge. White women have the highest breast cancer incidence rates, and African American women have higher mortality rates than other racial or ethnic groups in the United States. There is also evidence lesbian women are at a greater risk of developing breast cancer than heterosexual women. Every day, we are improving programs that address the issues women encounter in obtaining appropriate and timely treatment. As a Nation, we will overcome the financial and physical restraints of underserved populations and ensure access to quality health care.

Our Nation has made significant progress in the fight against breast cancer, and we remain firm in our commitment to do more. This month, we reaffirm our commitment to reduce the burden of breast cancer and our support for those who are living with this devastating disease. By raising awareness of this disease and supporting research, we can usher in a new era in our struggle against breast cancer.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2009, as National Breast Cancer Awareness Month. I encourage citizens, Government agencies, private businesses, nonprofit organizations, and other interested

groups to join in activities that will help Americans understand what they can do to prevent and control breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, 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.

[FR Doc. E9–24199
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# Presidential Documents

**Proclamation 8426 of September 30, 2009**

## National Disability Employment Awareness Month, 2009

**By the President of the United States of America**

**A Proclamation**

Fair access to employment is a fundamental right of every American, including the 54 million people in this country living with disabilities. A job can provide financial stability, help maximize our potential, and allow us to achieve our dreams. As Americans, we possess a range of vocational opportunities to make the most of our talents and succeed in a chosen career; those with disabilities are entitled to the same opportunities. During National Disability Employment Awareness Month, we recommit ourselves to implementing effective policies and practices that increase employment opportunities for individuals with disabilities.

In the past half-century, we have made great strides toward providing equal employment opportunities in America, but much work remains to be done. As part of that continuing effort, we must seek to provide opportunities for individuals with disabilities. Only then can Americans with disabilities achieve full participation in the workforce and reach the height of their ambition.

My Administration is committed to promoting positive change for every American, including those with disabilities. The Federal Government and its contractors can lead the way by implementing effective employment policies and practices that increase opportunities and help workers achieve their full potential. Across this country, millions of people with disabilities are working or want to work. We must ensure they have access to the support and services they need to succeed.

Recognizing the need for equal employment opportunities, we must also strengthen and expand the educational opportunities for individuals with disabilities. The American Recovery and Reinvestment Act substantially increased funding for the Individuals with Disabilities Education Act, and provided more than $500 million for vocational rehabilitation services, including job training, education, and placement. If we are to build a world free from unnecessary barriers, stereotypes, and discrimination, we must ensure that every American receives an education that prepares him or her for future success.

Each day, Americans with disabilities play a critical role in forging and shaping the identity of our Nation. Their contributions touch us all through personal experience or through that of a family member, neighbor, friend, or colleague. We grow stronger as a Nation when Americans feel the dignity conferred by having the ability to support themselves and their families through productive work. This month, we rededicate ourselves to fostering an inclusive work culture that welcomes the skills and talents of all qualified employees.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2009, as National Disability Employment Awareness Month. I call on all Americans to celebrate the contributions of individuals with disabilities to our workplaces and communities, and to promote the employment of individuals

with disabilities to create a better, more inclusive America, one in which every person is rightly recognized for his or her abilities and accomplishments.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, 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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# Presidential Documents

**Executive Order 13513 of October 1, 2009**

## Federal Leadership On Reducing Text Messaging While Driving

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7902(c) of title 5, United States Code, and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 *et seq.*, and in order to demonstrate Federal leadership in improving safety on our roads and highways and to enhance the efficiency of Federal contracting, it is hereby ordered as follows:

**Section 1.** *Policy*. With nearly 3 million civilian employees, the Federal Government can and should demonstrate leadership in reducing the dangers of text messaging while driving. Recent deadly crashes involving drivers distracted by text messaging while behind the wheel highlight a growing danger on our roads. Text messaging causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. Every day, Federal employees drive Government-owned, Government-leased, or Government-rented vehicles (collectively, GOV) or privately-owned vehicles (POV) on official Government business, and some Federal employees use Government-supplied electronic devices to text or e-mail while driving. A Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment will help save lives, reduce injuries, and set an example for State and local governments, private employers, and individual drivers. Extending this policy to cover Federal contractors is designed to promote economy and efficiency in Federal procurement. Federal contractors and contractor employees who refrain from the unsafe practice of text messaging while driving in connection with Government business are less likely to experience disruptions to their operations that would adversely impact Federal procurement.

**Sec. 2.** *Text Messaging While Driving by Federal Employees*. Federal employees shall not engage in text messaging (a) when driving GOV, or when driving POV while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

**Sec. 3.** *Scope of Order*. (a) All agencies of the executive branch are directed to take appropriate action within the scope of their existing programs to further the policies of this order and to implement section 2 of this order. This includes, but is not limited to, considering new rules and programs, and reevaluating existing programs to prohibit text messaging while driving, and conducting education, awareness, and other outreach for Federal employees about the safety risks associated with texting while driving. These initiatives should encourage voluntary compliance with the agency's text messaging policy while off duty.

(b) Within 90 days of the date of this order, each agency is directed, consistent with all applicable laws and regulations: (i) to take appropriate measures to implement this order, (ii) to adopt measures to ensure compliance with section 2 of this order, including through appropriate disciplinary actions, and (iii) to notify the Secretary of Transportation of the measures it undertakes hereunder.

(c) Agency heads may exempt from the requirements of this order, in whole or in part, certain employees, devices, or vehicles in their respective

agencies that are engaged in or used for protective, law enforcement, or national security responsibilities or on the basis of other emergency conditions.

**Sec. 4.** *Text Messaging While Driving by Government Contractors, Subcontractors, and Recipients and Subrecipients.* Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants to the extent authorized by applicable statutory authority, entered into after the date of this order, shall encourage contractors, subcontractors, and recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government. Agencies should also encourage Federal contractors, subcontractors, and grant recipients and subrecipients as described in this section to conduct initiatives of the type described in section 3(a) of this order.

**Sec. 5.** *Coordination.* The Secretary of Transportation, in consultation with the Administrator of General Services and the Director of the Office of Personnel Management, shall provide leadership and guidance to the heads of executive branch agencies to assist them with any action pursuant to this order.

**Sec. 6.** *Definitions.*

(a) The term ''agency'' as used in this order means an executive agency, as defined in 5 U.S.C. 105, except for the Government Accountability Office.

(b) ''Texting'' or ''Text Messaging'' means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) ''Driving'' means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

**Sec. 7.** *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect or alter:

(i) Authority granted by law or Executive Order to an agency, or the head thereof;

(ii) Powers and duties of the heads of the various departments and agencies pursuant to the Highway Safety Act of 1966, as amended, 23 U.S.C. 402 and 403, section 19 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 668, sections 7901 and 7902 of title 5, United States Code, or the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 *et seq.*;

(iii) Rights, duties, or procedures under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*; or

(iv) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
*October 1, 2009.*

[FR Doc. E9–24203
Filed 10–5–09; 8:45 am]
Billing code 3195–W9–P

# Rules and Regulations

Federal Register
Vol. 74, No. 192
Tuesday, October 6, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 120 and 124

**RIN 3245–AF64**

### Agency Titling Procedure Revision; Nomenclature Changes; Correction

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of correcting amendment; correction.

**SUMMARY:** The U.S. Small Business Administration (SBA) published in the **Federal Register** of September 4, 2009, a document correcting the titles of certain SBA officials. Some sections were inadvertently amended and another contained an error. This document corrects those amendments.

**DATES:** Effective on October 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dean R. Koppel, Office of Government Contracting, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Tel: (202) 205–6460 and e-mail: *dean.koppel@sba.gov.*

**SUPPLEMENTARY INFORMATION:** The SBA published a document in the **Federal Register** of August 30, 2007 which amended several SBA titles. On September 4, 2009, in the **Federal Register** (74 FR 45754), § 120.433; § 120.472 and § 120.473 were inadvertently amended. This correction removes the amendments to § 120.433; § 120.472 and § 120.473 published on September 4, 2009. Additionally, § 124.1008 (a) was identified as amended when the reference should have been § 124.1008(e).

In 74 FR 45754 published on September 4, 2009, make the following corrections.

#### §§ 120.433, 120.472 and 120.473 [Corrected]

■ 1. On page 45753, in the first column, remove the amendments to § 120.433; § 120.472 and § 120.473.

#### § 124.1008 [Corrected]

■ 2. On page 45754, in the first column, correct the amendment to § 124.1008 by removing the reference to ''paragraph (a)'' and adding a reference to ''paragraph (e)'' in its place.

Dated: September 29, 2009.

**Joseph G. Jordan,**

*Associate Administrator, Office of Government Contracting and Business Development.*

[FR Doc. E9–24040 Filed 10–5–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**[Docket No. SSA–2007–0066]**

**RIN 0960–AG57**

### Revised Medical Criteria for Evaluating Malignant Neoplastic Diseases

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are revising some of the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving malignant neoplastic diseases (cancer) [1] under titles II and XVI of the Social Security Act (Act). The revisions reflect our adjudicative experience, advances in medical knowledge, diagnosis, and treatment, and public comments we received in response to a Notice of Proposed Rulemaking (NPRM).

**DATES:** This rule is effective November 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mark Kuhn, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

**SUPPLEMENTARY INFORMATION:**

[1] ''Malignant neoplastic disease'' is commonly known as ''cancer.'' We use both terms interchangeably in this document because we continue to use the technical medical term in the listings.

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

#### Background

We are revising and making final the rules for evaluating malignant neoplastic diseases we proposed in an NPRM published in the **Federal Register** on April 24, 2008 (73 FR 22871). The preamble to the NPRM discussed the changes from the current rules and our reasons for making those changes. Since we are largely adopting the proposed rules as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM, available at *http://www.regulations.gov*.

We are making a few changes from the NPRM as a result of public comments. We explain those changes in our summary of the public comments and our responses later in this preamble.

#### Why are we revising the listings for malignant neoplastic diseases?

We developed these final rules as part of our ongoing review of the cancer body system. When we last revised this body system in final rules published on November 15, 2004,[2] we indicated that we would monitor and update the listings in this body system as needed.

#### When will we use these final rules?

We will use these final rules beginning on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of the final rules and to claims that are pending on and after the effective date.[3]

[2] *See* 69 FR 67018, corrected at 70 FR 15227.

[3] This means that we will use these final rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses the Commissioner's final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.

**How long will the rules in the malignant neoplastic diseases body system be in effect?**

We are extending the effective date of the malignant neoplastic diseases body system in parts A and B of the listings until 8 years after the effective date of these final rules. The rules will remain in effect only until that date unless we extend them. We will continue to monitor the rules and may revise them before the end of the 8-year period.

**Public Comments on the NPRM**

In the NPRM, we provided the public with a 60-day comment period, which ended on June 27, 2008. We received five public comment letters. The comments came from a national cancer advocacy group, a national group representing disability examiners in the State agencies that make disability determinations for us, a national group representing directors of those State agencies, and two individual State agencies.

We provide our responses below to the significant comments that were relevant to this rulemaking. A few of the comments were on subjects that were not related to the proposed rules. For example, commenters suggested changes to the introductory text of this body system and some suggested that we add new listings in sections for which we had not proposed rules. Other commenters made suggestions that involved the steps of our sequential evaluation process coming after the listing step. Although we read and considered these comments, we do not summarize or respond to them below because they are outside the scope of this rulemaking proceeding.

We have summarized the relevant comments below, but have tried to present the commenters' concerns and suggestions accurately and completely.

**Sections 13.00I and 113.00I—What do we mean by the following terms?**

We adopted a comment that suggested we include the term ''multimodal'' or the phrase ''multimodal therapy'' in the list of defined terms in sections 13.00I and 113.00I. The commenter also requested that we provide additional clarification of multimodal therapy. We adopted this comment by moving the definition of ''multimodal therapy'' from current sections 13.00E2 and 113.00E2 to final sections 13.00I3 and 113.00I2. We also revised the definitions in these sections to make them clearer.

Since we added a new definition in final sections 13.00I and 113.00I, we renumbered the definitions that follow. We also changed the headings of these sections. In the NPRM, we used the heading ''*What do these terms in the listings mean?''* for sections 13.00I and 113.00I, and we included only terms that were actually included in the listings. We use the term ''multimodal'' in current listings 13.02 and 13.11, and final listing 13.14; however, we do not use it in any of the listings in part B. Since we do not use the terms ''multimodal'' or ''multimodal therapy'' in any of the listings in part B, we changed the headings in both parts.

We did not adopt a suggestion that we include in final section 13.00I a definition of the term ''first treatment,'' which is a term we use only when we refer to an autologous bone marrow transplant in current listing 13.28B. The commenter thought that we defined this term only in an internal instruction. In fact, we already define ''first treatment'' in current section 13.00L3b, where we explain how to use listing 13.28. Moreover, listing 13.28 refers to section 13.00L3b. We think it will be easier for our adjudicators to find the definition if we leave it where it is.

We also did not adopt a comment that recommended that we add a definition for ''satellite lesions.'' We use this term only in one section of the listing for melanoma (a kind of skin cancer), and we define it there. See final listing 13.03B2c.

**Listing 13.02—Soft Tissue Tumors of the Head and Neck**

We did not adopt a comment recommending that we provide general guidance for evaluating bilateral neuroblastomas under current listing 13.02A. We consider bilateral neuroblastomas to be tumors of the central nervous system, which we evaluate under listing 13.13.

The same commenter suggested that we emphasize in the introductory text of the malignant neoplastic diseases body system how to evaluate soft tumors of the head and neck under current listing 13.02A. We did not adopt this comment because the listing requires such tumors to be either ''inoperable'' or ''unresectable'' and we already define those terms in final section 13.00I.

We did, however, adopt a third comment from this commenter recommending that we explain how we evaluate a recurrence that occurs more than 3 years after remission in connection with listing 13.02 and another listing. In response to this comment, we revised the second sentence of current sections 13.00H2 and 113.00H2, which referred only to the ''original'' tumor and any metastases, to also include recurrences and relapses. We also added a sentence at the end of final sections 13.00H3 and 113.00H3 to indicate that, if there is a recurrence or relapse after 3 years or another period specified in a listing in this body system, the impairment may again meet or medically equal the requirements of a cancer listing. These changes are only a clarification of our current rules, and ensure that we will not incorrectly find that people with recurrent tumors are no longer disabled.

**Listing 13.03—Skin**

One commenter suggested that we include criteria in listing 13.03 for melanomas with ulcerative features. The commenter believed that the description of these melanomas in the current American Joint Committee on Cancer (AJCC) staging manual indicates listing-level severity. We disagree with the commenter and have not adopted the comment. While the AJCC staging manual does indicate that melanomas with ulceration have a worse prognosis than non-ulcerated melanomas, it also indicates that many ulcerated melanomas have good prognoses. Therefore, we do not believe that the AJCC staging manual describes an impairment of listing-level severity, and it would be inappropriate for us to find that all people with this condition have a listing-level impairment.

The same commenter recommended that we add criteria for melanoma with in-transit spread; that is, metastasis along the lymph channels. We did not adopt the comment because the final listings already address the disabling effects of in-transit spread. We will evaluate in-transit spread that affects the lymph nodes under final listing 13.03B2a or 13.03B2b. We will evaluate in-transit spread that results in metastases to adjacent skin or distant sites under final listing 13.03B2c.

**Listing 13.09—Thyroid Gland**

In response to a comment, we added final listing 113.09C, for medullary carcinoma of the thyroid gland with metastases beyond the regional lymph nodes. Final listing 113.09C is identical to final listing 13.09C. The commenter referred to our statement in proposed 113.00K4 that we did not include a specific listing for children because the condition is rare in children, but did not believe the listings are meant to exclude cancers simply because they are rare. Since our listings do include some rare disorders, we agreed to add this listing in response to the comment. We currently find all such children with the cancer described in final listing 113.09C disabled based on medical equivalence to listing 113.09B.

In the NPRM, we explained in proposed section 113.00K4 that we would use listing 13.09C for children with this type of cancer. Because we are adding listing 113.09C, we did not include that paragraph in these final rules.

**Listing 13.10—Breast**

One commenter recommended that we include a listing for people with locally advanced breast cancer who receive multimodal therapy. The commenter recommended that we consider these people disabled for either 12 or 18 months from the date of diagnosis. The commenter noted that we have other listings that recognize the difficulties faced by patients during initial treatment of their cancers, even though they have good prognoses, and believed that we could have a similar listing for some people with breast cancer. The commenter indicated that there are treatment regimens that last for at least 7 to 12 months that may have many side effects and that, as treatment progresses, the side effects worsen.

We did not adopt this comment. While we agree with the commenter that there may be some people who are disabled from multimodal therapy for breast cancer and its adverse effects, we do not believe that we can uniformly describe those people medically, as required for a listing. Many people who undergo such therapy are not unable to work for 12 continuous months.

Another commenter recommended that we add a criterion for metastatic breast cancer to an axillary lymph node(s) with perforation of the capsule (that is, tumor extension beyond the capsule),[4] with or without nodal matting (fusion). We did not adopt this comment because, while perforation of the capsule, with or without matting, increases the risk of tumor recurrence, this finding alone does not usually represent the level of severity intended by the listings. We cannot have a listing based only on a risk of recurrence because people cannot qualify for disability benefits before they actually become unable to work (or for children under title XVI, meet the definition of disability for children). When there is recurrence, we will evaluate it under listing 13.10C.

**Listing 13.13—Nervous System**

One commenter recommended that we rewrite listing 13.13 to separate neoplasms that require metastases from those that do not. The commenter provided a suggested revision, but we did not adopt it for two reasons. First, the revisions we proposed to the listing did separate the neoplasms that require metastases from those that do not. As we explained in the preamble to the NPRM:

> We propose to make a minor editorial change to current listing 13.13A1 for highly malignant central nervous system neoplasms to clarify that the requirement for documented metastases applies only to medulloblastoma or other primitive neuroectodermal tumors (PNETs), and not to grades III and IV astrocytomas, glioblastoma multiforme, and ependymoblastoma. This is what we intend in the current rule, but we want[ ] to make the current sentence structure clearer. Therefore, we propose to reorganize the sentence for clarity.[5]

Second, and more importantly, the language the commenter proposed could have been misinterpreted to include under this listing medulloblastomas and other PNETs that have not metastasized. This interpretation would have been contrary to our intent, as we explained when we last made comprehensive revisions to the malignant neoplastic diseases body system in 2004.[6] In that final rule, we explained that we could evaluate medulloblastomas or other PNETs that have not metastasized under listing 13.13A2.

**Listing 13.23—Cancers of the Female Genital Tract**

One commenter pointed out that we have no listing for cancer of the vagina, nor do we provide guidance in the introductory text on how adjudicators should evaluate this malignancy. The commenter suggested that we revise listing 13.23C to include cancer of the vagina or that we explain which listing to use to evaluate this condition. We adopted this comment by including cancer of the vagina in listing 13.23C. The criteria for listing-level cancer of the vulva are also appropriate for cancer of the vagina. Under the prior rules, we would have found medical equivalence to this listing in such cases.

Two commenters expressed concern about our proposal to remove prior listing 13.23E1c, for ovarian cancer with ruptured ovarian capsule, tumor on the serosal surface, ascites with malignant cells, or positive peritoneal washings. One comment letter said that the medical literature with which the commenters were familiar showed that ovarian cancer with these findings has a high mortality rate. However, in the NPRM we cited current medical literature indicating that therapy has significantly improved the prognosis for women who have ovarian cancer with these findings.[7] Based on this medical literature, we believe that most women who have ovarian cancer with the findings in prior listing 13.23E1c have a good prognosis.

The other commenter, a national advocacy group for women with ovarian cancer, agreed with us that the prognosis for these cases has improved significantly, but recommended that we keep the listing to recognize the length and side effects of treatment. The commenter pointed out that women with these findings may undergo the same or similar surgery and chemotherapy as women with more advanced disease and that this treatment substantially limits those women's ability for gainful activity.

While we appreciate the second commenter's concerns—and we agree that some women with the findings in the prior listing will be disabled—we did not adopt the recommendation to keep the listing, primarily because many women with the findings in prior listing 13.23E1c will not be unable to work for at least 12 months. Even though they may be debilitated while they undergo treatment and for some time afterward, many of these women will have only minimal functional limitations 12 months after diagnosis. Therefore, it would be inappropriate for us to keep the prior listing, which would require us to find that all women with the listed criteria are disabled. We must evaluate these cases on an individual basis.

Finally, two commenters recommended that we not remove the listing 13.23E1c because there may be a recurrence of the disease, and a recurrence generally has a poor prognosis. We agree that recurrent ovarian cancer has a poor prognosis, but we already include it in final listing 13.23E1c, our criterion for recurrent ovarian cancer. As we have already noted, we cannot have a listing based only on a risk of recurrence.

**Listing 13.24—Prostate Gland**

We did not adopt a suggestion that we clarify in the introductory text how our adjudicators should use the Gleason grading scale[8] in connection with listing 13.24 because the listing criteria are not based on this scale. The listing requires that the tumor not respond to initial hormonal treatment or that it metastasize to internal organs. The

[4] The capsule is a membrane of fibrous tissue that encases the lymph node.

[5] *See* 73 FR at 22873.

[6] *See* 69 FR at 67024.

[7] For the list of references we consulted, see 73 FR at 22875.

[8] The Gleason grades and scores are used to help evaluate the prognosis of men with prostate cancer.

Gleason grade does not indicate whether the tumor meets these criteria.

**Other Changes From the NPRM**

We made a number of editorial corrections and changes in the final rules from the language of the NPRM. For example, we changed some sentences from passive into active voice. These changes are only for clarity, consistency, and to correct minor grammatical errors in the NPRM; none are substantive.

**What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?**

Under the Act, we have full power and authority to make rules and regulations and to establish necessary and appropriate procedures to carry out such provisions. Sections 205(a), 702(a)(5), and 1631(d)(1).

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866 and were subject to OMB review.

*Regulatory Flexibility Act*

We certify that these final rules have no significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis was not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 30, 2009.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we amend appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of Part 404 as follows:
■ a. Revise item 14 of the introductory text before part A of appendix 1.
■ b. Revise paragraph E2 of section 13.00 of part A of appendix 1.
■ c. Revise the second sentence of paragraph H2 and add a new second sentence to paragraph H3 of section 13.00 of part A of appendix 1.
■ d. Revise paragraph I of section 13.00 of part A of appendix 1.
■ e. Amend paragraph K of section 13.00 of part A of appendix 1 by revising K1a, K1b, the third sentence of K2a, and K6.
■ f. Revise listing 13.02C of part A of appendix 1.
■ g. Revise listing 13.03B2 of part A of appendix 1.
■ h. Amend listing 13.05 of part A of appendix 1 by revising the listing 13.05A.
■ i. Amend listing 13.09 of part A of appendix 1 by adding the word ''OR'' after listing 13.09B and adding listing 13.09C.
■ j. Revise listing 13.10B of part A of appendix 1.
■ k. Revise the heading of listing 13.11 of part A of appendix 1.
■ l. Revise listing 13.13A of part A of appendix 1.
■ m. Amend listing 13.14 of part A of appendix 1 by adding the word ''OR'' after listing 13.14B and adding listing 13.14C.
■ n. Revise listings 13.23C and 13.23E1 of part A of appendix 1.
■ o. Revise listing 13.24B of part A of appendix 1.
■ p. Revise listing 13.27 of part A of appendix 1.
■ q. Revise paragraph E2 of section 113.00 of part B of appendix 1.
■ r. Revise the second sentence of paragraph H2 and add a new second sentence to paragraph H3 of section 113.00 of part B of appendix 1.
■ s. Revise paragraph I of section 113.00 of part B of appendix 1.
■ t. Amend paragraph K of section 113.00 of part B of appendix 1 by revising K1a, the third sentence of K2a, and K4.
■ u. Amend listing 113.09 of part B of appendix 1 by adding the word ''OR'' after listing 113.09B and adding listing 113.09C.
■ v. Revise listing 113.13 of part B of appendix 1.

The revised text is set forth as follows:

**Appendix 1 to Subpart P of Part 404—Listing of Impairments**

* * * * *

14. Malignant Neoplastic Diseases (13.00 and 113.00): November 5, 2017

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*Part A*

* * * * *

**13.00 MALIGNANT NEOPLASTIC DISEASES**

* * * * *

E. *When do we need longitudinal evidence?*

* * * * *

2. *Other malignancies.* When there are no distant metastases, many of the listings require that we consider your response to initial antineoplastic therapy; that is, the initial planned treatment regimen. This therapy may consist of a single modality or a combination of modalities; that is, multimodal therapy (see 13.00I3).

* * * * *

H. *How long do we consider your impairment to be disabling?*

* * * * *

2. * * * When the impairment(s) has been in complete remission for at least 3 years, that is, the original tumor or a recurrence (or relapse) and any metastases have not been evident for at least 3 years, the impairment(s) will no longer meet or medically equal the criteria of a listing in this body system.

3. * * * If you have a recurrence or relapse of your malignancy, your impairment may meet or medically equal one of the listings in this body system again.

* * * * *

I. *What do we mean by the following terms?*

1. *Inoperable:* Surgery is thought to be of no therapeutic value or the surgery cannot be performed; for example, when you cannot tolerate anesthesia or surgery because of another impairment(s), or you have a tumor that is too large or that has invaded crucial structures. This term does not include situations in which your tumor could have been surgically removed but another method of treatment was chosen; for example, an attempt at organ preservation. Your physician may determine whether a tumor is inoperable before or after you receive neoadjuvant therapy. *Neoadjuvant therapy* is antineoplastic therapy, such as chemotherapy or radiation, given before surgery in order to reduce the size of the tumor.

2. *Metastases:* The spread of tumor cells by blood, lymph, or other body fluid. This term does not include the spread of tumor cells by direct extension of the tumor to other tissues or organs.

3. *Multimodal therapy:* A combination of at least two types of treatment modalities given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: Surgery, radiation, and systemic drug therapy (chemotherapy, hormonal therapy, and immunotherapy).

Examples of multimodal therapy include:

a. Surgery followed by chemotherapy or radiation.

b. Chemotherapy followed by surgery.

c. Chemotherapy and concurrent radiation.

4. *Persistent:* Failure to achieve a complete remission.

5. *Progressive:* The malignancy becomes more extensive after treatment.

6. *Recurrent, relapse:* A malignancy that was in complete remission or entirely removed by surgery has returned.

7. *Unresectable:* Surgery was performed, but the malignant tumor was not removed. This term includes situations in which your tumor is incompletely resected or the surgical margins are positive. It does not include situations in which a tumor is completely resected but you are receiving adjuvant therapy. Adjuvant therapy is antineoplastic therapy, such as chemotherapy or radiation, given after surgery in order to eliminate any remaining cancer cells and lessen the chance of recurrence.

* * * * *

K. *How do we evaluate specific malignant neoplastic diseases*?

1. *Lymphoma.*

a. Many indolent (non-aggressive) lymphomas are controlled by well-tolerated treatment modalities, although the lymphomas may produce intermittent symptoms and signs. Therefore, we may defer adjudicating these cases for an appropriate period after therapy is initiated to determine whether the therapy will achieve its intended effect, which is usually to stabilize the disease process. (See 13.00E3.) When your disease has been stabilized, we will assess severity based on the extent of involvement of other organ systems and residuals from therapy.

b. A change in therapy for indolent lymphomas is usually an indicator that the therapy is not achieving its intended effect. However, your impairment will not meet the requirements of 13.05A2 if your therapy is changed solely because you or your physician choose to change it, not because of a failure to achieve stability.

* * * * *

2. *Leukemia.*

a. *Acute leukemia.* * * * Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. * * *

* * * * *

6. *Brain tumors.* We use the criteria in 13.13 to evaluate malignant brain tumors. We consider a brain tumor to be malignant if it is classified as grade II or higher under the World Health Organization (WHO) classification of tumors of the central nervous system (*WHO Classification of Tumours of the Central Nervous System*, 2007). We evaluate any complications of malignant brain tumors, such as resultant neurological or psychological impairments, under the criteria for the affected body system. We evaluate benign brain tumors under 11.05.

* * * * *

13.02 *Soft tissue tumors of the head and neck* (*except salivary glands—13.08—and thyroid gland—13.09*).

* * * * *

C. Recurrent disease following initial antineoplastic therapy, except recurrence in the true vocal cord.

* * * * *

13.03 *Skin.*

* * * * *

B. Melanoma, as described in 1 or 2.

* * * * *

2. With metastases as described in a, b, or c:

a. Metastases to one or more clinically apparent nodes; that is, nodes that are detected by imaging studies (excluding lymphoscintigraphy) or by clinical examination.

b. If the nodes are not clinically apparent, with metastases to four or more nodes.

c. Metastases to adjacent skin (satellite lesions) or distant sites.

* * * * *

13.05 *Lymphoma* (*excluding T-cell lymphoblastic lymphoma—13.06*). (*See* 13.00K1 and 13.00K2c.)

A. Non-Hodgkin's lymphoma, as described in 1 or 2:

1. Aggressive lymphoma (including diffuse large B-cell lymphoma) persistent or recurrent following initial antineoplastic therapy.

2. Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell) requiring initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.

* * * * *

13.09 *Thyroid gland.*

B. * * *

OR

C. Medullary carcinoma with metastases beyond the regional lymph nodes.

13.10 *Breast* (*except sarcoma—13.04*). (*See* 13.00K4.)

* * * * *

B. Carcinoma with metastases to the supraclavicular or infraclavicular nodes, to 10 or more axillary nodes, or with distant metastases.

* * * * *

13.11 *Skeletal system*—sarcoma.

* * * * *

13.13 *Nervous system.* (*See* 13.00K6.)

A. Central nervous system malignant neoplasms (brain and spinal cord), as described in 1 or 2:

1. Highly malignant tumors, such as medulloblastoma or other primitive neuroectodermal tumors (PNETs) with documented metastases, grades III and IV astrocytomas, glioblastoma multiforme, ependymoblastoma, diffuse intrinsic brain stem gliomas, or primary sarcomas.

2. Progressive or recurrent following initial antineoplastic therapy.

OR

* * * * *

13.14 *Lungs.*

B. * * *

OR

C. Carcinoma of the superior sulcus (including Pancoast tumors) with multimodal antineoplastic therapy. Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

* * * * *

13.23 *Cancers of the female genital tract*—carcinoma or sarcoma.

* * * * *

C. Vulva or vagina, as described in 1, 2, or 3:

1. Invading adjoining organs.

2. With metastases to or beyond the regional lymph nodes.

3. Persistent or recurrent following initial antineoplastic therapy.

* * * * *

E. Ovaries, as described in 1 or 2:

1. All tumors except germ cell tumors, with at least one of the following:

a. Tumor extension beyond the pelvis; for example, tumor implants on peritoneal, omental, or bowel surfaces.

b. Metastases to or beyond the regional lymph nodes.

c. Recurrent following initial antineoplastic therapy.

* * * * *

13.24 *Prostate gland*—carcinoma.

* * * * *

B. With visceral metastases (metastases to internal organs).

* * * * *

13.27 *Primary site unknown after appropriate search for primary*—metastatic carcinoma or sarcoma, except for squamous cell carcinoma confined to the neck nodes.

* * * * *

*Part B*

* * * * *

**113.00 MALIGNANT NEOPLASTIC DISEASES**

* * * * *

E. *When do we need longitudinal evidence?*

* * * * *

2. *Other malignancies.* When there are no distant metastases, many of the listings require that we consider your response to initial antineoplastic therapy; that is, the initial planned treatment regimen. This therapy may consist of a single modality or a combination of modalities; that is, multimodal therapy (see 113.00I2).

* * * * *

H. *How long do we consider your impairment to be disabling?*

* * * * *

2. * * * When the impairment(s) has been in complete remission for at least 3 years, that is, the original tumor or a recurrence (or relapse) and any metastases have not been evident for at least 3 years, the impairment(s)

will no longer meet or medically equal the criteria of a listing in this body system.

3. * * * If you have a recurrence or relapse of your malignancy, your impairment may meet or medically equal one of the listings in this body system again.

* * * * *

I. *What do we mean by the following terms?*

1. *Metastases:* The spread of tumor cells by blood, lymph, or other body fluid. This term does not include the spread of tumor cells by direct extension of the tumor to other tissue or organs.

2. *Multimodal therapy:* A combination of at least two types of treatment modalities given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: Surgery, radiation, and systemic drug therapy (chemotherapy, hormonal therapy, and immunotherapy). Examples of multimodal therapy include:

a. Surgery followed by chemotherapy or radiation.

b. Chemotherapy followed by surgery.

c. Chemotherapy and concurrent radiation.

3. *Persistent:* Failure to achieve a complete remission.

4. *Progressive:* The malignancy becomes more extensive despite treatment.

5. *Recurrent, relapse:* A malignancy that was in complete remission or entirely removed by surgery has returned.

* * * * *

K. *How do we evaluate specific malignant neoplastic diseases?*

1. *Lymphoma.*

a. We provide criteria for evaluating aggressive lymphomas that have not responded to antineoplastic therapy in 113.05. Indolent (non-aggressive) lymphomas are rare in children. We will evaluate indolent lymphomas in children under 13.05 in part A.

* * * * *

2. *Leukemia.*

a. *Acute leukemia.* * * * Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. * * *

* * * * *

4. *Brain tumors.* We use the criteria in 113.13 to evaluate malignant brain tumors. We consider a brain tumor to be malignant if it is classified as grade II or higher under the World Health Organization (WHO) classification of tumors of the central nervous system (*WHO Classification of Tumours of the Central Nervous System*, 2007). We evaluate any complications of malignant brain tumors, such as resultant neurological or psychological impairments, under the criteria for the affected body system. We evaluate benign brain tumors under 111.05.

* * * * *

113.09 *Thyroid gland.*

B. * * *

OR

C. Medullary carcinoma with metastases beyond the regional lymph nodes.

* * * * *

113.13 *Brain tumors.* (See 113.00K4.) Highly malignant tumors, such as medulloblastoma or other primitive neuroectodermal tumors (PNETs) with documented metastases, grades III and IV astrocytomas, glioblastoma multiforme, ependymoblastoma, diffuse intrinsic brain stem gliomas, or primary sarcomas.

* * * * *

[FR Doc. E9–23896 Filed 10–5–09; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

**[Docket No. DEA–327F]**

## Schedules of Controlled Substances; Placement of Fospropofol Into Schedule IV

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule IV will be applicable to the manufacture, distribution, dispensing, importation, and exportation of fospropofol and products containing fospropofol.

**DATES:** *Effective Date:* November 5, 2009.

**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, Virginia 22152, *Telephone:* (202) 307–7183.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 12, 2008, the Food and Drug Administration (FDA) approved fospropofol for marketing under the trade name Lusedra® in the United States as a drug product indicated for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures.

Fospropofol, 2,6-diisopropopylphenoxymethyl phosphate disodium, is a water soluble, phosphono-O-methyl prodrug of propofol. It is metabolized in the body to propofol, the active metabolite. Propofol has been available for medical use in the United States since 1989 and is not currently a controlled substance. The pharmacological effects of fospropofol are attributed to the pharmacological actions of propofol. Propofol binds to γ-aminobutyric acid ($GABA_A$) receptor and acts as a modulator by potentiating the activity of GABA at this receptor.

Since propofol is the active metabolite of fospropofol, the abuse potential of fospropofol is comparable to that of propofol. Animal self-administration studies demonstrated that the reinforcing effects of propofol are relatively low and comparable to midazolam and other schedule IV benzodiazepines. Fospropofol elicits behavioral effects similar to methohexital and midazolam, schedule IV sedative-hypnotics.

Since fospropofol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On February 27, 2009, the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that fospropofol be placed into schedule IV of the CSA. Enclosed with the February 27, 2009, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Fospropofol and Its Salts in Schedule IV of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled ''Schedules of Controlled Substances: Placement of Fospropofol into Schedule IV'' on July 23, 2009 (74 FR 36424), which proposed placement of fospropofol into schedule IV of the CSA. The proposed rule provided an opportunity for all interested persons to submit their written comments on or before August 24, 2009.

### Comments Received

The DEA received two comments in response to the Notice of Proposed Rulemaking. One comment received from a concerned citizen did not relate to fospropofol, the substance that is being controlled. Thus DEA did not consider this comment.

Another comment received from a professional organization of anesthesiologists is in agreement with the findings of scientific and medical evaluation that formed the basis for the present rule controlling fospropofol as a schedule IV substance and it fully supported this control action.

**Scheduling of Fospropofol**

Based on the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Fospropofol has a low potential for abuse relative to the drugs or substances in schedule III. Although there is no direct comparison to a schedule III substance, this finding is based on the demonstration of the abuse potential of propofol, the active metabolite, relative to the schedule IV substances, methohexital and midazolam;

(2) Fospropofol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of fospropofol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. This finding is based on the symptoms exhibited upon withdrawal from propofol.

Based on these findings, the Deputy Administrator of DEA concludes that fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (21 U.S.C. 812(b)(4))

**Requirements for Handling Fospropofol**

*Registration.* Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with fospropofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with fospropofol, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before November 5, 2009 and may continue their activities until DEA has approved or denied that application.

*Security.* Fospropofol is subject to schedules III–V security requirements and must be manufactured, distributed, and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77 of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

*Labeling and Packaging.* All labels and labeling for commercial containers of fospropofol must comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

*Inventory.* Every registrant required to keep records and who possesses any quantity of fospropofol must keep an inventory of all stocks of fospropofol on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations on or after November 5, 2009. Every registrant who desires registration in schedule IV for fospropofol must conduct an inventory of all stocks of the substance on hand at the time of registration.

*Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

*Prescriptions.* All prescriptions for fospropofol or prescriptions for products containing fospropofol must be issued pursuant to §§ 1306.03–1306.06 and 1306.21, 1306.22–1306.27 of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

*Importation and Exportation.* All importation and exportation of fospropofol must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

*Criminal Liability.* Any activity with fospropofol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful on or after November 5, 2009.

**Regulatory Certifications**

*Executive Order 12866*

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

*Regulatory Flexibility Act*

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Fospropofol products will be used for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures. Handlers of fospropofol also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

*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 provisions of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This rule is not a major rule as defined by § 804 of the 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 costs 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.

**List of Subjects in 21 CFR Part 1308**

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

■ Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28

CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

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

■ 2. Section 1308.14 is amended in paragraph (c), by redesignating paragraphs (c)(23) through (c)(51) as paragraphs (c)(24) through (c)(52) and adding a new paragraph (c)(23) as follows:

**§ 1308.14 Schedule IV.**

* * * * *

(c) * * *

(23) Fospropofol ..... 2138

* * * * *

Dated: September 28, 2009.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E9–23971 Filed 10–5–09; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF STATE

## 22 CFR Part 41

**[Public Notice: 6779]**

## Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Requirements for Aliens in Religious Occupations

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** To comply with the Department of Homeland Security regulation requiring sponsoring employers to file petitions for all aliens for whom R–1 nonimmigrant status is sought. This rule establishes the requirement that consular officers ensure that R–1 visa applicants have obtained an approved U.S. Citizenship and Immigration Services Form I–129 petition from the Department of Homeland Security before issuance of a visa.

**DATES:** This rule is effective October 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, NW., Room L–603D, Washington, DC 20520–0106, (202) 663–2951.

**SUPPLEMENTARY INFORMATION:**

**Why is the Department promulgating this rule?**

On November 26, 2008, the Department of Homeland Security (DHS) promulgated regulations requiring sponsoring employers to file petitions for all aliens for whom R–1 nonimmigrant status is sought. 73 FR 72276. As a result, the requirements for an R–1 nonimmigrant visa now include establishing that the applicant is the beneficiary of an approved petition. U.S. Citizenship and Immigration Services (USCIS) has implemented the petition requirement for nonimmigrant religious workers as a way to determine the bona fides of a petitioning religious organization located in the United States and to determine that a religious worker will be admitted to the United States to work for a specific religious organization at the request of that religious organization. This rule amends the Department regulations to ensure consistency with the regulations set forth by DHS.

**Regulatory Findings**

*Administrative Procedure Act*

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for R–1 nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

*The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

*The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 12866*

The Department of State has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this final regulation justify its costs. The Department does not consider this final rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 41**

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and Visas.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 as follows:

## PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C.1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. Revise § 41.58 to read as follows:

**§ 41.58 Aliens in religious occupations.**

(a) *Requirements for ''R'' classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by USCIS of a petition to accord such classification or the extension by USCIS of the period of authorized stay in such classification; or

(3) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by USCIS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not precede or exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Aliens not entitled to classification under INA 101(a)(15)(R).* The consular officer must suspend action on the alien's application and submit a report to the approving USCIS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(R) is not entitled to the classification as approved.

Dated: September 24, 2009.

**Janice L. Jacobs,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. E9–24089 Filed 10–5–09; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 54

**[TD 9457]**

**RIN 1545–BG71**

## Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, September 8, 2009, providing guidance on employer comparable contributions to Health Savings Accounts under the Internal Revenue Code (Code) as amended by the Tax Relief and Health Care Act of 2006. The final regulations also provide guidance relating to the manner and method of reporting and paying excise tax.

**FOR FURTHER INFORMATION CONTACT:** Mireille Khoury, (202) 622–6080 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9457) that are the subject of these corrections are under section 4980 of the Internal Revenue Code. This document contains corrections to final regulations (TD 9457) that were published in the **Federal Register** on Tuesday, September 8, 2009 (74 FR 45994) providing guidance on employer comparable contributions to Health Savings Accounts under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305, and 306 of the Tax Relief and Health Care Act of 2006. The final regulations also provide guidance relating to the manner and method of reporting and paying excise tax under sections 4980B, 4980D, 4980E and 4980G of the Code.

### Need for Correction

As published, the final regulations (TD 9457) contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the final regulations (TD 9457), that are the subject of FR Doc. E9–21225, are corrected as follows:

On page 46000, column 3, in the signature block, line 6, the language ''Assistant Secretary of the Treasury (Tax'' is corrected to read ''Acting Assistant Secretary of the Treasury (Tax''.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. E9–24004 Filed 10–5–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

**RIN 1024–AD79**

## Special Regulations; Areas of the National Park System

**AGENCY:** National Park Service.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The National Park Service (NPS) is closing the historic residence of President of the United States Truman at the Harry S Truman National Historic Site to all public use through May 30, 2010. This action is necessary because the house is undergoing major repairs and restoration. All furniture and artifacts that are key to interpretive tours for the public will be removed for the project to protect them. The restoration and repair activities will also create conditions that are a hazard to the public health and safety. Closure of the home will allow completion of a process that will restore to original appearance and protect and conserve the historic home of President Truman and its contents.

**DATES:** *Effective Date:* October 6, 2009.
*Comment Date:* November 5, 2009.

**ADDRESSES:** You may submit comments, identified by the number 1024–AD79, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

—*Mail:* National Park Service, Larry Villalva, Superintendent, Harry S Truman National Historic Site, 223 North Main Street, Independence, MO 64050.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Larry Villalva, at Harry

S Truman National Historic Site. Telephone 816–254–2720.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Truman Home's construction and conservation projects are part of the National Park Service Centennial Initiative, which was introduced in May 2007. The initiative is a 9-year plan to improve facilities and services in the National Park Service for the 100th anniversary of the agency in 2016. One of the main goals of the initiative is stewardship of natural and cultural resources in our National Parks, including rehabilitation, restoration and maintenance of treasured cultural resources such as the Truman Home. The home is a Victorian style mansion which was built in 1867 and became part of the National Park System in 1983. It served as the residence and home of Harry S Truman, 33rd President of the United States, from 1919 until his death in 1972.

During the park closure, four projects will be completed: installation of a new HVAC system, installation of a fire suppression system, repair of structural deficiencies, and rehabilitation of walls, ceilings and historic wall covering materials. Prior to the these construction projects, the historic furniture and furnishings within the home's first and second story will be removed and placed in curatorial storage. The first floor rooms which normally are visited by the public during interpretive tours will require their furniture to also be removed in order to protect the items from accidental damage by moving equipment into or out of various work locations within the house, and in order to protect the artifacts from fine dust caused by construction activities and other potential falling ceiling debris.

The furniture removal is a very concise process involving detailed photography and mapping documentation in order to insure that each item is returned to its exact original location upon completion of the work.

Historic wallpaper has been removed from the dining room and upstairs bedroom areas for cleaning, repairing, and reinstallation by a paper conservator. Plaster located in many areas throughout the home has failed as a result of deterioration and exposure to moisture which caused ceilings to buckle, and walls to either bulge or crack.

The existing HVAC system installed in 1985 is failing to maintain a stable environment in the Truman Home. This compromises the longevity of not only the homes infrastructure, but also the thousands of artifacts on exhibit and in storage within the home. Plans include installation of three HVAC units to stabilize the interior environment. This project requires removal of flooring on the second floor and attic to install ductwork. With the floor cavities open a fire suppression system will be installed.

Suspension of tours of the home for the visiting public during the construction period is justified in order to allow the construction to proceed efficiently, to prevent public exposure to construction activities and noise, as well as fine particulates and falling debris, and the danger of the movement of equipment in and out of the structure.

There will be some minor effect on a few small businesses in the area but there is no way to avoid it. The remainder of the park will remain open throughout the year and the NPS will offer the public other programs which will be conducted on the Truman Home grounds and at other nearby Truman related sites. Closure of the Truman Home cannot be avoided without compromising the quality and cost of renovation of the home.

It is necessary for the regulation to become effective upon publication in order to allow necessary construction activities scheduled to proceed. Comments are being accepted for a period of 30 days in order to address questions or requests for additional information from the readers.

**Drafting Information**

The following persons participated in the writing of this regulation: Larry Villalva, Superintendent, Harry S Truman National Historic Site, Carol Dage, Curator, Harry S Truman National Historic Site, James Loach, Associate Regional Director, Midwest Regional Office, Omaha, Nebraska and Philip Selleck, Chief, Regulations and Special Park Uses, NPS, Washington, DC.

**Compliance With Other Laws**

*Paperwork Reduction Act*

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The area proposed to be restricted through this rulemaking is being closed only during the Truman Home repair, preservation and protection construction activities stabilizing the structure, replacing the HVAC systems and adding a fire suppression system.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The closure is confined to one building located within a unit of the National Park System, which is neither managed nor occupied by any other agency.

3. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule is confined to a closure for public safety and protection of the historic resource, and does not regulate any financial programs or matters.

4. This rule does not raise novel legal or policy issues. Closure of a historic structure for restoration is a normal procedure for assuring public safety, minimizing interruption of the restoration process, and protection of the building and contents while construction is ongoing.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The primary purpose of this rule is to close the Truman Home during preparation and completion of necessary construction activities. The restriction is necessary in order to allow the construction to proceed and protect the public from the hazards associated with that construction

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule will only affect those who will not be able to visit the interior of the Truman Home during the closure.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or

local government agencies, or geographic regions. There will be no costs associated with this closure.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary purpose of this regulation is to implement a closure to allow necessary construction activities to proceed safely and efficiently in order to carry out the protection and preservation of the Truman Home structure. This rule will not change the ability of United States based enterprises to compete in any way.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The restrictions under this regulation do not have a significant effect or impose an unfunded mandate on any agency or on the private sector. This rule applies only to federal parkland administered by the National Park Service at Truman Home, and no costs will be incurred by any non-federal parties.

*Takings (Executive Order 12630)*

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule does not apply to private property, or cause a compensable taking, so there are no takings implications.

*Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses public access to the Truman Home structure at Harry S Truman National Monument. The affected land is under the administrative jurisdiction of the National Park Service.

*Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion.

The Interim Guidance for NPS Director's Order 12 contains a listing of Categorical Exclusions. Section 3.4 (C)(4) of that guidance provides that ''repairs to cultural resource sites, structures, utilities and grounds'' are categorically excluded ''if the action would not adversely affect the cultural resource''. Completion of an environmental screening form disclosed that the adoption of this regulation would result in no measurable adverse environmental effects. In compliance with terms of the National Historic Preservation Act, we executed a Section 106 clearance, recording it on the ''XXX'' form. Copies of the clearance can be obtained through the park superintendent, as listed under the **FOR FURTHER INFORMATION CONTACT** section.

We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act. As such, a categorical exclusion is the appropriate form of NEPA compliance for this regulatory action.

*Government-to-Government Relationship With Tribes*

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This interim rule is temporary, is limited to the closure of the Truman house, does not affect any other area of the park, and does not involve items or interests of federally recognized Indian tribes.

*Information Quality Act*

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

*Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

*Clarity of This Regulation.*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Public Availability of Comments**

Before including your address, phone number, 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.

*Drafting Information:* The primary authors of this rule are: Larry Villalva, Superintendent, Harry S Truman Home; James Loach, Associate Regional Director, Midwest Regional Office, NPS, Omaha, NE, and Philip Selleck, Chief, Regulations and Special Park Uses, NPS, Washington, DC.

**List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 is revised to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. Add § 7.94 to read as follows:

**§ 7.94 Harry S Truman National Historic Site.**

The Truman Home structure at Harry S Truman National Historic Site is closed to all public use and access until June 1, 2010.

Dated: September 24, 2009.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9–24020 Filed 10–5–09; 8:45 am]

**BILLING CODE 4312–BA–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2008–0031; FRL–8963–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Indiana; Extended Permit Terms for Renewal of Federally Enforceable State Operating Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving Indiana's rule revision to extend permit terms for the renewal of Federally Enforceable State Operating Permits (FESOPs) from five years to ten years. Indiana submitted this rule revision for approval on December 19, 2007. FESOPs enable non-major sources to obtain federally enforceable limits that keep them below certain Clean Air Act (Act) applicability thresholds. EPA published proposed and direct final approvals of this request on May 5, 2009. We received adverse comments on our proposed rulemaking, which are addressed below. As a result, EPA withdrew the direct final approval on June 17, 2009.

**DATES:** This final rule is effective on November 5, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2008–0031. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886–3189 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *Portanova.sam@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** Section is arranged as follows:

I. What Did EPA Propose?
II. What Comments Did We Receive on the Proposed Action?
III. What Action Is EPA Taking?
IV. Statutory and Executive Order Reviews

### I. What Did EPA Propose?

On December 19, 2007, the Indiana Department of Environmental Management (IDEM) requested that EPA approve a rule revision to extend permit terms for the renewal of FESOPs from five years to ten years. On May 5, 2009, EPA published a proposed (74 FR 20665) and direct final (74 FR 20599) approval of this request. EPA received adverse comments on this action and withdrew the direct final approval on June 17, 2009 (74 FR 28616).

### II. What Comments Did We Receive on the Proposed Action?

EPA received one comment letter with two comments from Valley Watch, Inc.

*Comment:* Permit terms of five years are sometimes too long to account for changes in technology or other circumstances that make some conditions obsolete fairly quickly. Extending those terms will have a negative impact on the health of Valley Watch members and is, in general, bad public policy.

*Response:* Sources must comply with all applicable requirements of the Act regardless of the length of a FESOP's term or the timing of its issuance. FESOPs generally contain limits on the operations of the plant, *e.g.,* materials used and hours of operation, which effectively restrict the source's potential to emit. See 54 FR 27281 (June 28, 1989). An approvable FESOP program such as Indiana's requires the permits to undergo public notice and be subject to public comment. A FESOP does not impact any previously or newly applicable substantive requirements of the Act, such as new maximum achievable control technology standards under Section 112. Such provisions remain independently enforceable. Similarly, FESOP holders will still need to meet all applicable requirements under the Act, including those related to new construction. As such, an extension of FESOP renewal terms from five to ten years does not delay the obligation of a source to comply with all applicable requirements.

*Comment:* Indiana has significantly cut back on its ability to do inspections at both FESOP and bigger polluters. IDEM has taken away the inspection responsibilities of numerous local government agencies by stripping them of their financial and statutory support.

*Response:* The length of a FESOP's term does not affect IDEM's ability to conduct inspections at sources. The issue raised by the commenter is not related to the rulemaking action being addressed in this notice.

### III. What Action Is EPA Taking?

EPA is approving the revisions to 326 IAC 2–1.1–9.5 and 326 IAC 2–8–4 regarding the permit terms for FESOP renewals.

### IV. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a State Implementation Plan (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 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 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(189) to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

(189) On December 19, 2007, Indiana submitted modifications to its Federally Enforceable State Operating Permits rules as a revision to the state implementation plan. The revision extends the maximum permit term for renewals of Federally Enforceable State Operating Permits from five years to ten years. EPA has determined that this revision is approvable under the Clean Air Act.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326, Article 2: Permit Review Rules, sections 2–1.1–9.5, ''General provisions; term of permit'', and 2–8–4, ''Permit content'', are incorporated by reference. Filed with the Publisher of the Indiana Register on November 16, 2007, and became effective on December 16, 2007. Published in the Indiana Register on December 13, 2007 (20071212–IR–326060487FRA).

[FR Doc. E9–23938 Filed 10–5–09; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**RIN 0648–XR10**

### Atlantic Highly Migratory Species; Inseason Action to Close the Commercial Sandbar Shark Research Fishery

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

**ACTION:** Fishery closure.

**SUMMARY:** NMFS is closing the commercial sandbar shark research fishery. This action is necessary because NMFS estimated that landings in this fishery have exceeded 80 percent of the available quota.

**DATES:** The commercial sandbar shark research fishery is closed effective 11:30 p.m. local time October 13, 2009, until the effective date of the final 2010 shark season specifications in which NMFS will publish a separate document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Guy DuBeck, 301–713–2347; fax 301–713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 and issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS, every two weeks, on all Atlantic sharks they have received. Dealer reports for fish received between the 1st and 15th of the month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. In addition, shark landings within the shark research fishery are monitored via scientific observer reports. Under 50 CFR 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from the

date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On December 24, 2008, NMFS announced that the sandbar shark quota for the shark research fishery for the 2009 fishing year would be 87.5 metric tons (mt) dressed weight (dw) (193,784 lb dw). Scientific observer reports received through June 26, 2009, and dealer reports through August 26, 2009, indicate that 79.6 mt dw or 90.5 percent of the available quota for the sandbar shark research fishery has been taken. Accordingly, NMFS is closing the commercial sandbar shark research fishery as of 11:30 p.m. local time October 13, 2009. The SCS and pelagic shark fisheries will remain open.

During this closure, a fishing vessel, issued an Atlantic Shark Limited Access Permit (LAP) pursuant to § 635.4, may not possess or sell a sandbar shark, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and an NMFS-approved observer is onboard. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive sandbar sharks, except that a permitted shark dealer or processor may possess sandbar sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Additionally, a shark dealer issued a Federal permit, pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a sandbar shark if the shark was harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and had not been issued a Shark LAP, HMS Angling permit, or HMS CHB permit under § 635.4.

### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fisheries are currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because, if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(3).

This action is required under 50 CFR 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: September 29, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9–23951 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 09100091344–9056–02]**

**RIN 0648–XS04**

## 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 2009 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

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

The 2009 TAC of pollock in Statistical Area 630 of the GOA is 11,058 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(d)(1)(i), the Regional Administrator has determined that 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 10,800 mt, and is setting aside the remaining 258 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 September 30, 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: October 1, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9–24074 Filed 10–1–09; 4:15 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 74, No. 192
Tuesday, October 6, 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 HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2009–0520]**

**RIN 1625–AA08**

## Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent Special Local Regulation within the waters of Huntington Bay, New York for the annual Fran Schnarr Open Water Championships. This proposed Special Local Regulation is necessary to provide for the safety of life on the navigable waters of Huntington Bay by protecting swimmers from the hazards imposed by vessel traffic. This action is intended to increase the safety of the swimmers by limiting vessel access to a portion of Huntington Bay, New York during the swim event held on a single day each July. Entry into this area will be prohibited unless authorized by the Captain of the Port, Long Island Sound or the designated on-scene patrol personnel.

**DATES:** Comments and related material must reach the Coast Guard on or before November 5, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0520 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail: MSTC Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail *christie.m.dixon@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0520), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2009–0520'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0520 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we

determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Over the last several years, Metropolitan Swimming, Inc. has hosted an annual open water championship swim on the waters of Huntington Bay, NY during a single day in July. This swim has historically involved up to 150 swimmers and accompanying safety craft. Last year, the Coast Guard established a temporary special local regulation to protect the swimmers and safety craft from the hazards imposed by passing water traffic and other water related activities (74 FR 33144 [USCG–2009–0520]).

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard is proposing to establish a special local regulation around the race course for the duration of the race, generally from 7:15 a.m. to 11:30 a.m. on the day of the race.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish a special local regulation on the navigable waters of Huntington Bay, NY that would exclude all unauthorized persons and vessels from approaching within 100 yards of the proposed race course which consists of the following points: Start/Finish at approximate location 40°54′25.8″ N 073°24′28.8″ N, East Turn at approximate location 40°54′45″ N 073°23′36.6″ N and a West Turn at approximate location 40°54′31.2″ N 073°25′21″ N. This action is intended to prohibit vessel traffic in this portion of Huntington Bay, NY to provide for the safety of swimmers, swimmer safety craft and the boating community from the hazards posed by vessels operating near persons participating in this open water swim.

While the special local regulation will be permanent, it will only be enforced for approximately four hours and fifteen minutes on a single day in July that will be specified annually. Notification of the race date and subsequent enforcement of the special local regulation will be made via separate notice in the **Federal Register**, marine broadcasts and local notice to mariners. Entry into this area would be prohibited unless authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel. Marine traffic that may safely do so may transit outside of the area during the enforcement period, allowing navigation in all other portions of Huntington Bay, NY not covered by this rule. Any violation of the special local regulation described herein is punishable by civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact would be minimized for the following reason: vessels may transit in all areas of Huntington Bay, NY other than the area of the special local regulation with minimal increased transit time and the special local regulation will only be enforced for approximately four and a quarter hours on a single specified day each July.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in those portions of Huntington Bay, NY covered by the special local regulation. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact: MST1 Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a special local regulation which is categorically excluded from further environmental analysis under paragraph 34(h) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add § 100.123 to read as follows:

**§ 100.123: Fran Schnarr Open Water Championships, Huntington Bay, New York.**

(a) *Regulated area.* All navigable waters of Huntington Bay, NY within 100 yards of the swim race course consisting of the following points: Start/Finish at approximate position 40°54′25.8″ N 073°24′28.8″ N, East Turn at approximate position 40°54′45″ N 073°23′36.6″ N and a West Turn at approximate position 40°54′31.2″ N 073°25′21″ N.

(b) *Definitions.* The following definition applies to this section: *Designated on-scene patrol personnel*, means any commissioned, warrant or petty officer of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) The general regulations contained in 33 CFR 100.35 and 100.40 apply.

(2) In accordance with the general regulations in § 100.35 of this part, No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless they are officially participating in the Fran Schnarr Open Water Swim event or are otherwise authorized by the Designated On-scene Patrol Personnel.

(3) All persons and vessels must comply with the instructions from the Coast Guard Captain of the Port Long Island Sound or the designated on-scene patrol personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on scene patrol personnel on VHF–16 or to the Captain of the Port, Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule is enforced from 7:15 a.m. to 11:30 a.m. on a specified day each July to be determined on an annual basis. Notification of the specific date for the swim race and enforcement of the special local regulation will be made via separate notice in the **Federal Register**, marine broadcasts and local notice to mariners.

Dated: June 17, 2009.

**Daniel A. Ronan,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. E9–24007 Filed 10–5–09; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 151, 155, and 160

**[USCG–2008–1070]**

**RIN 1625–AB27**

### Nontank Vessel Response Plans and Other Vessel Response Plan Requirements

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings; request for comments; correction.

**SUMMARY:** The Coast Guard is issuing a correction to an earlier document that

published on September 25, 2009, in order to correct the date of the Washington, DC, public meeting. Our earlier notice listed 2 different dates for the same meeting; the correct date is October 28, 2009.

**DATES:** The public meetings will be held at the following locations:

- Washington, DC, October 28, 2009, from 1 p.m. to 3:30 p.m.
- Oakland, CA, November 3, 2009, from 1 p.m. to 3:30 p.m.
- New Orleans, LA, November 19, 2009, from 4:30 p.m. to 7 p.m.

Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closes November 30, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before November 30, 2009, or reach the Docket Management Facility by that date.

**ADDRESSES:** The public meetings will be held at the following locations:

- Washington, DC—United States Coast Guard Headquarters Building, Room 4202, 2100 Second St., SW., Washington, DC 20593.
- Oakland, CA—Ronald V. Dellums Federal Building, Auditorium, 3rd Floor North Tower, 1301 Clay Street, Oakland, CA 94612.
- New Orleans, LA—Ernest N. Morial Convention Center, Room 208, Exhibit Hall A, 900 Convention Center Blvd., New Orleans, LA 70130.

You may submit written comments identified by docket number USCG–2008–1070 before or after the meeting 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. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2008–1070.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, contact Lieutenant Jarrod DeWitz, U.S. Coast Guard, Office of Vessel Activities, Vessel Response Plan Review Team, telephone (202) 372–1219. You may also e-mail questions to *Jarrod.M.DeWitz@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

The Coast Guard is issuing this correction to an earlier notice that published on September 25, 2009, (74 FR 48891) in order to correct the date of the Washington, DC, public meeting. Our earlier notice listed 2 different dates for the same meeting; the correct date is October 28, 2009. The time/location of the Washington, DC, public meeting remains unchanged. The dates/times/locations for the Oakland, CA, and New Orleans, LA, public meetings remain unchanged.

We encourage you to participate in this rulemaking by submitting comments either orally at a meeting or in writing. If you bring written comments to a meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Jarrod DeWitz at the telephone number indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### Public Meeting

The Coast Guard will hold three public meetings regarding this proposed rulemaking on the following dates and at the following locations:

- Washington, DC, October 28, 2009, from 1 p.m. to 3:30 p.m., at the United States Coast Guard Headquarters Building, Room 4202, 2100 Second Street, SW., Washington, DC 20593.

**Note:** A government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

- Oakland, CA, November 3, 2009, from 1 p.m. to 3:30 p.m., at the Ronald V. Dellums Federal Building, Auditorium, 3rd Floor North Tower, 1301 Clay Street, Oakland, CA 94612.

**Note:** A government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

- New Orleans, LA, November 19, 2009, from 4:30 p.m. to 7 p.m., at the Ernest N. Morial Convention Center, Room 208, Exhibit Hall A, 900 Convention Center Blvd., New Orleans, LA 70130.

Members of the public may attend these meetings up to the seating capacity of the rooms. The meetings may conclude before the allotted time if all matters of concern have been addressed.

We plan to record each meeting using an audio-digital recorder and to make that audio recording available through a link in our online docket. A written summary of comments made and a list of attendees will be placed in the docket after each meeting concludes.

Dated: September 30, 2009.

**Stefan G. Venckus,**

*Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

[FR Doc. E9–24008 Filed 10–5–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2009–0751–200920; FRL–8965–9]**

## Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Hickory-Morganton-Lenoir; Determination of Attaining Data for the 1997 Fine Particulate Matter Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Hickory-Morganton-Lenoir, North Carolina, (hereafter referred to as ''Hickory, North Carolina'') nonattainment area for the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$

NAAQS. This proposed determination is based upon three years of complete quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the years of 2006–2008. In addition, monitoring data thus far available, but not yet certified, in the EPA Air Quality System (AQS) database for 2009 show that this area continues to meet the 1997 $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirement for the State of North Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard for the Hickory, North Carolina, $PM_{2.5}$ nonattainment area, shall be suspended. This requirement would remain suspended as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

**DATES:** Written comments must be received on or before November 5, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0751 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2009–0751,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2009–0751. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or by e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. What Is the Background for This Action?
IV. What Is EPA's Analysis of the Relevant Air Quality Data?
V. Proposed Action
VI. Statutory and Executive Order Reviews

## I. What Action Is EPA Taking?

EPA is proposing to determine that the Hickory, North Carolina, $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon complete quality assured, quality controlled, and certified ambient air monitoring data for the years 2006–2008 showing that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS. In addition, quality controlled and quality assured monitoring data thus far available, but not yet certified, in the EPA AQS database for 2009, show that this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

## II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c)), the requirement for the State of North Carolina to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for the Hickory, North Carolina, $PM_{2.5}$ nonattainment area, shall be suspended. This requirement would remain suspended as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

*As further discussed below, the proposed determination for the Hickory, North Carolina, $PM_{2.5}$ nonattainment area would:* (1) Suspend the requirement to submit an attainment demonstration and associated RACM (including reasonably available control technologies), RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 $PM_{2.5}$ NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Hickory, North Carolina, area based on the 2006 $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, any

such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice is not equivalent to a redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA) because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 1997 $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Hickory, North Carolina, $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. The 1997 $PM_{2.5}$ NAAQS became effective on July 18, 1997 (62 FR 36852), and are set forth at 40 CFR 50.7. The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144), are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 $PM_{2.5}$ NAAQS. EPA has not made any designation determination for the Hickory, North Carolina, area based on the 2006 $PM_{2.5}$ NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 $PM_{2.5}$ NAAQS for the Hickory, North Carolina, area. Conversely, any future designation determination of the Hickory, North Carolina, area, based on the 2006 $PM_{2.5}$ NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Hickory, North Carolina, area continues to demonstrate attainment with the 1997 $PM_{2.5}$ NAAQS, the requirement for the State of North Carolina to submit for the Hickory, North Carolina, $PM_{2.5}$ nonattainment area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS will remain suspended regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

## III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposure to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999 and began operating all air quality monitors by January 2001. On January 5, 2005, EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003 (70 FR 944). These designations became effective on April 5, 2005. The Hickory, North Carolina, area is composed of Catawba County, North Carolina, and was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS (see 40 CFR part 81).

## IV. What Is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA AQS database for the Hickory, North Carolina, $PM_{2.5}$ nonattainment area. On the basis of that review, EPA has concluded that this area attained the 1997 $PM_{2.5}$ NAAQS during the 2006–2008 monitoring period. Under EPA regulations at 40 CFR 50.7:

(1) The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$.

(2) The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 $\mu g/m^3$.

Table 1 shows the design values (the metrics calculated in accordance with 40 CFR part 50, appendix N, for determining compliance with the NAAQS) for the 1997 Annual $PM_{2.5}$ NAAQS for the Hickory, North Carolina, nonattainment area monitors for the years 2006–2008. Table 2 shows the design values for the 1997 24-hour $PM_{2.5}$ NAAQS for these same monitors and for the same 3-year period.

TABLE 1—DESIGN VALUE FOR COUNTIES IN THE HICKORY, NORTH CAROLINA NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—ANNUAL STANDARD

| Location | AQS site ID | 2006 average | 2007 average | 2008 average | 2006–2008 design value |
|---|---|---|---|---|---|
| Catawba County | 37–035–0004 | 15.163 | 14.592 | 12.806 | 14.2 |

TABLE 2—DESIGN VALUE FOR COUNTIES IN THE HICKORY, NORTH CAROLINA NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—24-HOUR STANDARD

| Location | AQS site ID | 2006 98th percentile | 2007 98th percentile | 2008 98th percentile | 2006–2008 design value |
|---|---|---|---|---|---|
| Catawba County | 37–035–0004 | 32.9 | 30.7 | 25.2 | 30 |

EPA's review of these data indicates that the Hickory, North Carolina, nonattainment area has met and continues to meet the 1997 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**V. Proposed Action**

EPA is proposing to determine that the Hickory, North Carolina, nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS based on 2006–2008 monitoring data. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it will suspend the requirement for the State of North Carolina to submit for this area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

**VI. Statutory and Executive Order Reviews**

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. For that reason, this proposed 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 CAA; 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–24059 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2009–0561–200919; FRL–8965–8]**

### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Greensboro-Winston Salem-High Point; Determination of Attaining Data for the 1997 Fine Particulate Matter Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Greensboro-Winston Salem-High Point, North Carolina, (hereafter referred to as ''Greensboro, North Carolina'') nonattainment area for the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2006–2008 showing that this area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS. In addition, monitoring data thus far available, but not yet certified, in the EPA Air Quality System (AQS) database for 2009 show that this area continues to meet the 1997 $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirement for the State of North Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area, shall be suspended. This requirement would remain suspended as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

**DATES:** Written comments must be received on or before November 5, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0561 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2009–0561,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2009–0561. 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 through *http://www.regulations.gov* or by e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. What Is the Background for This Action?
IV. What Is EPA's Analysis of the Relevant Air Quality Data?
V. Proposed Action
VI. Statutory and Executive Order Reviews

## I. What Action Is EPA Taking?

EPA is proposing to determine that the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2006–2008 showing that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS. In addition, monitoring data thus far available, but not yet certified, in the EPA AQS database for 2009, show that this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

## II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (*see* 40 CFR 51.1004(c)), the requirement for the State of North Carolina to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area, shall be suspended. This requirement would remain suspended as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

As further discussed below, the proposed determination for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area would: (1) Suspend the requirement to submit an attainment demonstration and associated RACM (including reasonably available control technologies), RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 $PM_{2.5}$ NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Greensboro, North Carolina, area based on the 2006 $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice is not equivalent to a redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA) because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 1997 $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. The 1997 $PM_{2.5}$ NAAQS became effective on July 18, 1997 (62 FR 36852), and are set forth at 40 CFR 50.7. The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144), are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 $PM_{2.5}$ NAAQS. EPA has not made any designation determination for the Greensboro, North Carolina, area based on the 2006 $PM_{2.5}$ NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 $PM_{2.5}$ NAAQS for the Greensboro, North Carolina, area. Conversely, any future designation determination of the Greensboro, North Carolina, area, based on the 2006 $PM_{2.5}$ NAAQS, will not have any effect on the determination proposed by this notice.

If this proposed determination is made final and the Greensboro, North Carolina, area continues to demonstrate attainment with the 1997 $PM_{2.5}$ NAAQS, the requirement for the State of North Carolina to submit for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS will remain suspended regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 $PM_{2.5}$ NAAQS. Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

## III. What Is the Background for This Action?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposure to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999 and began operating all air quality monitors by January 2001. On January 5, 2005, EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003 (70 FR 944). These designations became effective on April 5, 2005. The Greensboro, North Carolina, area is comprised of Davidson County and Guilford County, North Carolina, and was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS (*see* 40 CFR part 81).

## IV. What Is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA AQS database for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area. On the basis of that review, EPA has concluded that this area attained the 1997 $PM_{2.5}$ NAAQS during the 2006–2008 monitoring period. Under EPA regulations at 40 CFR 50.7:

(1) The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$.

(2) The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 $\mu g/m^3$.

Table 1 shows the design values (the metrics calculated in accordance with 40 CFR part 50, appendix N, for determining compliance with the NAAQS) for the 1997 Annual $PM_{2.5}$ NAAQS for the Greensboro, North Carolina, nonattainment area monitors for the years 2006–2008. Table 2 shows the design values for the 1997 24-hour $PM_{2.5}$ NAAQS for these same monitors for the same 3-year period.

TABLE 1—DESIGN VALUE FOR COUNTIES IN THE GREENSBORO, NORTH CAROLINA NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—ANNUAL STANDARD

| Location | AQS site ID | 2006 average | 2007 average | 2008 average | 2006–2008 design value |
|---|---|---|---|---|---|
| Davidson County | 37–057–0002 | 15.126 | 14.636 | 13.611 | 14.5 |
| Guilford County | 37–081–0013 | 14.497 | 13.140 | 11.577 | 13.1 |

TABLE 2—DESIGN VALUE FOR COUNTIES IN THE GREENSBORO, NORTH CAROLINA NONATTAINMENT AREA FOR 1997 $PM_{2.5}$ NAAQS—24-HOUR STANDARD

| Location | AQS site ID | 2006 98th percentile | 2007 98th percentile | 2008 98th percentile | 2006–2008 design value |
|---|---|---|---|---|---|
| Davidson County | 37–057–0002 | 31.0 | 30.9 | 24.7 | 29 |
| Guilford County | 37–081–0013 | 31.3 | 28.4 | 24.6 | 28 |

EPA's review of these data indicates that the Greensboro, North Carolina, nonattainment area has met and continues to meet the 1997 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Proposed Action

EPA is proposing to determine that the Greensboro, North Carolina, nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS based on 2006–2008 monitoring data. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it will suspend the requirements for the State of North Carolina to submit for this area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

## VI. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. For that reason, this proposed 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 CAA; 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: September 28, 2009.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–24057 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 86 and 600

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 531, 533, 537, and 538

**[EPA–HQ–OAR–2009–0472; FRL–8966–9; NHTSA–2009–0059]**

**RIN 2060–AP58; 2127–AK90**

## Public Hearing Locations for the Proposed Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards

**AGENCY:** Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA).

**ACTION:** Notice of public hearings.

**SUMMARY:** EPA and NHTSA are announcing the location addresses for the joint public hearings to be held for the ''Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards,'' published in the **Federal Register** on September 28, 2009. This joint proposed rulemaking is consistent with the National Fuel Efficiency Policy announced by President Obama on May 19, 2009, responding to the country's critical need to address global climate change and to reduce oil consumption. As described in the joint proposed rule, EPA is proposing greenhouse gas emissions standards under the Clean Air Act, and NHTSA is proposing Corporate Average Fuel Economy standards under the Energy Policy and Conservation Act, as amended. These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, covering model years 2012 through 2016, and represent a harmonized and consistent National Program. The joint proposed rule provides the dates, times, cities, instructions and other information for the public hearings and these details have not changed.

**DATES:** NHTSA and EPA will jointly hold three public hearings on the following dates: October 21, 2009, in Detroit, Michigan, October 23, 2009 in New York, New York, and October 27, 2009 in Los Angeles, California. The hearings will start at 9 a.m. local time and continue until everyone has had a chance to speak. If you would like to present testimony at the public hearings, we ask that you notify the EPA and NHTSA contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing.

**ADDRESSES:** NHTSA and EPA will jointly hold three public hearings at the following locations: Detroit Metro Airport Marriott, 30559 Flynn Drive, Romulus, Michigan 48174 on October 21, 2009; New York LaGuardia Airport Marriott, 102–05 Ditmars Boulevard, East Elmhurst, New York 11369 on October 23, 2009; and Renaissance Los Angeles Airport Hotel, 9620 Airport Boulevard, Los Angeles, California 90045 on October 27, 2009. Please see the proposed rule for addresses and detailed instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** EPA: Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4332; fax number: 734–214–4816; e-mail address: *wysor.tad@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; e-mail address *asdinfo@epa.gov.* NHTSA: Rebecca Yoon, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

**SUPPLEMENTARY INFORMATION:** The proposal for which NHTSA and EPA are jointly holding the public hearings was published in the **Federal Register** on September 28, 2009.[1] The proposed rule provides the dates, times, cities, instructions for how to participate and other information on the public hearings and these details have not changed. If you would like to present testimony at the public hearings, we ask that you notify the EPA and NHTSA contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' in the proposed rule for more information about the public hearings.[2] Also, please refer to the proposed rule for addresses and detailed instructions for submitting comments.

This notice of public hearings further provides the location addresses for the hearings, shown below:

*October 21, 2009:* Detroit Metro Airport Marriott, 30559 Flynn Drive, Romulus, Michigan 48174, 734–214–7555.

*October 23, 2009:* New York LaGuardia Airport Marriott, 102–05 Ditmars Boulevard, East Elmhurst, New York 11369, 718–565–8900.

*October 27, 2009:* Renaissance Los Angeles Airport Hotel, 9620 Airport Boulevard, Los Angeles, California 90045, 310–337–2800.

Dated: October 1, 2009.

**Paul N. Argyropoulos,**

*Acting Director, Office of Transportation and Air Quality, Environmental Protection Agency.*

Dated: October 1, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.*

[FR Doc. E9–24159 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–P**

[1] 74 FR 49454, September 28, 2009.

[2] 74 FR 49455, September 28, 2009.

# Notices

Federal Register
Vol. 74, No. 192
Tuesday, October 6, 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.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 1, 2009.

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

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

**Office of the Assistant Secretary for Civil Rights**

*Title:* USDA Race, Ethnicity and Gender Data Collection.

*OMB Control Number:* 0503–NEW.

*Summary of Collection:* Section 14006 and 14007 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 8701 (referred to as the 2008 Far Bill) establishes a requirement for the Department of Agriculture (USDA) to annually compile application and participation rate data regarding socially disadvantaged farmers or ranchers by computing for each program of the USDA that serves agriculture producers and landowners (a) raw numbers of applicants and participants by race, ethnicity, and gender, subject to appropriate privacy protection, as determined by the Secretary; and (b) the application and participation rate, by race, ethnicity and gender as a percentage of the total participation rate of all agricultural producers and landowners for each county and State in the United States.

*Need and Use of the Information:* Data will be collected through a questionnaire to determine the race, ethnicity and gender of farmers and ranchers who apply for and who participate in USDA programs and services. The data is also necessary to provide USDA and its agencies with sound data on the demographics of its constituents. The data will enable USDA to (a) develop a baseline on its applicants and participants, (b) assist in planning for and implementing appropriate responses to the needs of its constituents, and (c) in the conduct of oversight and evaluation of civil rights compliance. The information will be used by the Office of Advocacy and Outreach and the agencies' outreach offices to determine if socially disadvantaged farmers and ranchers are being equitably served by USDA programs. Failure to collect this information will have a negative impact on USDA's outreach activities and could result in an inability of the agencies to equitably deliver programs and services to applicant and producers.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 14,000,000.

*Frequency of Responses:* Reporting: Other (once).

*Total Burden Hours:* 462,000.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–24052 Filed 10–5–09; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Hood/Willamette Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA Forest Service

**ACTION:** Action of meeting.

**SUMMARY:** The Hood/Willamette Resource Advisory Committee (RAC) will meet on Wednesday, October 28, 2009. The meeting and field trip is scheduled to begin at 9:30 a.m. and will conclude at approximately 4:30 p.m. The meeting will be held at the Mt. Hood National Forest Headquarters; 16400 Champion Way; Sandy, Oregon; (503) 668–1700. The tentative agenda includes: (1) Public Forum; and (2) Field Trip to Title II Projects.

The Public Forum is tentatively scheduled to begin at 9:45 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the October 28th meeting by sending them to Designated Federal Official Connie Athman at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Connie Athman; Mt. Hood National Forest; 16400 Champion Way; Sandy, Oregon 97055; (503) 668–1672.

Dated: September 28, 2009.

**Kathryn J. Silverman,**

*Deputy Forest Supervisor.*

[FR Doc. E9–23789 Filed 10–5–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

**AGENCY:** Malheur National Forest, USDA Forest Service.

**ACTION:** Notice of New Fee Sites.

**SUMMARY:** The Malheur National Forest is planning to charge a $60 fee for the overnight rental of Short Creek and Sunshine Cabins. These cabins have not been available for recreation use prior to this date. Rentals of other cabins on the Malheur National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Short Creek and Sunshine Cabins.

**DATES:** Short Creek and Sunshine Cabins will become available for recreation rental May, 2010.

**ADDRESSES:** Forest Supervisor, Malheur National Forest, P.O. Box 909, John Day, OR 97845.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Harris, Recreation Fee Coordinator, 541–575–3008.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Malheur National Forest currently has three other cabin rentals. These rentals are often fully booked throughout their rental season. An analysis of Short Creek and Sunshine Cabins has shown that people desire having this sort of recreation experience on the Malheur National Forest. A market analysis indicates that the $60/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Short Creek and Sunshine Cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Date: September 17, 2009.

**Doug Gochnour,**

*Malheur National Forest Supervisor.*

[FR Doc. E9–23830 Filed 10–5–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* NOAA Coastal Ocean Program Grants Proposal Application Package.

*OMB Control Number:* 0648–0384.

*Form Number(s):* NA.

*Type of Request:* Regular submission.

*Number of Respondents:* 250.

*Average Hours per Response:* Abstract summary, 30 minutes; annual report, 5 hours; and final report, 10 hours.

*Burden Hours:* 850.

*Needs and Uses:* The National Ocean and Atmospheric Administration's (NOAA's) National Ocean Service (NOS), Coastal Ocean Program (COP) provides direct financial assistance in the form of discretionary research grants and cooperative agreements under its own program for the management of coastal ecosystems.

The COP is part of a unique Federal-academic partnership designed to provide predictive capability for managing coastal ecosystems. Under the authority of 33 U.S.C. 1442, ''Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems'', COP supports research on critical issues associated with the Nation's estuaries, coastal waters and the Great Lakes, and translates its finding into accessible information for coastal managers, planners, lawmakers and the public. COP's projects are multi-disciplinary, large in scale and long in duration (usually three to five years). Grants monies are available for related activities. In addition to the standard grant application and budget forms, applicants for COP grants provide a project summary with their applications, as well as annual and final project reports.

*Affected Public:* Not-for-profit institutions.

*Frequency:* Annually, one-time only, and on occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: October 1, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–24009 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Department of Commerce: Energy for Manufacturing Roundtable

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

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Department of Commerce (DOC) will host a half-day ''Energy for Manufacturing Roundtable'' on October 20, 2009. This event is intended for members of the manufacturing industry and energy suppliers to the manufacturing industry. Participants will learn about and discuss the consequences that energy consumption and workforce education have on competitiveness; how energy efficiency models can strengthen competition and innovation; and how energy consumption patterns are spurring greater implementation of industrial energy efficient technologies. U.S. leadership in industrial energy efficiency technologies being deployed worldwide will be highlighted.

**DATES:** October 20, 2009.

*Location:* U.S. Department of Commerce, Washington, DC.

**ADDRESS:** To apply to participate in the roundtable, please send an e-mail to *energyformanufacturing@mail.doc.gov* by October 15, 2009.

**SUPPLEMENTARY INFORMATION:**

#### Selection Criteria

The Department invites applications from manufacturers, energy suppliers, and trade associations representing

either the manufacturing industry or energy suppliers to the manufacturing industry to participate in the Roundtable. To be considered for participation, applicants should provide information regarding their qualifications to participate in the event and to make a valuable contribution based on their experiences regarding the topics to be discussed as identified in the Summary above. As space for this event is limited to 50 persons representing the private sector, DOC wishes to ensure broad coverage of industry sectors. Applicants will be notified of their selection to participate by October 16, 2009.

Dated: September 22, 2009.

**Cheryl McQueen,**

*Acting Director, Office of Energy and Environmental Industries, U.S. Department of Commerce.*

[FR Doc. E9–23964 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Manufacturers' Unfilled Orders Survey

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before December 7, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Chris Savage, U.S. Census Bureau, Manufacturing and Construction Division, 4600 Silver Hill Road, Room 7K071, Washington, DC 20233–6913, (301) 763–4834, or (via the Internet at *John.C.Savage@census.gov.*)

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Manufacturers' Shipments, Inventories, and Orders (M3) survey collects monthly data on shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are valuable tools for analysts of business cycle conditions, including members of the Council of Economic Advisers, the Treasury Department, and the business community.

The monthly M3 Survey estimates are based on a relatively small sample and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the manufacturing universe. The Annual Survey of Manufacturers (ASM) provides annual benchmarks for the shipments and inventory data in this monthly survey. There is no benchmark for unfilled orders. The U.S. Census Bureau plans a reinstatement to an expired collection ''Manufacturers' Shipments, Inventories and Orders (M3) Supplement: 2006–2007 Unfilled Orders Benchmark Survey,'' to be renamed the ''Manufacturers' Unfilled Orders Survey.'' Over the life of the M3 Survey, there have been four surveys specifically designed to collect unfilled orders. These surveys were conducted in 1976, 1986, 2000, and 2008. After analyzing the results of the 2008 survey, the Census Bureau ascertained the need for an ongoing data collection of unfilled orders data annually.

The Manufacturers' Unfilled Orders Survey will be used as a benchmark for the M3 Survey each year. The Census Bureau will use these data to develop universe estimates of unfilled orders as of the end of the calendar year and adjust the monthly M3 data on unfilled orders to these levels on the NAICS basis. The benchmarked unfilled orders levels will be used to derive estimates of new orders received by manufacturers. The survey data will also be used to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis; some industries are not requested to provide unfilled orders data on the M3 Survey.

#### II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 30 days of receipt. Letters encouraging participation will be mailed to companies that have not responded by the designated time. Telephone follow-up will be conducted to obtain response from delinquent companies.

#### III. Data

*OMB Control Number:* 0607–0561.

*Form Number:* MA–3000.

*Type of Review:* Regular submission.

*Affected Public:* Businesses, large and small, or other for-profit organizations.

*Estimated Number of Respondents:* 6,000.

*Estimated Time per Response:* .50 hours.

*Estimated Total Annual Burden Hours:* 3,000.

*Estimated Total Annual Cost:* $94,950.

*Respondents Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C. Section 182.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 30, 2009.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–23963 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–09–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Construction Progress Reporting Survey

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before December 7, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Davis, U.S. Census Bureau, 7K081, Washington, DC 2033–6900, (301) 763–1605 (or via the Internet at *michael.davis@census.gov*).

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Census Bureau plans to request a three-year extension of a currently approved collection for forms C–700, Private Construction Projects; C–700(R), Multifamily Residential Projects; and C–700(SL), State and Local Government Projects. These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) to collect information on the dollar value of construction put in place by private companies, individuals, private multifamily residential buildings, and state and local governments.

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. The Form C–700, Private Construction Projects, collects construction put in place data for nonresidential projects owned by private companies or individuals. The Form C–700(R), Multifamily Residential Projects, collects construction put in place data for private multifamily residential buildings. The Form C–700(SL), State and Local Government Projects, collects construction put in place data for state and local government projects.

The Census Bureau uses the information from these surveys to publish the value of construction put in place series. Published estimates are used by a variety of private business and trade associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various government agencies with a tool to evaluate economic policy and to measure progress towards established goals. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of the Treasury use the value in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

### II. Method of Collection

An independent systematic sample of projects is selected each month according to predetermined sample rates. Once a project is selected, it remains in the sample until completion of the project. Preprinted forms are mailed monthly to respondents to fill in current month data and any revisions to previous months. Some respondents are later called by a Census interviewer and report data over the phone. Having the information available from a database at the time of the interview greatly helps reduce the time respondents spend on the phone. Interviews are scheduled at the convenience of the respondent, which further reduces their burden.

### III. Data

*OMB Control Number:* 0607–0153.

*Form Number:* C–700, C–700(R), C–700(SL).

*Type of Review:* Regular submission.

*Affected Public:* Individuals, Businesses or Other for Profit, Not-for-Profit Institutions, Small Businesses or Organizations, and State and Local Governments.

*Estimated Number of Respondents:*
C–700 = 6,500.
C–700(R) = 1,500.
C–700(SL) = 10,500.
TOTAL = 18,500.

*Estimated Time per Response:* 5 to 15 minutes per month.

*Estimated Total Annual Burden Hours:* 48,100.

*Estimated Total Annual Cost:* $1.5 million.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, U.S.C., Section 182.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 30, 2009.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–23972 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–09–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Amendment of Date for Trade Mission to Algeria and Libya, February 17–22, 2010

**AGENCY:** Department of Commerce.

**ACTION:** Amendment and extension of deadline, of **Federal Register** March 11, 2009, Volume 74, Number 46.

**Mission Statement**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service has rescheduled the Trade Mission to Algiers, Algeria, and Tripoli, Libya, from November 4–8, 2009, to February 17–22, 2010. The Department of Commerce will accept additional applications for this mission through November 12, 2009. A maximum of 12 additional companies will be selected to participate in the mission from the new applicant pool. Companies previously selected to participate in this mission need not reapply.

**Proposed Timetable**

Tuesday, February 16
  Arrive in Algiers, Algeria
  Optional no-host dinner
Wednesday, February 17
  Market briefing
  One-on-one business appointments
  U.S. Embassy reception
Thursday, February 18
  One-on-one business appointments
  Meetings with government and industry officials
Friday, February 19
  Cultural site visits
Saturday, February 20
  Travel from Algiers to Tripoli, Libya

Sunday, February 21
Market briefing
One-on-one business appointments
Meetings with government and industry officials
U.S. Embassy reception
Monday, February 22
One-on-one business appointments
End of mission

For More Information and an Application Packet Contact: Lisa Huot, U.S. Commercial Service, Department of Commerce, Tel: 202–482–2796, Fax: 202–482–9000, E-mail: *northafricamission@mail.doc.gov.*

**Lisa Huot,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. E9–24035 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Import Administration

**[A–570–904]**

### Certain Activated Carbon from the People's Republic of China: Extension of Time Limit for Final Results of Changed Circumstances Review

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

**EFFECTIVE DATE:** October 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7906.

**SUPPLEMENTARY INFORMATION:** On January 27, 2009, the Department of Commerce (''Department'') issued its preliminary results for the changed circumstances review of the antidumping duty order of certain activated carbon from the People's Republic of China. *See Certain Activated Carbon from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part* 74 FR 4736 (January 27, 2009) (*Preliminary Results*). On February 9, 2009, the Department received comments from Applica Consumer Products Inc., an importer of coffeemakers and self–cleaning litter boxes that uses filters. On February 17, 2009, the Department received comments from Calgon Carbon Corporation and Norti Americas Inc., petitioners in this proceeding, and also from Rolf C. Hagen (USA) Corp., the requestor of this changed circumstance review. The current deadline for the final results of this review is October 26, 2009.

**Extension of Time Limits for Final Results**

In our *Preliminary Results*, we indicated, pursuant to 19 CFR 351.216(e), that the Department will issue the final results in the instant changed circumstances review within 270 days after the date on which the changed circumstances review is initiated. Currently, the final results of this changed circumstances review are due October 26, 2009. However, as explained below, the Department determines that good cause exists to extend the time limits for completion of this changed circumstances review. Accordingly, pursuant to 19 CFR 351.302(b), we are extending the time limit by 60 days.

Subsequent to the *Preliminary Results*, the Department received comments from interested parties. Because of those comments, the Department has determined that it requires additional time to analyze the complex issues raised by interested parties regarding the scope exclusion request. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in the instant review by 60 days. Therefore, the final results will be due no later than December 25, 2009. As December 25, 2009, is a Federal holiday, our final results will be issued no later than Monday, December 28, 2009.

This notice is published in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended.

Dated: September 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–24066 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket T–1–2009]**

### Foreign-Trade Zone 134—Chattanooga, TN; Application for Temporary/Interim Manufacturing Authority; Termination of Review; Volkswagen Group of America Chattanooga Operations, LLC (Motor Vehicles)

Notice is hereby given that the Foreign-Trade Zones (FTZ) Board staff has terminated its review of the application requesting temporary/interim manufacturing (T/IM) authority withm FTZ 134 at the Volkswagen Group of America Chattanooga Operations, LLC (VGACO) facility in Chattanooga, Tennessee. The application was filed on July 10, 2009 (74 FR 34714, 7–17–2009). Substantive comments submitted in opposition to the VGACO application during the public comment period remove the application from eligibility under the specific T/IM standard of ''clearly presenting no new, complex, or controversial issues'' (see ''Proposals to Facilitate the Use of Foreign-Trade Zones by Small and Medium-Sized Manufacturers,'' 69 FR 17643, 4/5/2004). The review was terminated on September 22, 2009.

Dated: September 24, 2009.

**Pierre V. Duy,**

*Acting Executive Secretary.*

[FR Doc. E9–23693 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Mission Statement; 2010 Executive-Led Trade Mission to Senegal and South Africa; March 7–12, 2010

**AGENCY:** Department of Commerce.

**ACTION:** Notice.

**I. Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Dakar, Senegal and Johannesburg, South Africa, March 7–12, 2010. Both of these cities serve as major gateways to other country markets on the African continent, Senegal being the main portal for French-speaking West Africa, and South Africa as the starting point for doing business in southern Africa. This mission will be

comprised of U.S. firms from a cross section of industries with market potential, including, but not limited to, products, services, and technologies in the following sectors: Electric power systems, automotive spare parts, construction and mining equipment, and agribusiness. Businesses with clean technologies in those and other sectors are also encouraged to apply.

The goal of the mission will be to help U.S. companies launch or increase their export business in the Senegalese and South African markets. Participating firms will gain market information, make business and government contacts, solidify exporting strategies, and advance specific projects, towards the outcome of increasing U.S. exports. The mission, to be led by an executive level U.S. Department of Commerce official, will include business-to-business matchmaking appointments with local companies, networking events, and meetings and briefings with government and industry officials. The mission delegation will be comprised of U.S. firms that design, manufacture, supply, and/or integrate products, services, and technologies in the target industries.

**II. Commercial Setting**

*Senegal*

Senegal is a secular republic with a strong presidency, bi-cameral legislature, multiple political parties, and historically peaceful transfers of power. Senegal plays a significant role in regional and international affairs, and President Wade has made excellent relations with the United States a high priority. His administration has advanced a liberal economic agenda, including privatizations and other market-opening measures. To support ever growing international trade, Senegal has well-developed port facilities, an international airport that serves as a regional hub for more than 28 airlines, and a serviceable telecommunications infrastructure, including a fiber optics backbone and cellular phone penetration approaching 15% of the population.

The Senegalese are generally well disposed towards Americans, and actively seek U.S. trade and investment. The country's geographic location and its market forces present U.S. companies with significant business opportunities. As of 2008, U.S. foreign direct investment stock in Senegal totaled $18 million. Total bilateral trade in 2008 reached $155 million, with the United States exporting $137 million in goods and services and importing $18.7 million in goods and services from Senegal. A driving force for the growth of this international trade is Senegal's expanding group of higher-income consumers of upscale consumer-ready products. Robust population growth (at 2.6 percent annually) and urbanization stand to bolster such consumer patterns in the long term. The African Development Bank (AfDB) and the World Bank are actively financing public infrastructure projects in Senegal. The AfDB is currently putting a great emphasis on private sector financing; the International Finance Corporation, the private sector-lending arm of the World Bank, has recently financed major infrastructure projects in Senegal. The West African Development Bank and the Islamic Development Bank are also very active lenders in Senegal. The U.S. Trade and Development Agency (USTDA) has financed several studies in Senegal in recent years. In carrying out its mission, USTDA emphasizes economic sectors that are most likely to benefit from U.S. exports of goods and services. Additionally, the U.S. Government's Millennium Challenge Corporation (MCC), created to provide financial aid to qualifying countries towards the goal of sustainable development, recently signed a $540 million compact grant with Senegal. The grant and soon-to-be announced public tenders will be directed to national road rehabilitation, irrigation, and water resources management projects. The MCC proposed Irrigation and Water Resources Management Project, comprising infrastructure investments in the Senegal River Delta and Podor areas, is designed to improve the productivity of the agricultural sector by extending and improving the quality of the irrigation system in certain agriculture-dependent areas of northern Senegal. It also seeks to provide additional supply of water for human and animal use there.

In the power sector, projects for rural electrification, the rehabilitation and replacement of antiquated plants, and the construction of improved transmission and distribution lines will lead to opportunities for U.S. companies. Senegal's growing reliance on crude oil as a power source is of concern to the country because of its cost and price volatility. The search for cheaper alternatives such as coal should lead to the pursuit of more attractive energy resources, and more opportunities for U.S. companies. While coal is a less expensive option, Senegal is also exploring possibilities to become a major biofuel supplier, as well as pursuing other alternative energy schemes, including wind turbine installations and small-scale, decentralized photovoltaic panel systems. Hydroelectricity is also being considered as an alternative to diesel power for Senegal. The Gambia River Basin Development Organization is embarking on a project to construct two hydroelectric power plants along with an interconnection of the power grids to confront persistent power shortage problems and the heavy dependence on imported petroleum products for the production of electricity.

Good prospects for U.S. automotive spare parts suppliers stem from the need to support the increasing number of U.S.-origin cars, second-hand vehicles, automotive accessories, and car servicing franchises in Senegal. The market for imported automobiles, spare parts, and accessories has climbed to $10.4 million during the period of January–July 2009, an increase of 28% from the $8.1 million in automotive imports during that same period in 2008.

In the construction sector, the Millennium Challenge Corporation compact grant creates opportunities for U.S. companies to participate in the Roads Rehabilitation Project (RN2/RN6). The Roads Rehabilitation Project seeks to expand access to markets and services and reduce transportation time and costs by improving the condition of certain strategic roads. The Government of Senegal has prioritized these roads in its Road Sector Master Plan, and their rehabilitation is in line with the national policy of increasing growth through road creation, renovation, and maintenance. The RN2 serves as the primary road to transport and export products from irrigation areas along the Senegal River, thereby complementing the Compact's Irrigation and Water Resources Management Project. The RN2 is also a strategic road, connecting Dakar harbor to Mauritania and Mali, and to southern cities in Senegal. The RN6 is the only road available to transport local agricultural products from Casamance to the rest of Senegal. Strategic as well, it connects Senegal with Guinea Bissau, Guinea-Conakry, and Mali. The improvement of both roads is expected to stimulate domestic and trans-border traffic and commerce.

Senegal's planned Arcelor Mittal (Faleme) iron ore project is expected to provide the best prospects for U.S. companies working in the mining sector. The implementation of this anticipated effort, awaiting the stabilization of the economy, should yield opportunities in mining operations, rail rehabilitation and construction, port development, and

engineering and project management. Sales opportunities should also develop for materials handling equipment such as trucks, loaders and dozers. A recent study commissioned by the U.S. Trade and Development Agency estimated U.S. export potential for this project, including services and equipment at $170 million.

Globally rising food and commodity costs, supplier shortages, and the devaluation of the dollar have increased Africa's interest in U.S. farm equipment, agribusiness technologies, products, and services. Local entrepreneurs recognize that these products and services are needed to support Senegal's modernization of the agricultural production and processing sectors to meet an increasing share of its domestic food needs. Given the high percentage of Senegal's population engaged in agriculture and agricultural processing, coupled with renewed focus on investment and development of the sector, opportunities exist for U.S. companies to supply the full range of farm inputs, new and used agricultural farm equipment, tractors and trucks, irrigation equipment, as well as food processing, transportation and food storage equipment and facilities.

*South Africa*

Enjoying macroeconomic stability and a pro-business environment, South Africa is a logical and attractive choice for U.S. companies to enter southern Africa. The mature nature of the South African economy—the most advanced, broad-based, and productive in Sub-Saharan Africa—can be seen in its wide variety of economic sectors and national retail consumption patterns, which range from basic needs (e.g., condensed milk) to high-end durable consumer goods (*e.g.,* SUV's). The growth of the country's consumer base and its efforts to upgrade and develop its infrastructure to match and further fuel its economic growth translates into opportunities for U.S. exporters and investors in South Africa. U.S. exports there have shown a steady growth over a period of years, rising to 18 percent in 2008, with a an estimated 25 percent decrease in the first half of 2009 due to the world economic crisis. However, the South African Rand is strengthening against the dollar, which will make dollar-denominated products more affordable for South Africans in the near term leading to an upturn in U.S. exports.

Other factors benefiting U.S. exporters include a sophisticated and well-capitalized banking sector, the country's position as the gateway to southern Africa, ongoing growth in market share for U.S. branded goods, and over $50 billion in formalized planned infrastructure expenditures by government-owned utilities and public-private partnerships over the next five years. In addition, the awarding to South Africa of the 2010 FIFA World Cup Soccer championship has resulted in an estimated $2 billion in projects. These projects involve tenders for supply-chain products and services, potentially for bid by interested U.S. companies. The mandate of the country's five development finance institutions, and the commitment of the U.S. Trade and Development Agency and the Agency for International Development to accelerate sustainable socio-economic development in the region by funding physical, social and economic infrastructure in South Africa, will also contribute to opportunities for U.S. companies there.

In the power sector, up to $47 billion is expected to be spent on new infrastructure for generation, transmission and distribution projects over the next five years. South Africa is going ahead with one of the most technologically advanced capital investment projects, the $2.27-billion Pebble Bed Modular Reactor program, identified as the first commercial-scale high-temperature reactor in the world. If this project proves successful, another 10 plants could be built. Independent power producers are also going to work with South Africa's Eskom to increase the new power capacity now required for South Africa. Additional power stations and major power lines are being built on a massive scale to meet rising electricity demand. U.S. companies are encouraged to leverage the need for supplies in conjunction with the upcoming restructuring of the electricity distribution industry into six regional electricity distributors. In addition to nuclear power, an alternative receiving much support from the South African Government, the power-generating infrastructure mix likely to respond to this increased demand includes wind and solar thermal energy, two of the most accessible and growing sectors in the country. There is also considerable potential for non-grid renewable power applications, which can be used to ensure access to power in remote rural areas.

In the automotive sector, the large number of model derivatives imported by South Africa has widespread implications for the aftermarket, representing opportunities for U.S. companies. There is also a lack of telematic components, essential for inflating airbags, facilitation of security and control of tracking devices, and for control of engine/transmission functions. Predictions of significant growth in the proportion of new cars featuring automotive telematics, and the current unavailability of this technology in South Africa pose yet another export opportunity for U.S. exporters.

There has been a rapid growth in demand for automotive specialty equipment and accessories in South Africa. This growth can be attributed to the higher disposable income within specific segments of the South African population. Since 2001 the activity of accessorizing and improving performance of vehicles has been transformed from a hobby to a fully-fledged culture of fierce competition. In the race to individualize and distinguish their vehicles, enthusiasts constantly seek innovative, authentic specialty components with little regard to price. In this lucrative aftermarket sector, South Africans often follow trends set in the United States and are highly receptive to U.S. brands.

Looking at the construction sector, 489 national roads and related projects will be in the pipeline over the medium term. Based on projections of future demand for housing construction in South Africa, 625,324 more 40-square-meter housing units will be needed annually between 2010 and 2016 to eliminate existing housing backlogs. The most significant capital equipment requirements for South Africa will be for tractor loader-backhoes and excavators; the need for 20-ton trucks also is projected to increase 3.7 times in 2010.

The notion of green building is gathering momentum in South Africa, with an array of projects currently in the pipeline due partially to increases in resource prices. These price increases are turning green building into an increasingly feasible option because of issues of longevity, efficiency, and the reduction of operation costs in the long run. In addition, with South Africa struggling with a power crisis and local authorities experiencing hardships pertaining to issues of water, sewerage and solid waste disposal, the government and the private sector are becoming increasingly conscious of the need for environment-friendly building practices. While the South African government recognizes the need for energy efficient buildings and building practices, it is the private sector that is set to lead this revolution. Green building technologies and practices from developed countries such as the United States are sought after in achieving South Africa's objective of creating a green and sustainable building culture.

The mining industry has traditionally been responsible for significant infrastructure development in South Africa. For example, 2,200 miles of railway line, three new ports, and a large amount of bulk handling infrastructure at existing ports are high on the agenda for both the South African government and the mining consortia. Increasing the efficiency of materials handling systems is also critical to exporters of ores and minerals. Significant infrastructure investments are planned for the Saldanha Bay iron and steel ore bulk export hub. Some other planned projects are the creation of a dedicated rail line for the export of manganese from the Northern Cape to the Coega Port, the building of a chorine plant, as well as an aluminum/steel smelter; a planned 65-mile slurry pipeline to the Majuba coal station, as well as a bulk coal handling system from the Waterberg coalfields for the Groot Geluk power station, and enhanced bulk material handling systems for coal at the port of Richards Bay.

The agribusiness sector in South Africa has many opportunities for U.S. exporters. The short-term market for agricultural machinery is very good. Farmers appear to be optimistic about current agricultural conditions, clearly evidenced by the latest tractor, combine, and baler sales statistics. Sporadic rains and prevalent dry weather conditions are still concerns and present excellent opportunities for no-till planting equipment. Domestic companies and local farmers have also indicated a strong interest in soil sampling equipment. With the continued downscaling of the large-scale workforce, excellent opportunities are being presented for high-end navigational tractors and precision farming equipment. Most of the precision agriculture equipment, such as planters and combine harvesters, is primarily imported from the United States, and smaller implements are purchased locally. Known U.S. brands like McCormick, John Deere, and New Holland are well entrenched in this market. The regional expansion of markets throughout southern Africa presents additional opportunities for U.S. businesses.

**III. Mission Goals**

The goal of this trade mission is to facilitate greater access to the Senegalese and South African markets by providing participants with first-hand market information, access to government decision makers, and one-on-one appointments with business contacts, including potential agents, distributors, and partners. The mission program is anticipated to include meetings in Dakar with regionally posted U.S. economic officers and trade specialists to enhance the prospect of regional opportunities.

**IV. Mission Scenario**

The trade mission will include two stops: Dakar, Senegal; and Johannesburg, South Africa. In each city, participants will meet with new business/government contacts. Additional business meetings in other African countries can be arranged before or after the mission through the Gold Key Service for an added cost of $700 per city (exclusive of interpreter and transportation costs).

**V. Mission Timetable**

*Dakar*

Sunday, March 7, 2010: Evening market briefing; No-host dinner with location TBD.

Monday, March 8, 2010: U.S. trade mission participant briefings/meetings with Senegalese and regional government and industry officials; One-on-one business appointments; Networking reception.

Tuesday, March 9, 2010: U.S. Embassy briefings and meetings; One-on-one business appointments; No-host dinner with location TBD.

Wednesday, March 10, 2010: Morning departure to Johannesburg.

*Johannesburg*

Wednesday, March 10, 2010: Market briefing.

Thursday, March 11, 2010: Meetings with government and industry officials; One-on-one business appointments; Evening networking reception.

Friday, March 12, 2010: One-on-one business appointments.

Mission concludes Friday afternoon. Participants may return to United States or continue on for additional appointments arranged separately under the Gold Key Service.

**VI. Participation Requirements**

All parties interested in participating in the Executive-led Trade Mission to Senegal and South Africa must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 5 and maximum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Senegal and South Africa as well as U.S. companies seeking to enter these markets for the first time may apply.

*Fees and Expenses*

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for an individual company representative will be $5,200 for large firms and $3,500 for small or medium-sized enterprises (SMEs).* The fee for each additional firm representative (large firm or SME) is $650. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. The option to participate in the mission is also being offered to U.S.-based firms with an established presence in Senegal and/or South Africa, or neighboring countries; the same fee structure applies for these firms.

*Conditions for Participation*

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

*Selection Criteria for Participation*

Selection will be based on the following criteria:

- Suitability of the company's products or services to the Senegalese and South African markets.
- Applicant's potential for business in Senegal and South Africa, including likelihood of exports resulting from the mission.

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

• Consistency of the applicant's goals and objectives with the stated scope of the mission.

• Past or current export activity or ability to initiate and sustain immediate export activities.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**VII. Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for the mission will begin immediately and conclude January 15, 2010. Applications will be available online on the mission Web site at *http://www.export.gov/2010Africamission.* They can also be obtained by contacting the Mission Contacts listed below. Applications received after January 15, 2010, will be considered only if space and scheduling constraints permit.

**VIII. Contacts**

Karen Dubin, Senior International Trade Specialist, U.S. Commercial Service/Washington, DC, Tel: 202–482–3786; Fax: 202–482–7801, e-mail: *Karen.Dubin@mail.doc.gov.*

Steven Morrison, Senior Commercial Officer, U.S. Commercial Service/Dakar, Tel: 221–33–823–4296, x3202, Fax: 221–33–822–1371, e-mail: *Steve.Morrison@mail.doc.gov.*

John Howell, Commercial Officer, U.S. Commercial Service/Johannesburg, Tel: 27–11–290–3062/Fax: 27–11–884–0253, e-mail: *John.Howell@mail.doc.gov.*

Dated: October 1, 2009.

**Karen A. Dubin,**

*Senior International Trade Specialist, U.S. Department of Commerce, International Trade Administration, Global Trade Programs, Washington, DC.*

[FR Doc. E9–24036 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Announcement of Performance Review Board Members

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

**ACTION:** Notice of Performance Review Board Membership.

**SUMMARY:** 5 CFR 430.3 10 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the International Trade Administration's Performance Review Board.

**DATES:** *Effective Date:* The effective date of service of appointees to the International Trade Administration Performance Review Board is upon publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn E. Brown, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Executive Resources Operations, 14th and Constitution Avenue, NW., Room 5015A, Washington, DC 20230, at (202) 482–3060.

**SUPPLEMENTARY INFORMATION:** The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service. The term of the new members of the ITA PRB will expire after two years in December 31, 2011. The Acting Under Secretary for International Trade. Michelle O'Neill, has named the following members of the International Trade Administration Performance Review Board:

1. Patricia A. Sefcik, Executive Director for Trade Promotion and Outreach (Chair).

2. Walter M. Bastian, Deputy Assistant Secretary for Western Hemisphere, Market Access and Compliance.

3. David M. Robinson, Chief Financial Officer and Director of Administration (new).

4. Edward C. Yang, Senior Director, China Non-Market Economy Compliance Unit (new).

5. Joel Secundy, Deputy Assistant Secretary for Services, ITA (new).

6. Lisa A. Casias, Director for Financial Management (new).

Dated: September 24, 2009.

**Susan Boggs,**

*Director, Office of Executive Resources Operations, Department of Commerce Human Resources Operations Center.*

[FR Doc. E9–23924 Filed 10–5–09; 8:45 am]

**BILLING CODE 3510–DS–M**

## COMMODITY FUTURES TRADING COMMISSION

### Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Mid-C Financial Peak Contract; Mid-C Financial Peak Daily Contract; Mid-C Financial Off-Peak Contract; and Mid-C Financial Off-Peak Daily Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform Significant Price Discovery Functions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of action and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Mid-C Financial Peak (''MDC'') contract; Mid-C Financial Peak Daily (''MPD'') contract; Mid-C Financial Off-Peak (''OMC'') contract; and Mid-C Financial Off-Peak Daily (''MXO'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform significant price discovery functions. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

**DATES:** Comments must be received on or before October 21, 2009.

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

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

• *E-mail: secretary@cftc.gov.* Include ICE Mid-C Financial Peak (MDC) Contract, ICE Mid-C Financial Peak Daily (MPD) Contract, ICE Mid-C Financial Off-Peak (OMC) Contract, and/or Mid-C Financial Off-Peak Daily (MXO) Contract in the subject line of the

message, depending on the subject contracts to which the comments apply.

- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

## II. Determination of a SPDC

### *A. The SPDC Determination Process*

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

### *B. Mid-C Financial Peak Contract*

The MDC contract is cash settled based on the arithmetic calendar-month average of peak-hour day-ahead electricity prices published daily in the ''ICE Day Ahead Power Price Report'' for the Mid-Columbia hub during all peak hours in the month of the electricity production. The peak-hour electricity price reported each day by the ICE is a volume-weighted index that includes qualifying,[5] day-ahead, peak-hour power contracts based on the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date. The ICE contracts on which the price index is based specify physical delivery of power. The ICE publishes index prices for those hubs where there is sufficient trading activity. Ideally, a hub displays a minimum of one trade per day and an average of three trades per day during the prior three months before the ICE begins publishing an index for that hub. The size of the MDC contract is 400 megawatt hours (''MWh''),[6] and the unit of trading is any multiple of 400 MWh. The MDC contract is listed for up to 86 calendar months with four complete calendar years.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its MDC contract, the total number of trades was 2,022 in the second quarter of 2009, resulting in a daily average of 31.6 trades. During the same period, the MDC contract had a total trading volume of 67,400 contracts and an average daily trading volume of 1,053.1

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] Trades that are not deemed to qualify for inclusion in the index calculation are those that are done between two companies owned by the same parent company, price basis spread legs (i.e. spread trades that are executed on a trading platform that subsequently are converted into two outright prices for trade-reporting purposes), cancelled or altered trades prior to a counterparty's confirmation, trades where the counterparty reverses a trade within two minutes of the previous transaction, and option trades that fall outside of the given time period for the index.

[6] The MDC contract permits traders to choose either a single lot of 400 MWh in an entire month or 400 MWh each peak day of the contract month (in this case, the number of lots traded would equal the number of peak days). By and large, most traders opt for the latter variation of the contract.

contracts. Moreover, the open interest as of June 30, 2009, was 169,851 contracts.

It appears that the MDC contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE MDC contract averaged more than 1,000 contracts on a daily basis, with more than 30 separate transactions each day. In addition, the open interest in the subject contract was large. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*C. Mid-C Financial Peak Daily Contract*

The MPD contract is cash settled based on the day-ahead index price published in the settlement month by the ICE for the specified day. The peak day-ahead electricity prices are published in the ''ICE Day Ahead Power Price Report.'' For each peak day of the month, the ICE reports a next-day peak electricity price for each hub using the methodology noted above. The ICE contracts on which the price index is based specify physical delivery of power. The size of the MPD contract is 400 MWh. The MPD contract is listed for 38 consecutive days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its MPD contract, the total number of trades was 1,294 in the second quarter of 2009, resulting in a daily average of 20.2 trades. During the same period, the MPD contract had a total trading volume of 18,862 contracts and an average daily trading volume of 294.7 contracts. Moreover, the open interest as of June 30, 2009, was 826 contracts.

It appears that the MPD contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE contract averaged nearly 300 contracts on a daily basis, with more than 20 separate transactions each day. In addition, the open interest in the subject contract was sizable. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*D. Mid-C Financial Off-Peak Contract*

The OMC contract is cash settled based on the arithmetic calendar month average of off-peak day-ahead electricity prices published in the ''ICE Day Ahead Power Price Report'' for the Mid-Columbia hub during all off-peak hours in the month of the electricity production. The electricity price reported each day by the ICE is a volume-weighted index that includes qualifying day-ahead off-peak power contracts based on the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the date of publication. The ICE contracts on which the price index is based specify physical delivery of power. The ICE publishes off-peak index prices for those hubs where there is sufficient trading activity. The size of the OMC contract is 25 MWh,[7] and the unit of trading is any multiple of 25 MWh. The OMC contract is listed for up to 86 calendar months with three complete calendar years.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its OMC contract, the total number of trades was 443 in the second quarter of 2009, resulting in a daily average of 6.9 trades. During the same period, the OMC contract had a total trading volume of 185,950 contracts and an average daily trading volume of 2,905.5 contracts. The open interest as of June 30, 2009, was 1,015,361 contracts (each with a size of 25 MWh).

It appears that the OMC contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE OMC contract averaged nearly 3,000 contracts on a daily basis, with more than six separate transactions each day. In addition, the open interest in the subject contract was large. In regard to material price reference, while it did not identify the particular contract under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*E. Mid-C Financial Off-Peak Daily Contract*

The MXO contract is cash settled based on the day-ahead index price published in the settlement month by the ICE for the specified day. The off-peak day-ahead electricity prices are published in the ''ICE Day Ahead Power Price Report.'' For each off-peak day of the month, the ICE reports a next-day off-peak electricity price for each hub using the methodology noted above. The ICE contracts on which the price index is based specify physical delivery of power. The size of the MXO contract is 25 MWh. The MXO contract is listed for 38 consecutive days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its MXO contract, the total number of trades was 437 in the second quarter of 2009, resulting in a daily average of 6.8 trades. During the same period, the MXO contract had a total trading volume of 61,688 contracts and an average daily trading volume of 963.9 contracts. Moreover, the open interest as of June 30, 2009, was 5,232 contracts.

It appears that the MXO contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material

[7] The OMC contract permits traders to choose either a single lot of 25 MWh in an entire month or 25 MWh each off-peak day of the contract month (in this case, the number of lots traded would equal the number of off-peak days). By and large, most traders opt for the latter variation of the contract.

liquidity, trading in the ICE MXO contract averaged nearly 1,000 contracts on a daily basis, with more than six separate transactions each day. In addition, the open interest in the subject contract was large. In regard to material price reference, while it did not specify or otherwise reference the particular contract under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

**III. Request for Comment**

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules, the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's MDC, MPD, OMC, and/or MXO contracts perform significant price discovery functions. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about one or several of the subject contracts. Moreover, because four contracts are included in this notice, it is important that commenters identify to which contract or contracts their comments apply.

**IV. Related Matters**

*A. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (''PRA'') [8] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

*B. Cost-Benefit Analysis*

Section 15(a) of the CEA [9] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on September 22, 2009 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–23966 Filed 10–5–09; 8:45 am]

**BILLING CODE P**

[8] 44 U.S.C. 3507(d).

[9] 7 U.S.C.19(a).

## COMMODITY FUTURES TRADING COMMISSION

### Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the SP–15 Financial Day-Ahead LMP Peak Contract; SP–15 Financial Day-Ahead LMP Peak Daily Contract; SP–15 Financial Day-Ahead LMP Off-Peak Daily Contract; SP–15 Financial Swap Real Time LMP—Peak Daily Contract; SP–15 Financial Day-Ahead LMP Off-Peak Contract; NP–15 Financial Day-Ahead LMP Peak Daily Contract; and NP–15 Financial Day-Ahead LMP Off-Peak Daily Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform Significant Price Discovery Functions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of action and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the SP–15 Financial Day-Ahead LMP [1] Peak (''SPM'') contract; SP–15 Financial Day-Ahead LMP Peak Daily (''SDP'') contract; SP–15 Financial Day-Ahead LMP Off-Peak Daily (''SQP'') contract; SP–15 Financial Swap Real Time LMP—Peak Daily (''SRP'') contract; SP–15 Financial Day-Ahead LMP Off-Peak Contract (''OFP''); NP–15 Financial Day-Ahead LMP Peak Daily (''DPN'') contract; and NP–15 Financial Day-Ahead LMP Off-Peak Daily (''UNP'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform significant price discovery functions. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c)

[1] The term LMP represents ''locational marginal price,'' which represents the additional cost associated with producing an incremental amount of electricity. LMPs account for generation costs, congestion along the transmission lines, and loss.

promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

**DATES:** Comments must be received on or before October 21, 2009.

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

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include ICE SP–15 Financial Day-Ahead LMP Peak (SPM) Contract; ICE SP–15 Financial Day-Ahead LMP Peak Daily (SDP) Contract; ICE SP–15 Financial Day-Ahead LMP Off-Peak Daily (SQP) Contract; ICE SP–15 Financial Swap Real Time LMP—Peak Daily (SRP) Contract; ICE SP–15 Financial Day-Ahead LMP Off-Peak (OFP) Contract; ICE NP–15 Financial Day-Ahead LMP Peak Daily (DPN) Contract; and/or ICE NP–15 Financial Day-Ahead LMP Off-Peak Daily (UNP) Contract in the subject line of the message, depending on the subject contract(s) to which the comments apply.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [2] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not an SPDC, the Commission will consider the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

## II. Determination of an SPDC

### *A. The SPDC Determination Process*

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[3] After prompt consideration of all relevant information,[4] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [5] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

### *B. SP–15 Financial Day-Ahead LMP Peak Contract*

The SPM contract is cash settled based on the arithmetic average of peak-hour, day-ahead LMPs posted by the California ISO [6] (CAISO) for the SP–15 Existing Zone Generation (EZ Gen) Hub for all peak hours in the calendar month. The LMPs are derived from power trades that result in physical delivery. The size of the SPM contract is 400 megawatt hours (''MWh''), and the unit of trading is the number of peak days in the contract month multiplied by 400 MWh (one 400–MWh increment is referred to as a lot). In other words, a minimum of 400 MWh must be delivered each peak day of the month, and trading is restricted to multiples of the number of peak days in the contract month. The SPM contract is listed for up to 110 months including four entire calendar years.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the

[2] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[3] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[4] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[5] 7 U.S.C. 2(h)(7)(C).

[6] The acronym ''ISO'' signifies ''Independent System Operator,'' which is an entity that coordinates electricity generation and transmission, as well as the grid reliability, throughout its service area.

ICE reported that, with respect to its SPM contract, 3,235 separate transactions occurred in the second quarter of 2009, resulting in a daily average of 50.5 trades. During the same period, the SPM contract had a total trading volume of 143,717 contracts, and an average daily trading volume of 2,245.6 contracts. Moreover, the open interest in the contract as of June 30, 2009, was 460,583 contracts.

It appears that the SPM contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the SPM contract averaged more than 2,000 contracts on a daily basis, with approximately 50 separate transactions each day. In addition, the open interest in the subject contract was extremely large. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*C. SP–15 Financial Day-Ahead LMP Peak Daily Contract*

The SDP contract is cash settled based on the arithmetic average of peak-hour, day-ahead LMPs posted by the CAISO for the SP–15 EZ Gen Hub for all peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the SDP contract is 400 MWh. The SDP contract is listed for 45 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its SDP contract, 6,159 separate transactions occurred in the second quarter of 2009, resulting in a daily average of 96.2 trades. During the same period, the SDP contract had a total trading volume of 23,365 contracts and an average trading volume of 365.1 contracts per day. Moreover, the open interest in the contract as of June 30, 2009, was 3,387 contracts.

It appears that the SDP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE SDP contract averaged more than 350 contracts on a daily basis, with more than 95 separate transactions each day. In addition, the open interest in the subject contract was large. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*D. SP–15 Financial Swap Real Time LMP—Peak Daily*

The SRP contract is cash settled based on the arithmetic average of hourly, real-time LMPs posted by the CAISO for the SP–15 EZ Gen Hub for all peak hours in the day of the electricity generation. The LMPs are derived from power trades that result in physical delivery. The size of the SRP contract is 400 MWh, and the unit of trading is any multiple of 400 MWh. The SRP contract is listed for 45 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its SRP contract, 826 separate transactions occurred in the second quarter of 2009, resulting in a daily average of 12.9 trades. During the same period, the SRP contract had a total trading volume of 1,014 contracts and an average trading volume of 15.8 contracts per day. Moreover, the open interest in the contract as of June 30, 2009, was 143 contracts.

It appears that the SRP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE SRP contract averaged more than 15 contracts on a daily basis, with more than 12 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*E. SP–15 Financial Day-Ahead LMP Off-Peak Contract*

The OFP contract is cash settled based on the arithmetic average of off-peak-hour, day-ahead LMPs posted by the CAISO for the SP–15 Existing Zone Generation (EZ Gen) Hub for all off-peak hours in the calendar month. The LMPs are derived from power trades that result in physical delivery. The size of the OFP contract is 25 megawatt hours (''MWh''), and the unit of trading is any multiple of 25 MWh. That is, a minimum of 25 MWh must be delivered each off-peak day of the month, and trading is restricted to multiples of the number of off-peak days in the contract month. The OFP contract is listed for up to 86 months including three entire calendar years.

Based upon a required quarterly notification filed on April 30, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that its OFP contract met the minimum five trades or more per day threshold in the first quarter of 2009. During that period, the OFP contract had a total trading volume of 1,159,586 contracts and the open interest as of March 31, 2009, was 3,259 contracts.

It appears that the ICE OFP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, the OFP contract met the minimum trading threshold with a total trading volume of over one million contracts in the first quarter of 2009. In addition, the ending open interest was sizeable. In regard to material price reference, while it did not specifically

address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*F. NP–15 Financial Day-Ahead LMP Peak Daily Contract*

The DPN contract is cash settled based on the arithmetic average of the peak-hour, day-ahead LMPs posted by the CAISO for the NP–15 EZ Gen Hub for peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the DPN contract is 400 MWh. The DPN contract is listed for 45 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its DPN contract, 2,782 separate transactions occurred in the second quarter of 2009, resulting in a daily average of 43.5 trades. During the same period, the DPN contract had a total trading volume of 5,766 contracts and an average trading volume of 90.1 contracts per day. Moreover, the open interest in the contract as of June 30, 2009, was 947 contracts.

It appears that the DPN contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE DPN contract averaged approximately 90 contracts on a daily basis, with more than 40 separate transactions each day. In addition, the open interest in the subject contract was significant. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

*G. NP–15 Financial Day-Ahead LMP Off-Peak Daily Contract*

The UNP contract is cash settled based on the arithmetic average of the off-peak-hour, day-ahead LMPs posted by the CAISO for the NP–15 EZ Gen Hub for off-peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the UNP contract is 25 MWh. The UNP contract is listed for 45 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its UNP contract, 1,925 separate transactions occurred in the second quarter of 2009, resulting in a daily average of 30.1 trades. During the same period, the UNP contract had a total trading volume of 36,936 contracts and an average trading volume of 577.1 contracts per day. Moreover, the open interest in the contract as of June 30, 2009, was 4,152 contracts.

It appears that the UNP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE UNP contract averaged more than 575 contracts on a daily basis, with more than 30 separate transactions each day. In addition, the open interest in the subject contract was large. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Specifically, power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being traded over-the-counter through voice brokers and potentially submitted for clearing. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Power End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

**III. Request for Comment**

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the part 36 rules, the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the subject contracts perform significant price discovery functions. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to an SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contracts. Moreover, commenters are requested to identify the contract or contracts to which their comments apply.

**IV. Related Matters**

*A. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (''PRA'')[7] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

*B. Cost-Benefit Analysis*

Section 15(a) of the CEA[8] requires the Commission to consider the costs and

[7] 44 U.S.C. 3507(d).

[8] 7 U.S.C.19(a).

benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on September 22, 2009 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–23965 Filed 10–5–09; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Request

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On August 27, 2009, the Department of Education published a comment period notice in the **Federal Register** (Page 43689, Column 1) seeking public comment for an information collection entitled, ''Federal Pell Grant Program—Maximum Pell Grant to Children of Soldiers''. We are now withdrawing this information collection as we can obtain this information through other means, and therefore do not collect this data from the public. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: September 30, 2009.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

[FR Doc. E9–24042 Filed 10–5–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Office of Science

### Notice of Renewal of the DOE/NSF Nuclear Science Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with 41of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a two-year period.

The Committee will provide advice to the Associate Director of the Office of Science for Nuclear Physics (DOE), and the Assistant Director, Directorate for Mathematical and Physical Sciences (NSF), on scientific priorities within the field of basic nuclear science research. The Under Secretary for Science has determined that renewal of the Committee is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on October 1, 2009.

**Eric Nicoll,**

*Committee Management Officer.*

[FR Doc. E9–24024 Filed 10–5–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2594–013]**

### Northern Lights, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

September 29, 2009.

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

a. *Type of Application:* Major License.

b. *Project No.:* 2594–013.

c. *Date filed:* July 17, 2009.

d. *Applicant:* Northern Lights, Inc. (NLI).

e. *Name of Project:* Lake Creek Hydroelectric Project.

f. *Location:* The existing project is located on Lake Creek in Lincoln County, Montana, near the City of Troy. The project does not affect Federal lands.

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

h. *Applicant Contact:* Mark Contor, Operations Manager, Northern Lights, Inc., P.O. Box 269, 421 Chevy Street, Sagle, ID 83860; Telephone (800) 326–9594 ext. 134

i. *FERC Contact:* Shana Murray, Telephone (202) 502–8333, and e-mail *shana.murray@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

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

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

Motions to intervene, protests, comments, recommendations,

preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR. 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. This application has been accepted for filing and is now is ready for environmental analysis.

l. *The Project consists of:* (1) a 268-foot-long, 44-foot-high concrete gravity dam; (2) a 30-acre reservoir with a storage capacity of 150 acre-feet (af); (3) a reinforced concrete intake structure; (4) a 1,694-foot-long, 10-foot diameter flowline, leading to a forebay created by a reinforced concrete structure with wood superstructure; (5) a 297-foot-long, 5-foot diameter penstock, leading to Powerhouse No. 1 containing a Francis-type, turbine-generating unit with a rated capacity of 1 megawatt (MW); (6) a 441-foot-long penstock with a diameter of 8.5 feet, leading to Powerhouse No. 2 containing a Francis-type, turbine-generating unit with a rated capacity of 3.5 MW; (7) a 2.4–7.97/13.8 kilovolt step-up transformer at Powerhouse No. 2; and (8) appurtenant facilities. The project is estimated to generate an average of 23,400,000 kilowatthours annually. The dam and existing project facilities are owned and operated by the applicant. The applicant is not proposing to add capacity or to make any modifications to the Project or its operation under the new license.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

(For projects with a Non-Draft NEPA document):

| Milestone | Target date |
|---|---|
| Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions. | November 28, 2009. |
| Commission issues Draft EA or EIS. | May 27, 2010. |
| Comments on Draft EA or EIS. | July 26, 2010. |
| Modified Terms and Conditions. | September 24, 2010. |
| Commission Issues Final EA or EIS. | December 23, 2010. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23986 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2009–128—VA]**

### Virginia Electric and Power Company; Notice of Availability of Environmental Assessment

September 29, 2009.

In accordance with the National Environmental Policy Act of 1969 and Federal Energy Regulatory Commission regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed Virginia Electric and Power Company's application for non-project use of project lands and waters to permit East Oaks, LLC (East Oaks) to construct a boat forklift pad at its commercial marina at the Roanoke Rapids and Gaston Project. The proposal is located on Lake Gaston in Warren County, North Carolina.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2009) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by October 29, 2009 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–2009–128) on all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

''eFiling'' link. For further information, contact Shana High at (202) 502–8674.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23985 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ID–3274–003]**

## Egan, Douglas F.; Notice of Filing

September 29, 2009.

Take notice that on September 22, 2009, Douglas F. Egan filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d and Part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23981 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ID–4099–001]**

## Lambert, Gary; Notice of Filing

September 29, 2009.

Take notice that on September 22, 2009, Gary Lambert filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 USC 825d and Part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23982 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ID–6169–000]**

## Shoulla, Sarita; Notice of Filing

September 29, 2009.

Take notice that on September 22, 2009, Sarita Shoulla filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d and Part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23984 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EF09–3031–000]**

### Southwestern Power Administration; Notice of Filing

September 29, 2009.

Take notice that on September 22, 2009, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested by the Department of Energy's Delegation Order Nos. 00–001.00C and 00–037.00, and by section 302(a) of the Department of Energy Organization Act (Pub. L. 95–91), submitted Rate Order SEPA–51, approved on an interim basis, effective September 20, 2009, Rate Schedules JW–1–I and JW–2–F for the sale of power from the Jim Woodruff System, and submitted for confirmation and approval on a final basis, pursuant to the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, Rate Schedule JW1–I, effective September 20, 2009 through September 19, 2014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 22, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23987 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–6168–000]**

### Carey, Christopher; Notice of Filing

September 29, 2009.

Take notice that on September 22, 2009, Christopher Carey filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d and Part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23983 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the Record Communications; Public Notice

September 29, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the

official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | File date | Presenter or requestor |
|---|---|---|
| Prohibited: | | |
| 1. RC09–3–000 | 9–23–09 | Paul Murphy. |
| Exempt: | | |
| 1. CP09–6–000 | 9–17–09 | Paul Sansone, *et al.*[1] |
| CP09–7–000. | | |
| 2. Project No. 1888–027 | 9–28–09 | Jeanne Levitan, *et al.*[2] |
| 3. Project No. 2210–169 | 9–17–09 | Barbara Rudnick. |
| 4. Project No. 13431–000 | 9–8–09 | Hon. Robert J. Kane. |

[1] One of ten e-mails received from Paul Sansone, Anne Phillips, Martha Neuringer, Anne Berblinger, Marvin Llewallen, Mattson McDonald, Florence Sage, Cynthia Straughan, Laurie Caplan, David Drury (File dates: 9–17–09 to 9–22–09).

[2] Petition filed on behalf of users of Lake Frederic, York Haven Hydroelectric Project.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–23980 Filed 10–5–09; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8965–7]**

## Agency Information Collection Activities; Proposed Collection; Comment Request for Reformulated Gasoline Commingling Provisions; EPA ICR No. 2228.03; OMB Control No. 2060–0566

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This request is to renew an emergency ICR that is scheduled to expire on December 31, 2009.

**DATES:** Comments must be submitted on or before December 7, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0745, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*
- *Mail:* Air Docket, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Fax or Hand Delivery:* EPA's Public Reading Room is located in Room 3334 of the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. Docket hours are Monday through Friday, 8 a.m. until 4:30 p.m., excluding legal holidays. In order to ensure to arrange for proper fax or hand delivery of materials, please call the Air Docket at 202–566–1742.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0745. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Geanetta Heard, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9017; fax number: (202) 343–2801; e-mail address: *heard.geanetta@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0745. The docket is available for online viewing at *www.regulations.gov,* and for in-person viewing at EPA's Public Reading Room. The Public Reading Room was temporarily closed due to flooding and reopened in the EPA Headquarters Library, Infoterra Room (Room 3334), in the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST) in its new location, Monday through Friday, excluding legal holidays. The telephone

number for the Air Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

*Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:*

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

**What Information Collection Activity or ICR Does This Apply to?**

*Affected entities:* Entities potentially affected by this action are gasoline retailers, wholesale purchaser-consumers, gasoline stations, gasoline stations with convenience stores and gasoline stations without convenience stores.

*Title:* Reformulated Gasoline Commingling Provisions.

*ICR numbers:* EPA ICR No. 2228.03, OMB Control No. 2060–0566.

*ICR status:* This ICR is currently scheduled to expire on December 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

*Abstract:* With this information collection request (ICR), we are seeking permission to accept notifications from gasoline retailers and wholesale purchaser-consumers related to commingling of ethanol blended and non-ethanol-blended reformulated gasoline (RFG) under section 1513 of the Energy policy Act of 2005 (EPAct) and 40 CFR 80.78(a)(8)(ii)(B); and to provide for a compliance option whereby a retailer or wholesale purchaser-consumer may demonstrate compliance via test results under § 80.78(a)(8)(iii)(A). These provisions are designed to grant compliance flexibility. An emergency ICR has been put in place and expires December 31, 2009. We are requesting that the Office of Management and Budget (OMB) renew this ICR and request that it be effective three years after approval.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.50 hours (30 minutes) per respondent and 0.25 hours (15 minutes) per response. Burden means the total time, effort, or financial resources expended by a person to generate, maintain, retain, or disclose or provide information to (or for) a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to process and maintain information; to disclose and provide information; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 56,700.

*Frequency of response:* Occasional.

*Estimated total average number of responses for each respondent:* 2.

*Estimated total annual burden hours:* 27,675 hours.

*Estimated total annual costs:* $885,600.

**Are There Changes in the Estimates From the Last Approval?**

There is a reduction of $1,079,325 in the total estimated respondent burden compared with that identified in the previous ICR. This change is due to the use of a more correct Bureau of Labor Statistics table reflecting costs for the gasoline retail station industry.[1]

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

[1] For this ICR, we have used the ''May 2008 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 44710—Gasoline Stations,'' as the basis for our estimates. See *http://www.bls.gov/oes/2008/may/naics4_447100.htm* (accessed September 8, 2009).

Dated: September 30, 2009.

**Lori Stewart,**

*Acting Director, Office of Transportation and Air Quality.*

[FR Doc. E9–24056 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2009–0665; FRL–8793–3]**

## Lead Dust Hazard Standards and Definition of Lead-Based Paint; TSCA Section 21 Petition; Notice of Receipt and Request for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that EPA has received a petition from the National Center for Healthy Housing, Alliance for Healthy Homes, Sierra Club, et al., (petitioners) on August 10, 2009, and requests comments on issues raised by the petition. The petition requests, under section 21 of the Toxic Substances Control Act (TSCA) or, in the alternative, under 5 U.S.C. 553(c), EPA to lower the regulatory lead dust standards and modify the regulatory definition of lead-based paint. EPA must either grant or deny a TSCA section 21 petition within 90 days of filing.

**DATES:** Comments must be received on or before October 21, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0655, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0655. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0655. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Christina Wadlington, National Program Chemicals Division (7404T), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1859; e-mail address: *wadlington.christina@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, distribute, or use lead-based paint. 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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. TSCA Section 21

### *A. What Is a TSCA Section 21 Petition?*

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny a TSCA section 21 petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial, or if EPA fails to grant or deny a TSCA section 21 petition, the expiration of the 90–day period.

### *B. What Criteria Apply to a Decision on a TSCA Section 21 Petition?*

The scope of a TSCA section 21 petition is limited to the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA will refer to the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this petition.

## III. Summary of TSCA Section 21 Petition Received

### *A. What Action was Requested?*

On August 10, 2009, EPA received a petition from the National Center for Healthy Housing, Alliance for Healthy Homes, Sierra Club, et al., petitioning EPA to amend regulations promulgated under TSCA sections 401 and 403. Specifically, the petitioners are requesting that EPA:

> ''1. Lower dust lead hazard standards at 40 CFR 745.65(b), 40 CFR 745.227(e)(8)(viii), and 40 CFR 745.227(h)(3)(i) from 40 micrograms of lead per square foot of surface area (μg/ft²) to 10 μg/ft² or less for floors and from 250 μg/ft² to 100 μg/ft² or less for window sills. 2. Modify the definition of lead-based paint in 40 CFR 745.103 and 745.223 for previously applied paint or other surface coatings in housing, child-occupied facilities, public building and commercial buildings to reduce the lead levels from 0.5 percent by weight (5,000 parts per million (ppm)) to 0.06 percent by weight (600 ppm) with a corresponding reduction in the 1.0 milligram per square centimeter standard.'' (Ref. 1) Petition at 2.

### *B. What Support Do the Petitioners Offer?*

The petitioners provide results of analysis derived from studies that have become available since the current dust lead standards were promulgated in 2001. Studies referenced by petitioners, include: Dixon et al. (2009) (Ref. 2), National Center for Healthy Housing (rev. 2006) (Ref. 3), Wilson (2008) (Ref. 4), and the Cincinnati Children's Hospital Medical Center's ''HOME Study.''

Citing their analysis of data from the National Health and Nutrition Examination Survey (NHANES) from 1999–2004 (Refs. 2 and 4), the petitioners conclude that:

1. ''4.6% of children with an average age of 33 months living in pre-1978 homes would have a blood lead level of 10 μg/[deciliter]dL or greater when their floor dust lead loading was 12 μg/ft².''

2. ''At a floor dust lead loading of 12 μg/ft², there is 95% confidence that no more than 7.9% of children would have a blood lead level of 10 μg/dL or greater.''

3. ''5.1% of children would have a blood lead level of 10 μg/dL or greater when their window sill dust lead loading was 100 μg/ft².'' Based on this information the petitioners conclude that ''[u]sing EPA's criteria of protecting 95% of children from an elevated blood lead level (currently defined as 10 μg/dL or greater), dust standards of 10 μg/ft² for floors and 100 μg/ft² for window sills should be adopted.'' Petition at 3.

From their own ''Study of HUD's Risk Assessment Methodology in Three U.S. Communities'' (Ref .3), the petitioners assert ''that children living in homes with floor dust lead levels under 20 μg/ft² had proportionally fewer elevated blood lead levels than children living in homes where the floor dust lead loading exceeded 20 μg/ft².'' The petitioners further assert, based on on-going analysis of the ''HOME Study,'' that ''lower dust standards are achievable.'' Petition at 4.

The petitioners also contend that ''the economic consequences of a rule based on the standards recommended in this petition will be less than EPA originally estimated when it adopted the current standards.'' They provide that in the January 5, 2001 final rule (Ref. 5), EPA estimated that 22 million homes would have lead dust hazards based on a standard of 10 μg/ft², and assert that the their ''review of the Six-Year Follow-Up Study and the HOME Study demonstrated that current lead hazard control practices are adequate to reduce dust lead below the levels recommended in the petition.'' The petitioners also assert that the ''NHANES data suggest that less than 15% of pre-1978 homes–9.8 million homes–would be classified as having a dust lead hazard.'' Petition at 5.

When reviewing the regulatory definition of lead-based paint at 40 CFR 745.103 and 745.223, the petitioners note that EPA simply adopted that statutory standard: Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or more than 0.5% by weight. Petitioners further note that HUD used the same definition in its Lead-Safe Housing Rule.

To support their request that EPA lower the lead level in the definition of lead-based paint, petitioners explain that ''under the current standards, paint that contains less than 5,000 ppm of lead would not be considered lead-based paint. As a result, when a lead inspector or lead risk assessor documents levels of 4,500 ppm of lead in the paint, the buyer or tenant would be told that lead-based paint is not present. The buyer or tenant would be unaware of the potential dangers of disturbing the paint.'' Petition at 6.

The petitioners estimate that ''the economic consequences of this change

in the definition of lead-based paint would primarily impact those buildings that already have been tested for the presence of lead-based paint by a certified lead risk assessor or lead inspector and found to have levels of lead in the paint between 600 ppm and 5,000 ppm (and the equivalent in mg/cm$^2$).'' Petition at 7.

**IV. EPA Seeks Public Comment**

Under TSCA section 21, EPA must either grant or deny a petition within 90 days. EPA is providing this opportunity for the public to comment on, or provide any additional information relevant to, the issues identified in the petition. In order for the Agency to consider such comments within the 90–day petition review period, EPA must receive the comments on or before October 21, 2009 (see **ADDRESSES**).

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (EPA 100B–03/001), referred to as the ''Assessment Factors Document.'' The ''Assessment Factors Document'' was published in the **Federal Register** issue of July 1, 2003 (Ref. 6).

**V. References**

1. National Center for Healthy Housing, Alliance for Healthy Homes and Sierra Club. Letter from Rebecca Morley, National Center for Healthy Housing; Patrick MacRoy, Alliance for Healthy Homes; and Tom Neltner, Sierra Club to Administrator Jackson, Environmental Protection Agency. Re: Citizen Petition to EPA Regarding the Paint and Dust Lead Standards. August 10, 2009.

2. Dixon, S.L.; Gaitens, J.M.; Jacobs, D.E., et al. (2009) Exposure of U.S. children to residential dust lead, 1999–2004: II: The contribution of lead-contaminated dust to children's blood lead levels. *Environmental Health Perspectives*. 117(3): 468–474.

3. National Center for Healthy Housing (rev. 2006) Study of HUDs Risk Assessment Methodology in Three U.S. Communities: Final Report, Columbia, MD (accessed 5–13–2009: *http://www.nchh.org/LinkClick.aspx?fileticket=HZUenslvU/0=&tabid=217*).

4. Wilson, Jonathan. (2008) Should the EPA Lead Dust Standards be Lowered? (accessed 5–8–2009: *http://www.healthyhomestraining.org/Research/Translational_Research_11-17_PbDust_Standard_r2.1.pdf*).

5. EPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001) (FRL–6763–5). Available on-line at: *http://www.gpoaccess.gov/fr/index.html*.

6. EPA. A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information; Notice. **Federal Register** (68 FR 39086, July 1, 2003) (FRL–7520–2). Available on-line at *http://www.epa.gov/osa/spc/assess.htm*.

**List of Subjects**

Environmental protection, Lead, Lead-based paint, Lead dust hazard standards.

Dated: September 29, 2009.

**James Jones,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E9–23929 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8966–1]**

### Environmental Laboratory Advisory Board (ELAB) Meeting Dates and Agenda

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on October 21, 2009 at 1 p.m. ET; November 18, 2009 at 1 p.m. ET; December 16, 2009 at 1 p.m. ET; February 17, 2010 at 1 p.m. ET; and March 17, 2010 at 1 p.m. ET to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: (1) Expanding the number of laboratories seeking National Environmental Laboratory Accreditation Conference (NELAC) accreditation; (2) proficiency testing; (3) ELAB support to the Agency's Forum on Environmental Measurements (FEM); (4) implementing the performance approach; and (5) follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their next face-to-face meeting on January 25, 2010 at the Hyatt Regency in Chicago, IL at 1:30 p.m. (CT).

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to Ms. Lara P. Autry, DFO, U.S. EPA (E243–05), 109 T.W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov*. Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. For information on access or services for individuals with disabilities, please contact Lara P. Autry at the number above. To request accommodation of a disability, please contact Lara P. Autry, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 28, 2009.

**Kevin Teichman,**

*EPA Acting Science Advisor.*

[FR Doc. E9–24060 Filed 10–5–09; 8:45 am]

**BILLING CODE 6560–50–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 October 19, 2009.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Earl E. Geiger*, Bloomington, Minnesota, acting in concert with the Geiger Family Group; to acquire voting shares of Heritage Bancshares Group, Inc., Willmar, Minnesota, and thereby indirectly acquire voting shares of

Heritage Bank, NA, Spicer, Minnesota, and Heritage Bank, NA, Holstein, Iowa.

Board of Governors of the Federal Reserve System, September 30, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9–23952 Filed 10–5–09; 8:45 am]

**BILLING CODE 6210–01–S**

## 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 October 21, 2009.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Belva H. Rasmussen 2009 Grantor Retained Annuity Trust*, Falcon Heights, Minnesota; Eva B. Rasmussen, Edina, Minnesota; Pamela M. Harris, Falcon Heights, Minnesota; and Teresa Rasmussen Trangsrud, Orono, Minnesota, trustees, to join a group acting in concert with Belva H. Rasmussen, individually, and with Belva H. Rasmussen, Teresa Rasmussen Trangsrud and Lyle Delwyche, trustees of the Walter C. Rasmussen Marital Trust Under Agreement dated December 26, 1985, and the Walter C. Rasmussen Family Trust Under Agreement dated December 26, 1985 (together, the ''Rasmussen Family Group'', and to acquire voting shares of Northeast Securities Corporation, and thereby indirectly acquire voting shares of Northeast Bank, both of Minneapolis, Minnesota.

**B. Federal Reserve Bank of San Francisco** (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

*1. Thomas A. and Maureen Sue Ellison*, to acquire additional voting shares of Foundation Bancorp, Inc., and thereby indirectly acquire voting shares of Foundation Bank, all of Bellevue, Washington.

Board of Governors of the Federal Reserve System, October 1, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–24037 Filed 10–5–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 22, 2009. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, October 20, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:30 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

• *Proposed rules regarding closed-end mortgages and home-equity lines of credit*

Members will discuss proposed changes to Regulation Z (Truth in Lending) regarding disclosures that consumers receive in connection with closed-end mortgages and home-equity lines of credit. Members will also discuss amendments that would provide new consumer protections for home-secured credit, including provisions to prevent mortgage loan originators from steering consumers to more expensive loans.

• *Proposed rules to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009*

Members will discuss proposed amendments to Regulation Z to protect consumers who use credit cards from a number of potentially costly practices.

• *Foreclosure issues*

Members will discuss loss-mitigation efforts, including the Administration's Making Home Affordable program, the performance of modified mortgages, and other issues related to foreclosures.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, October 1, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9–24012 Filed 10–5–09; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2009.

**A. Federal Reserve Bank of Cleveland** (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. Middlefield Banc Corp, Inc.*, Columbus, Ohio; to engage *de novo* through its subsidary, EMORECO, Inc., Dublin, Ohio, in activities related to extending credit and servicing loans, pursuant to sections 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9–23953 Filed 10–5–09; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the St. Louis Airport Storage Site, St. Louis, MO, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the St. Louis Airport Storage site, St. Louis, Missouri, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* St. Louis Airport Storage site.

*Location:* St. Louis, Missouri.

*Job Titles and/or Job Duties:* All workers who worked in any area and in any job capacity.

*Period of Employment:* During the operational period from January 1, 1946 through December 31, 1966 and the residual period from January 1, 1967 through December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. E9–24023 Filed 10–5–09; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology

### HIT Policy Committee's Information Exchange Workgroup Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming subcommittee meeting of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Policy Committee, Information Exchange Workgroup.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed. The Information Exchange Workgroup is charged with making recommendations to the HIT Policy Committee on issues related to policies, governance, sustainability, and architectural approaches to enable health information exchange.

*Date and Time:* The meeting will be held on October 20, 2009, from 9 a.m. to 3 p.m. Eastern Time.

*Location:* The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

*Contact Person:* Jonathan Ishee, JD, MPH, MS, LLM, Office of the National Coordinator, HHS, 200 Independence Ave., SW., Room 729–G, Washington, DC 20201, 202–205–8493, Fax: 202–690–6079, e-mail: *jonathan.ishee@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The Workgroup will be hearing testimony from invited experts and stakeholders in the area of electronic exchange of laboratory information. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 15, 2009. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation may be limited. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow, 202–205–4528, at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: September 30, 2009.

**Jonathan Ishee,**

*Office of Policy and Research, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E9–24041 Filed 10–5–09; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Renewal of Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information

**AGENCY:** Office of the Secretary (OS), HHS.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Homeland Security determined on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, Bacillus anthracis. On the basis of this determination, the Secretary of Health and Human Services is renewing the October 1, 2008 declaration by former Secretary Michael O. Leavitt of an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued by the Food and Drug Commissioner under 21 U.S.C. 360bbb–3(a). This notice is being issued in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

**DATES:** This Notice and referenced HHS declaration are effective as of October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Nicole Lurie, MD MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On September 23, 2008, former Secretary of Homeland Security, Michael Chertoff, determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, Bacillus anthracis, although there is no current domestic emergency involving anthrax, no current heightened risk of an anthrax attack, and no credible information indicating an imminent threat of an attack involving Bacillus anthracis. Pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of such determination, on October 1, 2008, former Secretary of Health and Human Services, Michael O. Leavitt, declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).[1] Pursuant to section 564(b)(2)(B) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of Secretary Chertoff's September 23, 2008 determination, I hereby renew former Secretary Leavitt's October 1, 2008 declaration of an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). I am issuing this notice in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

Dated: October 1, 2009.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. E9–24086 Filed 10–1–09; 4:15 pm]

**BILLING CODE 4150–37–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: National Health Service Corps Travel Request Worksheet—Extension**

Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program use the online Travel Request Worksheet to receive travel funds from the Federal Government to perform pre-employment interviews at sites on the NHSC's Opportunities List.

The travel approval process is initiated when a scholar notifies the NHSC of an impending interview at one or more NHSC approved practice sites. The Travel Request Worksheet is also used to initiate the relocation process after a NHSC scholar has successfully been matched to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the scholar and the NHSC logistics contractor regarding travel arrangements and authorization of the funding for the site visit or relocation.

The estimated annual burden is as follows:

[1] Pursuant to section 564(b)(4) of the FFDCA, notice of the determination by the Secretary, DHS, and the declaration by the Secretary, HHS, was provided at 73 FR 58242 (October 6, 2008).

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Travel Request Worksheet | 140 | 2 | 280 | .06 | 16.8 |

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–24046 Filed 10–5–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

**Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0043)—Extension**

The Health Education Assistance Loan (HEAL) program continues to administer and monitor outstanding loans which were provided to eligible students to pay for educational costs in a number of health professions. HEAL forms collect information that is required for responsible program management. The HEAL Repayment Schedule, Fixed and Variable, provides the borrower with the cost of a HEAL loan, the number and amount of payments, and the Truth-in-Lending disclosures. The Lender's Report on HEAL Student Loans Outstanding (Call Report), provides information on the status of loans outstanding by the number of borrowers and total number of loans whose loan payments are in various stages of the loan cycle, such as student education and repayment, and the corresponding dollar amounts. These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which lenders may have excessive delinquencies and defaulted loans.

The estimate of burden for the forms is as follows:

| Form and number | Number of respondents | Responses per respondent | Total responses | Hours per responses | Total burden hours |
|---|---|---|---|---|---|
| Disclosure: | | | | | |
| Repayment Schedule HRSA 502–1,2 | 8 | 396 | 3,168 | 0.50 | 1,584 |
| Reporting: | | | | | |
| Call Report HRSA 512 | 13 | 4 | 52 | 0.75 | 39 |
| Total Reporting and Disclosure | 21 | | 3,220 | | 1,623 |

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–24044 Filed 10–5–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Center for Mental Health Service (CMHS) Transformation Accountability (TRAC) Reporting System—Revision**

SAMHSA's CMHS is requesting approval for a revision to the National Outcome Measures (NOMs) for Consumers Receiving Mental Health Services (OMB No. 0930–0285, Expiration Date: 4/30/2010). The name of this data collection effort is revised to the CMHS TRAC Reporting System (hereafter referred to as TRAC) to enable SAMHSA CMHS to consolidate its performance reporting activities within one package. This request includes a revision of the currently approved data collection effort directed at consumers of the Services (NOMs) programs; additional questions will enable CMHS to more fully explain grantee performance in relation to Agency and/or program objectives. This request also includes the addition of two new surveys to be completed by the Project Directors of grants that include infrastructure development and prevention activities. These new instruments will enable SAMHSA CMHS to capture a standardized set of performance indicators using a uniform reporting method.

These proposed data activities are intended to promote the use of consistent measures among CMHS grantees and contractors funded through the Program of Regional and National Significance (PRNS) and Children's Mental Health Initiative (CMHI) budget lines. These common measures recommended by CMHS are a result of extensive examination and recommendations, using consistent criteria, by panels of staff, experts, and grantees. Wherever feasible, the proposed measures are consistent with or build upon previous data development efforts within CMHS. These data collection activities will be organized to reflect and support the domains specified for SAMHSA's NOMs for the Services programs, and the categories developed by CMHS to specify the Infrastructure Development and Prevention program activities. The use of consistent measurement for specified outcomes across CMHS-funded projects will improve the ability of SAMHSA and CMHS to respond to the Government Performance and Results Act (GPRA) and the Office of Management and Budget Program Assessment Rating Tool (PART) evaluations.

**TRAC Reporting—Consumer NOMs Data Collection**

The currently approved data collection effort for the SAMHSA CMHS programs that provide direct treatment to consumers includes separate data collection forms that are parallel in design for use in interviewing adults and children (or their caregivers for children under the age of 11 years old). These SAMHSA TRAC data will be collected at baseline, at six month reassessments for as long as the consumer remains in treatment, and at discharge. The proposed data collection encompasses eight of the ten SAMHSA NOMs domains.

| Domain | Number of questions: adult | Number of questions: caregiver and child/adolescent |
|---|---|---|
| Access/Capacity | 4 | 4 |
| Functioning | 28 | 26 |
| Stability in Housing | 1 | 2 |
| Education and Employment | 4 | 3 |
| Crime and Criminal Justice | 1 | 1 |
| Perception of Care | 15 | 14 |
| Social Connectedness | 4 | 4 |
| Retention [1] | 5 | 5 |
| Total Number | 63 | 59 |

[1] Retention is defined as retention in the community. The indicator is based on use of psychiatric inpatient services, which is based on a measure from the Stability in Housing Domain.

Changes to the current tools include the following:

- The administrative section of all tools was changed to allow grantees to capture and track when consumers refuse interviews, consent cannot be obtained from proxy, and consumers are impaired or unable to provide consent. The administrative section of the children's tools was additionally changed to capture whether the respondent is the child or his/her caregiver.
- Questions were added to all tools to capture general health, psychological functioning, life in the community, and substance use.
- CMHS reduced the data collection requirement for 3-month programs to be consistent with 6-month programs; all grant programs will be required to collect the NOMs interviews in 6 month intervals. CMHS will require the collection of Clinical Discharge interviews.

In addition to questions asked of consumers as listed above, programs will be required to abstract information from consumer records regarding the services provided. The time to complete the revised instruments is estimated as shown below. These estimates are based on grantee reports of the amount of time required to complete the currently approved instruments accounting for the additional time required to complete the new questions, as based on an informal pilot.

**TRAC Reporting—Infrastructure Development Data Collection**

CMHS has identified categories and associated grant- or community-level indicators to assess performance of the Infrastructure Development grant programs to be reported by the grant Project Directors. The performance indicators are the focus of this proposed data collection. A web-based data entry system will be developed to capture this performance data for all CMHS-funded Infrastructure Development grants upon approval of the indicators. Not all categories or indicators will apply to every grant program; CMHS Program Directors will be responsible for determining whether a category (or an indicator within a category) applies to

each grant program, establishing targets at the grant level, and monitoring data submission. The following table summarizes the total number of indicators for each category that may or may not apply to each grant program:

| Category | Number of indicators |
|---|---|
| Policy Development | 2 |
| Workforce Development | 5 |
| Financing | 3 |
| Organizational Change | 1 |
| Partnerships/Collaborations | 2 |
| Accountability | 6 |
| Types/Targets of Practices | 4 |
| Total Number | 23 |

Grantee Project Directors will be responsible for submitting data quarterly. The use of standardized domains and data collection approaches will enhance aggregate data development and reporting.

**TRAC Reporting—Prevention and Mental Health Promotion Data Collection**

CMHS has identified categories and associated grant- or community-level indicators to assess performance of the Prevention grant programs. The performance indicators are the focus of this proposed data collection. A web-based data entry system will be developed to capture this performance data for all CMHS-funded Prevention and Mental Health Promotion grants upon approval of the indicators. Not all categories or indicators will apply to every grant program; CMHS Program Directors will be responsible for determining whether a category (or an indicator within a category) applies to each grant program, establishing targets at the grant level, and monitoring data submission. The following table summarizes the total number of indicators for each category that may or may not apply to each grant program:

| Category | Number of indicators |
|---|---|
| Awareness | 1 |
| Training | 1 |
| Knowledge/Attitudes/Beliefs | 1 |
| Screening | 1 |
| Outreach | 2 |
| Referral | 1 |
| Access | 1 |
| Total Number | 8 |

Grantee Project Directors will be responsible for submitting data quarterly. The use of standardized domains and data collection approaches will enhance aggregate data development and reporting.

Following is the estimated annual response burden for this effort.

| Type of response | Number of respondents | Data collection per respondent | Total responses | Hours per data collection | Hour burden |
|---|---|---|---|---|---|
| NOMs | | | | | |
| Consumer Baseline Assessment | 15,681 | 1 | 15,681 | 0.333 | 5,222 |
| Consumer 6-Month Reassessment | 10,646 | 1 | 10,646 | 0.367 | 3,907 |
| Consumer Discharge Interviews | 4,508 | 1 | 4,508 | 0.367 | 1,655 |
| Chart Abstraction | | | | | |
| Baseline | 2,352 | 1 | 2,352 | 0.1 | 235 |
| Reassessment | 9,017 | 1 | 9,017 | 0.1 | 902 |
| NOMs Subtotal | 15,681 | | 15,681 | | 11,920 |
| Infrastructure | | | | | |
| Quarterly Record Abstraction | 652 | 4 | 2,608 | 4 | 10,432 |
| Prevention and Mental Health Promotion | | | | | |
| Quarterly Record Abstraction | 290 | 4 | 1,160 | 4 | 4,640 |
| Total | 16,623 | | | | 26,992 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by December 7, 2009.

Dated: September 28, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–24021 Filed 10–5–09; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension**

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act.

The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or emotional impairment (children/youth) [42 U.S.C. 10802(4)]. Only entities that are designated by the governor of each State, the five (5) territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), the American Indian Consortium (the Hopi and Navajo Nations in the Southwest), and the Mayor of the District of Columbia to protect and advocate the rights of persons with developmental disabilities under Title I, Subtitle C—Protection and Advocacy of Individual Rights, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 150041 et seq.) are eligible to receive PAIMI Program grants [42 U.S.C. at 10802(2)]. These grants are based on a formula prescribed by the Secretary at 42 U.S.C. at 10822(a)(1)(A).

On January 1, each eligible State protection and advocacy (P&A) system is required to prepare a report that describes its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI Program allotments during the most recently completed fiscal year. The PAIMI Act at 42 U.S.C. 10824(a) requires that each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA/CMHS) and to the State Mental Health Agency where the system is located. These annual PAIMI Program Performance Reports (PPR) to the Secretary must include the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;
- A description of activities conducted by States to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and
- A description of the coordination among such systems, activities and mechanisms;
- Specification of the number of systems that are public and nonprofit systems established with PAIMI Program allotments;
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the State P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

** [The PAIMI Rules at 42 CFR Part 51 at section 51.32(b), state that P&A systems may place restrictions on case or client acceptance criteria developed as part of its annual PAIMI priorities. Each P&A system is required to inform prospective clients of any such restrictions when he/she requests a service].

This PAIMI PPR summary must include a separate section, prepared by the PAIMI Advisory Council (PAC) that describes the council's activities and its assessment of the operations of the State P&A system at 42 U.S.C. 10805(7).

The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows:

| 42 CFR citation | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total annual burden |
|---|---|---|---|---|
| 51.(8)(a)(2) Program Performance Report | 57 | 1 | 26.0 | [1] 1,482 |
| 51.8(8)(a)(8) Advisory Council Report | 57 | 1 | 10.0 | [1] 570 |
| 51.10 Remedial Actions. | | | | |
| Corrective Action Plans Implementation Status Report | 6 | 1 | 8.0 | 56 |
| | 6 | 3 | 2.0 | 42 |
| 51.23(c) Reports, materials and fiscal data provided to the PAC | 57 | 1 | 1.0 | 57 |
| 51.25(b)(2) Grievance Procedures | 57 | 1 | .5 | 29 |
| Total | 126 | | | 184 |

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: September 28, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–24019 Filed 10–5–09; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Project: Addiction Technology Transfer Centers (ATTC) Network Program Monitoring (OMB No. 0930–0216)—Revision**

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) will continue to monitor program performance of its Addiction Technology Transfer Centers (ATTCs). The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the ATTCs develop and update State-of-the-art, research-based curricula and professional development training.

Each of the forms is described below. SAMHSA/CSAT is proposing to revise the Event Description and Post-Event forms currently used by the ATTCs. The Follow-Up forms will not be changed. The Pre-Events forms currently in use will be eliminated.

Sixty percent of the forms are administered in person to participants at educational and training events, who complete the forms by paper and pencil. Ten percent of the training courses are online, and thus, those forms are administered online. The remaining thirty percent is made up of 30-day follow-up forms that are distributed to consenting participants via electronic mail using an online survey tool.

(1) The Event Description Form will be revised. The form collects event information. It includes questions regarding the SAMHSA priority areas and cross-cutting principles covered by the content of the event. SAMHSA's priority areas and cross-cutting principles have been revised since this form was approved, so the form will be revised to match the updated priorities and principles. In addition, the Event Description Form asks which of SAMHSA's Technical Assistance Publications (TAPs) and Treatment Improvement Protocols (TIPs) were used during the event. New TIPs and TAPs have been published since the form was approved. Those new TIPs and TAPs will be added to the form.

(2) The Pre-Event Form for meetings, technical assistance events, and training events will be eliminated. The demographic information that was collected on this form will be added to the Post-Event Forms. By incorporating this demographic information on the Post-Event Forms, the Pre-Event Form can be eliminated, thereby reducing the response burden for participants.

(3) The Post-Event Form for all events will be revised. The five current demographic questions will be revised to reflect a more current understanding of the field, and five additional demographic questions will be included.

(4) The Follow-Up Form for all events will remain the same as the ones currently in use by the ATTCs.

*Event Description:* The event description form asks approximately 10 questions of the ATTC faculty/staff for each of the ATTC events. The approved form asks the event focus, format, and publications to be used in the event. As noted above, it will be revised to reflect updates to SAMHSA's priority areas and cross-cutting principles and the publication of new TIPs and TAPs.

**Technical Assistance and Meeting Events Forms**

The ATTCs provide technical assistance, which is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. The ATTCs hold meetings, which are ATTC sponsored or co-sponsored events in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy. The ATTCs will collect satisfaction measures after each technical assistance and meeting event. The ATTCs will base the Post-Event Form on the approved CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB #0930–0197). The only revision to this GPRA form will be that the ATTCs will revise the five current demographic questions asked on this form and include five additional demographic questions. The ATTCs will collect satisfaction measures 30 days after each event by using the approved CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB #0930–0197). The ATTCs are eliminating the Technical Assistance and Meeting Pre-Event Forms currently in use.

*Post-Event Form for Technical Assistance and Meetings:* The Post-Event Information form for technical assistance and meetings asks approximately 25 questions of each individual that participated in the event. The current form asks the participants to report satisfaction with the quality of the event and event materials, and to assess their level of skills in the topic area. The five current demographic questions on the form will be revised to reflect a more current understanding of the field, and five additional demographic questions will be included. The form will ask participants to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, and employment setting.

*30-Day Follow-Up Form for Technical Assistance and Meetings:* The Follow-up Information Form for technical assistance and meetings asks about 20 questions of about 25% of consenting participants. The approved form asks the participants to report satisfaction with the quality of the event materials, to assess their level of skills in the topic area, and to report whether or not they have shared information from the event at their place of work. This form is already approved by OMB and will not be revised (OMB #0930–0197).

**Training Forms**

Trainings are defined as ATTC sponsored or co-sponsored events, mainly focusing on the enhancement of knowledge and/or skills of counselors and other professionals who work with individuals with substance use disorder-related problems. The ATTCs will collect information from training participants at the end of the training event by using a revised version of the currently approved Post-Event Form for training. The current approval for this form is under OMB #0930–0216. The only revision to this Post-Event Form will be that the ATTCs will revise the five current demographic questions asked and include five additional demographic questions. The ATTCs will collect information from training participants 30 days after the training event by using the same form currently approved for this purpose under OMB #0930–0216. The Pre-Event Form for training will be eliminated.

*Post-Event Form for Training:* The Post- Form for Training asks approximately 25 questions of each individual that participated in the training. The approved form asks the participants to report satisfaction with, usefulness of, and quality of the training and training materials as well as to assess their level of skills in the topic area. The five current demographic questions on the form will be revised to reflect a more current understanding of the field, and five additional

demographic questions will be included. The form will ask participants to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, and employment setting.

*Follow-up Form for Training:* The Follow-up Information Form for Training asks about 25 questions of about 25% of consenting participants. The approved form asks the participants to report satisfaction with, usefulness of, and quality of the training and training materials as well as to assess their level of skills in the topic area. The form also asks participants to report whether or not they have shared information from the event at their place of work and which, if any, barriers they have encountered to applying the information gained from the training. This form is already approved by OMB and will not be revised (OMB #0930–0216).

The information collected on the ATTC forms will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants report improvement in their clinical competency, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

| Type of respondent | Number of respondents | Responses per respondent | Hours per response | Total annual burden hours |
|---|---|---|---|---|
| Faculty/staff Event Description Form | 250 | 1 | .25 | 62.50 |
| Meeting and Technical Assistance Participants: | | | | |
| Post-Event Form | 5,000 | 1 | .12 | 600 |
| Follow-up Form | Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB #0930–0197) | | | |
| Training Participants: | | | | |
| Post-Event Form | 30,000 | 1 | .16 | 4,800 |
| Follow-up Form | 7,500 | 1 | .16 | 1,200 |
| Total | 42,750 | | | 6,662.50 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: September 28, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–24017 Filed 10–5–09; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0163]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance, Emergency Use Authorization of Medical Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 5, 2009.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB Control Number 0910–0595. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Draft Guidance, Emergency Use Authorization of Medical Products—(OMB Control Number 0910–0595)—Extension

The draft guidance describes the agency's general recommendations and procedures for issuance of emergency use authorizations (EUA) under section 564 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–3), which was amended by the Project BioShield Act of 2004 (Pub. L. 108–276). The act permits the FDA Commissioner (the Commissioner) to authorize the use of unapproved medical products or unapproved uses of approved medical products during an emergency declared under section 564 of the act. The data to support issuance of an EUA must demonstrate that, based on the totality of the scientific evidence available to the Commissioner, including data from adequate and well-controlled clinical trials (if available), it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing a serious or life-threatening disease or condition (21 U.S.C. 360bbb–3(c)). Although the exact type and amount of data needed to support an EUA may vary depending on the nature of the declared emergency and the nature of the candidate product, FDA recommends that a request for consideration for an EUA include scientific evidence evaluating the product's safety and effectiveness, including the adverse event profile for diagnosis, treatment, or prevention of the serious or life-threatening disease or condition, as well as data and other information on safety, effectiveness, risks and benefits, and (to the extent available) alternatives.

Under section 564 of the act, the FDA Commissioner may establish conditions on the approval of an EUA. Section 564(e) requires the FDA Commissioner (to the extent practicable given the

circumstances of the emergency) to establish certain conditions on an authorization that the Commissioner finds necessary or appropriate to protect the public health and permits the FDA Commissioner to establish other conditions that he finds necessary or appropriate to protect the public health. Conditions authorized by section 564(e) of the act include, for example: Requirements for information dissemination to health care providers or authorized dispensers and product recipients; adverse event monitoring and reporting; data collection and analysis; recordkeeping and records access; restrictions on product advertising, distribution, and administration; and limitations on good manufacturing practices requirements. Some conditions, the statute specifies, are mandatory to the extent practicable for authorizations of unapproved products and discretionary for authorizations of unapproved uses of approved products. Moreover, some conditions may apply to manufacturers of an EUA product, while other conditions may apply to any person who carries out any activity for which the authorization is issued. Section 564 of the act also gives the FDA Commissioner authority to establish other conditions on an authorization that he finds to be necessary or appropriate to protect the public health.

For purposes of estimating the burden of reporting, FDA has established six categories of respondents: (1) Those who file a Request for Consideration for an EUA and, in lieu of submitting the data, provide reference to a pending or approved application; (2) those who file a Request for Consideration for an EUA, without reference to a pending or approved application; (3) those who submit pre-EUA submissions to FDA on a candidate EUA product, which references a pending or approved application; (4) those who submit pre-EUA submissions to FDA on a candidate EUA product, for which there is no reference to a pending or approved application; (5) manufacturers of an unapproved EUA product who must report to FDA regarding such activity; and (6) state and local public health officials who carry out an activity related to an unapproved EUA product (e.g., administering the product to recipients) and who must report to FDA regarding such activity.

For purposes of estimating the burden of recordkeeping, FDA has calculated the anticipated burden on manufacturers of unapproved products authorized for emergency use. FDA also anticipates that some state and local public health officials may be required to perform additional recordkeeping (e.g., related to the administration of unapproved EUA products to civilians) and calculated a recordkeeping burden for those activities.

No burden was attributed to reporting or recordkeeping for unapproved uses of approved products, since those products already are subject to approved collections of information (adverse experience reporting for biological products is approved under OMB Control No. 0910–0308 through September 30, 2011; adverse drug experience reporting is approved under OMB Control No. 0910–0230 through July 31, 2012; investigational new drug application regulations are approved under OMB Control No. 0910–0014 through August 31, 2011; and investigational device exemption reporting is approved under OMB Control Number 0910–0078 through January 31, 2010). Thus, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Requests for Consideration; Pending Application on File | 5 | 2 | 10 | 15 | 150 |
| Requests for Consideration; No Application Pending | 4 | 2 | 8 | 50 | 400 |
| Pre-EUA Submissions; Pending Application on File | 2 | 2 | 4 | 20 | 80 |
| Pre-EUA Submissions; No Application Pending | 11 | 2 | 22 | 75 | 1,650 |
| Manufacturers of an Unapproved EUA Product | 3 | 4 | 12 | 2 | 24 |
| State and Local Public Health Officials; Unapproved EUA Product | 30 | 4 | 360 | 2 | 240 |
| Total | | | | | 2,544 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED RECORDKEEPING ANNUAL BURDEN[1]

| | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| Manufacturers of an Unapproved EUA Product | 3 | 4 | 12 | 25 | 300 |
| State and Local Public Health Officials; Unapproved EUA Product | 30 | 4 | 120 | 3 | 360 |

TABLE 2.—ESTIMATED RECORDKEEPING ANNUAL BURDEN[1]—Continued

| | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| Total | | | | | 660 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual burden estimate for this information collection is 3,204 hours. The estimated reporting burden for this collection is 2,544 hours, and the estimated recordkeeping burden is 660 hours.

In the **Federal Register** of April 20, 2009 (74 FR 17962), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. However, in the period of time since the 60-day notice was drafted, there was a determination of public health emergency involving the 2009 H1N1 virus and multiple declarations supporting the issuance of EUAs. As a result of this increased activity and the likelihood of a continued increase in the number of EUA and pre-EUA submissions, on its own initiative, FDA is providing estimates based on the number of reports that the agency received in the past year.

Dated: September 29, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24048 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0465]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Additive Petitions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on food additive petitions regarding animal feed.

**DATES:** Submit written or electronic comments on the collection of information by December 7, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Additive Petitions—21 CFR Part 571 (OMB Control Number 0910–0546)—Extension**

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless its use is permitted by a regulation which prescribes the condition(s) under which it may safely be used, or unless it is exempted by regulation for investigational use. Section 409(b) of the act specifies the information that must be submitted by a petition in order to establish the safety of a food additive and to secure the issuance of a regulation permitting its use.

To implement the provision of section 409 of the act, procedural regulations have been issued under part 571 (21 CFR part 571). These procedural regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broader terms by the law. The regulations add no substantive requirements to those indicated in the law, but seek to explain the requirements and provide a standard format for submission of petitions, that when implemented, will speed up the time for processing. Labeling requirements for food additives intended for animal consumption are also set forth in various regulations contained in 21 CFR parts 573, 582, and 584. The labeling regulations are considered by FDA to be cross-referenced to § 571.1, which is the subject of this same OMB clearance for food additive petitions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 571.1(c) moderate category | 1 | 1 | 1 | 3,000 | 3,000 |
| 571.1(c) complex category | 1 | 1 | 1 | 10,000 | 10,000 |
| 571.6 amendment of petition | 2 | 2 | 4 | 1,300 | 5,200 |
| Total Hours | | | | | 18,200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA derived the annual reporting burden estimate for the different categories as follows:

**Section 571.1(c)—moderate category**: For food additive petition without complex chemistry, manufacturing, efficacy, or safety issues, the estimated time requirement per petition is approximately 3,000 hours. An average of 1 (one) petitions of this type is received on an annual basis, resulting in a burden of 3,000 hours.

**Section 571.1(c)—complex category**: For a food additive petition with complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per petition is approximately 10,000 hours. An average of 1 (one) petition of this type is received on an annual basis, resulting in a burden of 10,000 hours.

**Section 571.6**: For a food additive petition amendment, the estimated time requirement per petition is approximately 1,300 hours. An average of 4 (four) petitions of this type is received on an annual basis, resulting in a burden of 5,200 hours.

Thus, the estimated total annual burden for this information collection is 18,200 hours.

Dated: September 29, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24047 Filed 10–05–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Interagency Breast Cancer and Environmental Research Coordinating Committee (Committee).

The Committee shall coordinate all efforts within the Department of Health and Human Services to share and coordinate information on existing research activities, and make recommendations to the Secretary DHHS, the National Institutes of Health and other Federal agencies regarding how to improve existing research programs.

The Committee's primary mission is to facilitate the efficient and effective exchange of information on breast cancer research activities among the member agencies, and to coordinate solicitation of proposals for collaborative, multidisciplinary research, including proposals to evaluate environmental and genomic factors that may be related to the etiology of breast cancer.

Duration of this committee is two years from the date the Charter is filed.

**Francis S. Collins,**

*Director, National Institutes of Health.*

[FR Doc. E9–23974 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2009–M–0033, FDA–2009–M–0016, FDA–2009–M–0034, FDA–2009–M–0049, FDA–2009–M–0071, FDA–2009–M–0127, FDA–2009–M–0128, FDA–2009–M–0135, FDA–2009–M–0159]**

### Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Nicole Wolanski, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993, 301–796–6570.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the

Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2009, through March 31, 2009. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2009, THROUGH MARCH 31, 2009

| PMA No.<br>Docket No. | Applicant | Trade Name | Approval Date |
|---|---|---|---|
| P060030<br>FDA–2009–M–0033 | Roche Molecular Systems, Inc. | Cobas ampliprep/cobas taqman HFC test | October 30, 2008 |
| P950009 (S8)<br>FDA–2009–M–0016 | BD Diagnostics | BD focal point gs imaging system | December 3, 2008 |
| P080010<br>FDA–2009–M–0034 | Advanced Medical Optics, Inc. | Tecnis multifocal foldable posterior chamber intraocular lens | January 16, 2009 |
| P080021<br>FDA–2009–M–0049 | Advanced Vision Science, Inc. | xact foldable hydrophobic acrylic UV light absorbing posterior chamber IOL | February 2, 2009 |
| P030031 (S11)<br>FDA–2009–M–0071 | Biosense Webster, Inc. | Navistar & Celsius thermo cool catheters | February 6, 2009 |
| P070014<br>FDA–2009–M–0127 | Bard Peripheral Vascular, Inc. | lifestent flexstar & flexstar XL vascular stent system | February 13, 2009 |
| P940015 (S12)<br>FDA–2009–M–0128 | Genzyme Corp. | Synvisc-One | February 26, 2009 |
| P070005<br>FDA–2009–M–0135 | Synthemed Corp. | Repel-cv bioresorbable adhesion barrier | March 6, 2009 |
| P080002<br>FDA–2009–M–0159 | The Female Health Co. | FC2 female condom | March 10, 2009 |

## II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: September 24, 2009.

**Jeffrey Shuren,**

*Acting Director, Center for Devices and Radiological Health.*

[FR Doc. E9–23962 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of P01 applications on Interdisciplinary Research on Oral Manifestations of HIV/AIDS in Vulnerable Populations.

*Date:* November 12, 2009.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, henriquv@nidcr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23997 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Pediatric Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Pediatric Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on Tuesday, December 8, 2009, from 8 a.m. to 6 p.m.

*Location*: Hilton, Washington, DC/Rockville Executive Meeting Center, Plaza Ballroom, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person*: Doreen Kezer, Office of Medical and Scientific Programs (HF-33), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1249, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On December 8, 2009, the Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for Abilify (aripiprazole), Argatroban (argatroban), Orencia (abatacept), Humira (adalimumab), Zemuron (rocuronium bromide), Cancidas (caspofungin acetate), Cardiolite (technetium Tc99 sestamibi), Evicel—fibrin sealant (human), Artiss—fibrin sealant (human), Voluven—6% hydroxyethyl starch 130/0.4 in 0.9% sodium chloride injection, Reyataz (atazanavir sulfate), Kaletra (lopinavir/ritonavir), Aptivus (tipranavir), Zetia (ezetimibe), Vytorin (ezetimibe/simvastatin), Ventolin HFA (albuterol sulfate). The committee will also receive a brief update on atypical antipsychotic drugs as requested by the Pediatric Advisory Committee Meeting on November 18, 2008.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before Tuesday, November 24, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before Monday, November 16, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by Tuesday, November 17, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Doreen Kezer at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 1, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24013 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of The Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* October 30, 2009.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* Key topics for this meeting will focus on emerging issues of public importance in biomedical and behavioral research. Further information will be available on the COPR Web site.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Kelli L. Carrington Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, 301–594–4575, *carringkmaiI.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

*Information is also available on the Institute's/Center's home page: http://www.copr.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from

Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23800 Filed 10–5–09; 8:45 am]

**BILLING CODE M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Migrant Health.

*Dates and Times:* November 2, 2009, 8:30 a.m. to 5 p.m.; November 3, 2009, 8:30 a.m. to 5 p.m.

*Place:* Hilton Hotel, 1750 Rockville Pike, Rockville, Maryland 20852, Telephone: (301) 468–1100, Fax: (301) 468–0308.

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

*Agenda:* The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

Agenda items are subject to change as priorities indicate.

**FOR FURTHER INFORMATION CONTACT:** Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 594–0367.

Dated: September 29, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–24045 Filed 10–5–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on November 4, 2009, from 8 a.m. to 5 p.m.

*Location*: Holiday Inn, Walker/Whetstone Room, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Ronald P. Jean, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD, 20993, 301–796–5650, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On November 4, 2009, the committee will discuss, make recommendations and vote on a premarket approval application for the Dynesys Spinal System, sponsored by Zimmer Spine. The Dynesys Spinal System is indicated to provide spinal alignment and stabilization in skeletally mature patients at one or two contiguous levels from L1–S1.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available on the FDA Internet under the appropriate date at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 28, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 20, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 21, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: 10/1/09.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24016 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Cardiovascular and Renal Drugs Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on December 7, 2009, from 8 a.m. to 5 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, 620 Perry Parkway, Gaithersburg, MD. The hotel phone number is 301–977–8900.

*Contact Person*: Elaine Ferguson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On December 7, 2009, the committee will discuss new drug application (NDA) 21–560, for everolimus oral tablets, by Novartis Pharmaceuticals Corporation, to be used in patients with kidney transplants to prevent rejection of the transplanted kidney.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 23, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 13, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 16, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 1, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24015 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Joint Meeting of the Cardiovascular and Renal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committees*: Cardiovascular and Renal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

*General Function of the Committees*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on December 8, 2009, from 8 a.m. to 5 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

*Contact Person*: Elaine Ferguson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6778, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512533 or 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot

line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: On December 8, 2009, the committee will discuss safety considerations related to FDA-approved gadolinium-based contrast agents used with magnetic resonance imaging (MRI) scans. An MRI is a medical imaging technique that does not require x-rays. These scans outline the internal body structures such as organs and other soft tissues. Contrast agents are substances injected into the body before MRI scans, helping doctors to better see and interpret MRI findings. FDA approved gadolinium-based contrast agents include: gadobenate dimeglumine (MULTIHANCE), gadodiamide (OMNISCAN), gadopentetate dimeglumine (MAGNEVIST), gadoteridol (PROHANCE), gadoversetamide (OPTIMARK), gadoxetate disodium (EOVIST), and gadofosveset (ABLAVAR, previously known as VASOVIST).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 23, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 13, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 16, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 1, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–24014 Filed 10–5–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Collaborations in Infectious Disease Research (ICIDR).

*Date:* November 2, 2009.

*Time:* 10:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 496–3528, *gm12w@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Collaborations in Infectious Disease Research (ICIDR).

*Date:* November 4, 2009.

*Time:* 10:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 496–3528, *gm12w@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Collaborations in Infectious Disease Research (ICIDR).

*Date:* November 6, 2009.

*Time:* 10:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23979 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Research Support.

*Date:* October 28, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Eric Lorenzo, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–496–2550. *lorenzoe@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23978 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel. Brain Dopamine.

*Date:* October 29, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alicja L Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–496–9666. *markowsa@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel. Cardiac Progenitor Cells and Aging.

*Date:* November 10, 2009.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7707. *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy*.

[FR Doc. E9–23977 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Building Translational Research in Integrative Behavioral Science.

*Date:* November 4, 2009.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call.)

*Contact Person:* Rebecca C Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608. 301–443–4525. *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23976 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to discuss recommendations for the annual update of the IACC Strategic Plan for Autism Spectrum Disorders Research. The meeting will be open to the public and will be accessible by webcast and conference call.

*Name of Committee:* Interagency Autism Coordinating Committee (IACC).

*Type of meeting:* Open.

*Date:* October 23, 2009.

*Time:* 9 a.m. to 5 p.m.* Eastern Time—*Approximate end time.

*Agenda:* A presentation by a panel of parents of children with autism; a presentation on Applied Behavioral Analysis by Dr. Tony Charman; and discussion of recommendations for updating the IACC Strategic Plan for Autism Spectrum Disorders Research.

*Place:* The National Institutes of Health, Main Campus, William H. Natcher Conference Center, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Webcast Live: http://videocast.nih.gov/.*

*Conference Call Access:* Dial: 888–455–2920; Access code: 3132846.

*Cost:* The meeting is free and open to the public.

*Registration: http://www.acclaroresearch.com/oarc/10–23–09_IACC/.* Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

*Access:* Metro accessible—Red Line—Medical Center Metro Station.

*Contact Person:* Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8200, Bethesda, MD 20892–9669, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

**Please Note:** Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations must submit a letter of intent, a brief description of the organization represented, and a written/electronic copy of the oral presentation/statement at least 24 hours in advance of the meeting. A printed/electronic copy of the comment/statement provided by the deadline is required prior to the oral presentation; the document will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in order of the date and time when their request to speak is received, along with the required written statement submitted at least 24 hours in advance of the meeting.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the statement to the Contact Person listed on this notice at least 24 hours in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. All written statements received by the deadline for both oral and written public comment will be provided to the IACC for their consideration.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 7 days prior to the meeting.

NIH has instituted stringent security procedures for entrance onto the NIH campus. All visitors must enter through the NIH Gateway Center. This center combines visitor parking, non-commercial vehicle inspection and visitor ID processing, all in one location. The NIH will process all visitors in vehicles or as pedestrians. You will be asked to submit to a vehicle or personal inspection and will be asked to state the purpose of your visit. Visitors over 15 years of age must provide a form of government-issued ID such as a driver's license or passport. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection.

When driving to NIH, plan some extra time to get through the security checkpoints. Be aware that visitor parking lots on the NIH campus can fill up quickly. The NIH campus is also accessible via the metro Red Line, Medical Center Station. The Natcher Conference Center is a 5-minute walk from the Medical Center Metro Station.

Additional NIH campus visitor information is available at: *http://www.nih.gov/about/visitor/index.htm.*

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Meeting schedule is subject to change.

Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: September 28, 2009

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23975 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fatty Liver Ancillary Studies.

*Date:* November 9, 2009.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Special Emphasis Panel of Kidney, Urologic and Hematologic Diseases Training and Mentored Awards.

*Date:* November 13, 2009.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–24001 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; Coordinating Center for Organ Transplant Clinical Trials.

*Date:* October 23, 2009.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Maryam Feili-Hariri, PhD, Scientific Review Officer, Immunology Review Branch, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–5658, *haririmf@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Review.

*Date:* October 26, 2009.

*Time:* 9 p.m. to 4 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:* Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2605, *ks216i@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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23998 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Menopause and Sleep Disorders.

*Date:* October 28, 2009.

*Time:* 8:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Demography of Sex Differences.

*Date:* November 2, 2009.

*Time:* 11:45 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Cognition, Mobility, and Depression.

*Date:* December 1, 2009.

*Time:* 1:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–23999 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center For Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel Conference Grant Meeting 1.

*Date:* October 26, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lisa A Newman, SCD, Scientific Review Officer, DHHS, National Institutes of Health, National Center for Research Resources, 6701 Democracy Boulevard, Room 1074—MSC 4874, Bethesda, MD 20892–4874, (301) 435–0965, *newmanla2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: September 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–24000 Filed 10–5–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Countywide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2009, will be decreased.

**DATES:** *Effective Date:* October 1, 2009, and applies to major disasters declared on or after October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** James A. Walke, Disaster Assistance Directorate, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** Response and Recovery Directorate Policy No. 9122.1 provides that FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of a decrease in the countywide per capita impact indicator to $3.23 for all disasters declared on or after October 1, 2009.

FEMA bases the adjustment on a decrease in the Consumer Price Index for All Urban Consumers of 1.5 percent for the 12-month period ended in August 2009. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2009.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24071 Filed 10–5–09; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of a decrease of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2009.

**DATES:** *Effective Date:* October 1, 2009, and applies to major disasters declared on or after October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** James A. Walke, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5121–5207, prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Small Project Grants, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of a decrease of the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $63,200 for all disasters declared on or after October 1, 2009.

FEMA bases the adjustment on a decrease in the Consumer Price Index for All Urban Consumers of 1.5 percent for the 12-month period ended in August 2009. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2009.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24069 Filed 10–5–09; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Statewide Per Capita Impact Indicator

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2009, will be decreased.

DATE: *Effective Date:* October 1, 2009, and applies to major disasters declared on or after October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** James A. Walke, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

**SUPPLEMENTARY INFORMATION:** 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be decreased to $1.29 for all disasters declared on or after October 1, 2009.

FEMA bases the adjustment on a decrease in the Consumer Price Index for All Urban Consumers of 1.5 percent for the 12-month period ended in August 2009. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2009.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24068 Filed 10–5–09; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Holders or Containers Which Enter the United States Duty Free

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0035.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Holders or Containers which Enter the United States Duty Free. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before December 7, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Holders or Containers which Enter the United States Duty Free

*OMB Number:* 1651–0035

*Form Number:* None

*Abstract:* This collection of information is to implement Item 9801.00.10 (HTSUS) which provides that articles that were manufactured in the United States and exported and returned without having been advanced in value or improved in condition may be brought back into the U.S. duty-free. It also allows CBP to implement 9803.00.50 (HTSUS) which provides for the duty free entry of substantial holders or containers of foreign manufacture if duty had been paid upon a previous importation pursuant to the provisions of 19 CFR 10.41b(b) and (c).

*Current Actions:* There are no changes to the information collection. This submission is being made to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 20.

*Estimated Number of Responses per Respondent:* 18.

*Estimated Number of Total Annual Responses:* 360.

*Estimated Total Annual Burden Hours:* 90.

Dated: September 30, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9–24010 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–730; Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; Form I–730, Refugee/Asylee Relative Petition; OMB Control No. 1615–0037.

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 July 13, 2009, at 74 FR 33453, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 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 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 No. 1615–0037 in the subject box. 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730; 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 an asylee or refugee to file on behalf of his of her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by USCIS to determine eligibility for the requested immigrant benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 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 number 202–272–8377.

Dated: October 1, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–24092 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: File No. OMB–5; Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; File No. OMB–5, Notice of Immigration Pilot Program; OMB Control No. 1615–0061.

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 July 15, 2009, at 74 FR 34361, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 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 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 No. 1615–0061 in the subject box. 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* File No. OMB–5; 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 will be used by USCIS to determine which regional centers should participate in the immigration pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you need a copy of the information collection, please visit the website at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: October 1, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–24091 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–602; Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; Form I–602, Application by Refugee for Waiver of Grounds of Excludability; OMB Control No. 1615–0069.

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 July 13, 2009, at 74 FR 33454, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 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 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 No. 1615–0069 in the subject box. 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–602; 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. Form I–602 is necessary to establish eligibility for waiver of excludability based on humanitarian, family unity, or public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 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 number 202–272–8377.

Dated: October 1, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–24090 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Form I–854; Extension of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review; Form I–854, Interagency Alien Witness and Informant Record; OMB Control No. 1615–0046.

* * * * *

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 7, 2009.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–854. Should USCIS decide to revise Form I–854 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–854.

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), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., 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.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0046 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Interagency Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–854; 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. Form I–854 is used by law enforcement agencies to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 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 number 202–272–8377.

Dated: September 30, 2009.

**Sunday Aigbe,**

*Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–24064 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### Citizenship and Immigration Services

### Form I–129S, Extension of an Existing Information Collection; Comment Request

**ACTION:** 30–Day Notice of Information Collection Under Review; Form I–129S, Nonimmigrant Petition Based on Blanket L Petition; OMB Control No. 1615–0010.

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 25, 2009, at 74 FR 30314, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 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 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 No. 1615–0010 in the subject box. 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 agencies 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129S; 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. USCIS will use the information collected to determine whether the applicant meets the eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 35 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 145,750 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 number 202–272–8377.

Dated: September 30, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–24065 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1859–DR; Docket ID FEMA–2008–0018]**

### American Samoa; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA–1859–DR), dated September 29, 2009, and related determinations.

**DATES:** *Effective Date:* September 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 29, 2009, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I determined that the damage in certain areas of the Territory of American Samoa resulting from an earthquake, tsunami, and flooding beginning on September 29, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declared that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you were hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You were authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the Territory, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any

Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you were authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth R. Tingman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the Territory of American Samoa have been designated as adversely affected by this declared major disaster:

The Territory of American Samoa for Individual Assistance.

Debris removal and emergency protective measures (Categories A and B) under the Public Assistance program for the Territory of American Samoa. Direct Federal assistance is authorized.

All islands within the Territory of American Samoa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24072 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1857–DR;Docket ID FEMA–2008–0018]**

## New York; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1857–DR), dated September 1, 2009, and related determinations.

**DATE:** *Effective Date:* September 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2009.

Allegany County for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24075 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]**

## Georgia; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2009.

Cherokee, DeKalb, Fulton, and Newton Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

Crawford County for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24073 Filed 10–5–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Maximum Amount of Assistance Under the Individuals and Households Program

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2009.

**DATES:** *Effective Date:* October 1, 2009, and applies to emergencies and major disasters declared on or after October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Berl D. Jones, Jr., Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 212–1000.

**SUPPLEMENTARY INFORMATION:** Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174, prescribes that FEMA must annually adjust the maximum amounts for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is $29,900. The decrease in award amount as stated above is for any single emergency or major disaster declared on or after October 1, 2009. In addition, in accordance with 44 CFR 61.17(c), this adjustment includes the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued for those disasters.

FEMA bases the adjustment on a decrease in the Consumer Price Index for All Urban Consumers of 1.5 percent for the 12-month period ended in August 2009. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2009.

Catalog of Federal Domestic Assistance No. 97.048, Individuals and Households—Housing; 97.049 Individuals and Households—Disaster Housing Operations; 97.050, Individuals and Households—Other Needs.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–24070 Filed 10–5–09; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5288–N–13]**

### Notice of Proposed Information Collection for Public Comment Enterprise Income Verification (EIV) System Access Authorization Form and Rules of Behavior and User Agreement

**AGENCY:** Office of the Assistance Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 7, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms or other available information.

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202 402–3374, for copies of other available documents (this is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to the Office of Management and Budget (OMB) for review, as required by the Paper Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Enterprise Income Verification (EIV) System Access Authorization Form and Rules of Behavior and User Agreement.

*OMB Control Number:* 2577–XXXX (Pending).

*Description of the Need for the Information and Proposed Use:* In accordance with statutory requirements at 5 U.S.C. 552a, as amended (most commonly known as the Federal Privacy Act of 1974), the Department is required to account for all disclosures of information contained in a system of records. Specifically, the Department is required to keep an accurate accounting of the name and address of the person or agency to which the disclosure is made. The Enterprise Income Verification (EIV) System (HUD/PIH–5) is classified as a System of Records, as initially published on July 20, 2009, in the **Federal Register** at page 41780 (70 FR 41780) and amended and published on August 8, 2006, in the **Federal Register** at page 45066 (71 FR 45066).

As a condition of granting HUD staff and staff of processing entities with access to the EIV system, each prospective user of the system must (1) Request access to the system; (2) agree to comply with HUD's established rules of behavior; and (3) review and signify their understanding of their responsibilities of protecting data protected under the Federal Privacy Act (5 USC 552a, as amended). As such, the collection of information about the user and the type of system access required by the prospective user is required by HUD to: (1) Identify the user; (2) determine if the prospective user in fact requires access to the EIV system and in what capacity; (3) provide the prospective user with information related to the Rules of Behavior for

system usage and the user's responsibilities to safeguard data accessed in the system once access is granted; and (4) obtain the signature of the prospective user to certify the user's understanding of the Rules of Behavior and responsibilities associated with his/her use of the EIV system.

HUD will collect the following information from each prospective user: Public Housing Agency (PHA) code, organization name, address, prospective user's full name, HUD-assigned user ID, position title, telephone number, facsimile number, type of work which involves the use of the EIV system, type of system action requested, requested access roles to be assigned to prospective user, public housing development numbers to be assigned to prospective PHA user, and prospective user's signature and date of request. The information will be collected electronically and manually (for those who are unable to transmit electronically) via a PDF-fillable or Word-fillable document, which can be e-mailed, faxed or mailed to HUD.

If this information is not collected, the Department will not be in compliance with the Federal Privacy Act and be subject to civil penalties.

*Agency Form Numbers:* Pending.

*Members of Affected Public:* Employees of Federal, State or Local Government or Public Housing Agencies (PHAs), and staff of PHA-hired management agents.

*Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 17,939 respondents; requiring initial and periodic responses; 1.0 hour per initial response and 0.25 hours per updated periodic response; 18,825.50 total burden hours.

*Status of the Proposed Information Collection:* New Request. Pending Authorization.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 28, 2009.

**Bessy Kong,**

*Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.*

[FR Doc. E9–23969 Filed 10–5–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5342–N–01]**

### Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Family Unification Program (FUP)

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD announces the availability on its Web site of the applicant information, deadline information, and other requirements for the Family Unification Program (FUP) NOFA for FY2009. Approximately $14.6 million is made available through this NOFA, through the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). The FY2009 FUP NOFA that provides this information is available on the Grants.gov Web site at *http://apply07.grants.gov/apply/forms_app_idx.html.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Family Unification Program is 14.880. Applications submitted in response to the FY2009 FUP NOFA must be submitted electronically through Grants.gov.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Questions regarding the 2009 General Section should be directed to the Office of Departmental Grants Management and Oversight at 202–708–0667 (this is not a toll-free number) or the NOFA Information Center at 1–800–HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Dated: September 23, 2009.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. E9–23970 Filed 10–5–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5349–N–01]**

### Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2010

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually and is making new designation of QCTs at this time on the basis of revised metropolitan statistical area (MSA) definitions published by the Office of Management and Budget (OMB). In accordance with the Gulf Opportunity Zone (GO Zone) Act of 2005, the authorization for GO Zone DDAs expires on December 31, 2010 and consequently, this will be the last designation of GO Zone DDAs.

**FOR FURTHER INFORMATION CONTACT:** For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8234, Washington, DC 20410–6000; telephone number (202) 402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone number (202) 622–3040, fax number (202) 622–4753. For questions about the ''HUB Zones'' program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416; telephone number (202) 205–8885, fax number (202) 205–7167, or send an e-mail to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at 202–708–8339. (These are not toll-free telephone numbers.) Additional copies

of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

*Copies Available Electronically:* This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

**SUPPLEMENTARY INFORMATION:**

**This Document**

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2009 Fair Market Rents (FMRs), FY2009 income limits, and 2000 Census population counts, as explained below. This notice also lists those areas treated as DDAs under the Gulf Opportunity Zone Act of 2005 (GO Zone Act) (Pub. L. 109–135; the GO Zone Act, as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007). Specifically, the GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)'' as a result of Hurricanes Katrina, Rita, or Wilma: (1) Shall be treated as DDAs designated under subclause (I) of Internal Revenue Code section 42(d)(5)(C)(iii)[1] (*i.e.,* areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income (AMGI)), and (2) shall not be taken into account for purposes of applying the limitation under subclause II of such section (*i.e.,* the 20 percent cap on the total population of designated areas). In accordance with the Go Zone Act as amended, GO Zone DDAs expire on December 31, 2010. Thus, this will be the last DDA designation containing GO Zone DDAs.

This notice also re-designates QCTs based on those newly defined MSAs published by the Office of Management and Budget (OMB) since 2006 that have been included in HUD's Section 8 Income Limits though FY2009. New MSAs have been designated in Arizona and Florida, however these result only in changes to QCT designations in the new Arizona metropolitan area and the nonmetropolitan part of Arizona. The designations of QCTs under Section 42 of the Internal Revenue Code published September 28, 2006, (71 FR 57234) for the remainder of Arizona, the remaining 49 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and on December 19, 2003, (68 FR 70982) for American Samoa, Guam, and the Northern Mariana Islands, remain in effect because QCTs in these areas are not affected by the updated metropolitan area definitions.

**2000 Census**

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 08–01 on November 20, 2007. The FY2009 FMRs and FY2009 income limits used to designate DDAs are based on these new metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs. The most recent update of MSA definitions published in OMB Bulletin No. 09–01 on November 20, 2008 are inconsistent with the FY2009 FMRs and FY2009 income limits and therefore are not incorporated in these DDA and QCT designations.

**Background**

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at Section 42 of the Code. The Secretary of HUD is required to designate DDAs and QCTs by Section 42(d)(5)(C) (re-designated section 42(d)(5)(B) by the Housing and Economic Recovery Act of 2008) of the Code. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the Code only in instances where it receives explicit statutory delegation.

**Summary of the Low-Income Housing Tax Credit**

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, states may also provide Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: Either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in Section 42. Individuals can use the

[1] Section 42(d)(5)(C)(iii) was re-designated section 42(d)(5)(B)(iii) by the Housing and Economic Recovery Act of 2008.

credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

Under section 42(d)(5)(B) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or, where the poverty rate is at least 25 percent. There is a limit on the number of Qualified Census Tracts in any metropolitan statistical area that may be designated to receive an increase in eligible basis: All of the designated census tracts within a given metropolitan area may not together contain more than 20 percent of the total population of the metropolitan area. For purposes of HUD designations of Qualified Census Tracts, all nonmetropolitan areas in a state are treated as if they constituted a single nonmetropolitan area.

The GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause I of Internal Revenue Code section 42(d)(5)(C)(iii) (*i.e.,* areas designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI), and shall not be taken into account for purposes of applying the limitation under subclause II of such section (*i.e.,* the 20 percent cap on the total population of designated areas). This notice lists the affected areas described in the GO Zone Act. Because the populations of DDAs designated under the GO Zone Act are not counted against the statutory 20 percent cap on the aggregate population of DDAs, the total population of designated metropolitan DDAs (regular and GO Zone) listed in this notice exceeds 20 percent of the total population of all MSAs, and the population of all nonmetropolitan DDAs listed in this notice exceeds 20 percent of the total population of nonmetropolitan counties. In accordance with the GO Zone Act as amended, the authorization for GO Zone DDAs expires on December 31, 2010 and consequently, this will be the last designation of GO Zone DDAs.

Section 42(d)(5)(C)(v) as added to the Code by the Housing and Economic Recovery Act of 2008, and re-designated as Section 42(d)(5)(B)(v), allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

**Explanation of HUD Designation Methodology**

*A. Difficult Development Areas*

This notice lists all areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma as DDAs according to lists of counties and parishes from the Federal Emergency Management Agency Web site (*http://www.fema.gov/*). Affected metropolitan areas and nonmetropolitan areas are assigned the indicator ''[GO Zone]'' in the lists of DDAs.

In developing the list of the remaining DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions, as published in OMB Bulletin No. 08–01 on November 20, 2007, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2009 HUD income limits for very low-income households (Very Low-Income Limits, or VLILs), which are based on 50 percent of AMGI, and final FY2009 FMRs used for the Housing Choice Voucher (HCV) program. In formulating the FY2009 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2009 FMR areas and FMRs are available at *http://www.huduser.org/datasets/fmr/fmrs/fy2009_code/index.asp?data=fmr09.* Complete details on HUD's process for determining FY2009 income limits are available at *http://www.huduser.org/datasets/il/il09/index.html.*)

HUD's unit of analysis for designating metropolitan DDAs, therefore, consists of: Entire MSAs, in cases where these were not broken up into HMFAs for

purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2009 two-bedroom FMR and the FY2009 four-person VLIL.

a. The numerator of the ratio was the area's final FY2009 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 71 FR 5068), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The non-GO Zone DDAs are those HMFAs and nonmetropolitan counties not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma, with the highest ratios cumulative to 20 percent of the 2000 population of all HMFAs and of all nonmetropolitan counties, respectively.

*B. Qualified Census Tracts*

In developing this list of QCTs, HUD used 2000 Census 100-percent count data on total population, total households, and population in households; a special tabulation of household income at the tract level from the 2000 Census; the 2000 Census base AMGIs computed at the HMFA level as described above to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 08–01 on November 20, 2007, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically 26 U.S.C. 42(d)(5)(B)(iv)(II), refers to the same section of the Code that defines income for purposes of tenant eligibility and unit maximum rent, specifically 26 U.S.C. 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which in FY2006 and thereafter are established at the HMFA level. Similarly, HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (26 U.S.C. 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas. The QCTs were determined as follows:

1. To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more. In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying by a factor of 0.6 the HMFA median family income for 1999, as estimated by HUD from 2000 Census data. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying by a factor of 0.6 the state-specific, non-metropolitan balance median family income for 1999, as estimated by HUD. (For a complete listing of HMFA median family incomes for 1999, see *http://www.huduser.org/datasets/il/il09/msacounty_medians.pdf*. For a complete listing of state non-metropolitan balance median family incomes for 1999, see *http://www.huduser.org/datasets/il/il09/Medians2009.pdf*.)

2. For each census tract, the percentage of households below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard. In performing this calculation, HUD used a special tabulation of household income data from the 2000 Census that provides more detail than the data on household income distribution publicly released by the Census Bureau and used in the designation of QCTs published December 12, 2002. Therefore, even in MSAs where there was no geographic change, a different set of census tracts may be determined eligible and designated as QCTs based on these more accurate data. HUD's special tabulations of census tract household income distribution are available for download from *http://qct.huduser.org/tables/data_request.odb*.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined.

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion, or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria for QCTs. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then, tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then, tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the designated population percentage above 20 percent, subsequent census tracts are then considered to determine

if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

*C. Application of Population Caps to DDA Determinations*

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all metropolitan areas. The cumulative population of nonmetropolitan DDAs not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the Code. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

*D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters*

As stated in OMB Bulletin 08–01, defining metropolitan areas:

> OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas.

Following OMB guidance, the estimation procedure for the FY2009 FMRs incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of ''Old FMR Areas'' (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as non-metropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as ''HUD Metro FMR Areas (HMFAs),'' to distinguish such areas from OMB's official definition of MSAs.

In addition, Waller County, Texas, which is part of the Houston-Baytown-Sugar Land, TX HMFA, is not an area ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. It is, therefore, excluded from the definition of the Houston-Baytown-Sugar Land, TX HMFA and is assigned the FMR and VLIL of the Houston-Baytown-Sugar Land, TX HMFA and is evaluated as if it were a separate metropolitan area for purposes of designating DDAs. The Houston-Baytown-Sugar Land, TX HMFA is assigned the indicator ''(part)'' in the list of Metropolitan DDAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of a HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the city of Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld Counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of the city of Broomfield at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that

were within the boundaries of the city of Broomfield according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld Counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

**Future Designations**

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated periodically as new data become available, or as metropolitan area definitions change. QCTs are being updated at this time to reflect the recent changes to 2000 Census-based metropolitan area definitions (OMB Bulletin 03–04, June 6, 2003, as updated through OMB Bulletin 08–01, November 20, 2007).

**Effective Date**

For DDAs designated by reason of being in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma (the GO Zone Designation), the designation is effective:

(1) For housing credit dollar amounts allocated and buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010; or

(2) For purposes of Section 42(h)(4) of the Internal Revenue Code, for buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, but only with respect to bonds issued after December 31, 2005.

The 2010 lists of DDAs that are not part of the GO Zone Designation are effective:

(1) For allocations of credit after December 31, 2009; or

(2) For purposes of Section 42(h)(4) of the Code, if the bonds are issued and the building is placed in service after December 31, 2009.

If an area is not on a subsequent list of DDAs, the 2010 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) For purposes of Section 42(h)(4) of the Code, if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of Section 42(h)(4) of the Code, the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the Code and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

**Interpretive Examples of Effective Date**

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The term ''regular DDA,'' as used below, refers to DDAs that are designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI. The term ''GO Zone DDA'' refers to areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. The examples covering regular DDAs are equally applicable to QCT designations.

*(Case A)* Project A is located in a 2010 regular DDA that is not a designated regular DDA in 2011. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2010. Credits are allocated to Project A on October 30, 2011. Project A is eligible for the increase in basis accorded a project in a 2010 regular DDA because the application was filed before January 1, 2011 (the assumed effective date for the 2011 regular DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

*(Case B)* Project B is located in a 2010 regular DDA that is NOT a designated regular DDA in 2011 or 2012. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2010. Credits are allocated to Project B on March 30, 2012. Project B is not eligible for the increase in basis accorded a project in a 2010 regular DDA because, although the application for an allocation of tax credits was filed before January 1, 2011 (the assumed effective date of the 2011 regular DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

*(Case C)* Project C is located in a 2010 regular DDA that was not a DDA in 2009. Project C was placed in service on November 15, 2009. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2010. The bonds that will support the permanent financing of Project C are issued on September 30, 2010. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2010 DDA because the project was placed in service before January 1, 2010.

*(Case D)* Project D is located in an area that is a regular DDA in 2010, but is NOT a regular DDA in 2011. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2010. Bonds are issued for Project D on April 30, 2011, but Project D is not placed in service until January 30, 2012. Project D is eligible for the increase in basis available to projects located in 2010 regular DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2011, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a regular DDA, and (3) both the issuance of the bonds and placement in service of project D occurred after the application was submitted.

*(Case E)* Project E is located in a GO Zone DDA. The bonds used to finance Project E are issued on July 1, 2010, and Project E is placed in service July 1, 2012. Project E is not eligible for the increase in basis available to projects in GO Zone DDAs because it was not placed in service during the period that began on January 1, 2006, and ends on December 31, 2010.

*(Case F)* Project F is located in a GO Zone DDA. The bonds used to finance Project F were issued July 1, 2005, and Project F is placed in service on July 1, 2010. Project F is not eligible for the increase in basis available to projects in GO Zone DDAs because the bonds used to finance project F were issued before January 1, 2006.

*(Case G)* Project G is a multiphase project located in a 2010 regular DDA that is NOT a designated regular DDA in 2011. The first phase of Project G received an allocation of credits in 2010, pursuant to an application filed March 15, 2010, which describes the multiphase composition of the project. An application for tax credits for the second phase Project G is filed with the allocating agency by the same entity on March 15, 2011. The second phase of Project G is located on a contiguous site. Credits are allocated to the second phase of Project G on October 30, 2011. The aggregate amount of credits allocated to the two phases of Project G exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project G is, therefore, eligible for the increase in basis accorded a project in a 2010 regular DDA, because it meets all of the conditions to be a part of a multiphase project.

*(Case H)* Project H is a multiphase project located in a 2010 regular DDA that is NOT a designated regular DDA in 2011. The first phase of Project H received an allocation of credits in 2010, pursuant to an application filed March 15, 2010, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project H is filed with the allocating agency by the same entity on March 15, 2012. Credits are allocated to the second phase of Project H on October 30, 2012. The aggregate amount of credits allocated to the two phases of Project H exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project H is, therefore, not eligible for the increase in basis accorded a project in a 2010 regular DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project H was not made in the year immediately following the first phase application year.

**Findings and Certifications**

*Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

*Federalism Impact*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: September 25, 2009.

**Raphael W. Bostic,**

*Assistant Secretary for Policy Development and Research.*

**2010 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS**
**(OMB Metropolitan Area Definitions, November 20, 2007 [MSA] and derived FY2009 HUD Metro FMR Area Definitions [HMFA])**

| State | Metropolitan Area | Metropolitan Area Components | | | |
|---|---|---|---|---|---|
| Alabama | Mobile, AL MSA [GO Zone] | Mobile County | | | |
| | Tuscaloosa, AL MSA [GO Zone] | Greene County | Hale County | Tuscaloosa County | |
| Arizona | Flagstaff, AZ MSA | Coconino County | | | |
| | Prescott, AZ MSA | Yavapai County | | | |
| | Yuma, AZ MSA | Yuma County | | | |
| California | Fresno, CA MSA | Fresno County | | | |
| | Los Angeles-Long Beach, CA HMFA | Los Angeles County | | | |
| | Napa, CA MSA | Napa County | | | |
| | Orange County, CA HMFA | Orange County | | | |
| | Oxnard-Thousand Oaks-Ventura, CA MSA | Ventura County | | | |
| | Riverside-San Bernardino-Ontario, CA MSA | Riverside County | San Bernardino County | | |
| | Salinas, CA MSA | Monterey County | | | |
| | San Diego-Carlsbad-San Marcos, CA MSA | San Diego County | | | |
| | San Luis Obispo-Paso Robles, CA MSA | San Luis Obispo County | | | |
| | Santa Barbara-Santa Maria, CA MSA | Santa Barbara County | | | |
| | Santa Cruz-Watsonville, CA MSA | Santa Cruz County | | | |
| | Santa Rosa-Petaluma, CA MSA | Sonoma County | | | |
| Florida | Bradenton-Sarasota-Venice, FL MSA | Manatee County | Sarasota County | | |
| | Cape Coral-Fort Myers, FL MSA [GO Zone] | Lee County | | | |
| | Deltona-Daytona Beach-Ormond Beach, FL MSA | Volusia County | | | |
| | Fort Lauderdale, FL HMFA [GO Zone] | Broward County | | | |
| | Miami-Miami Beach-Kendall, FL HMFA [GO Zone] | Miami-Dade County | | | |
| | Naples-Marco Island, FL MSA [GO Zone] | Collier County | | | |
| | Ocala, FL MSA | Marion County | | | |
| | Orlando-Kissimmee, FL MSA | Lake County | Orange County | Osceola County | Seminole County |
| | Palm Bay-Melbourne-Titusville, FL MSA [GO Zone] | Brevard County | | | |
| | Palm Coast, FL MSA | Flagler County | | | |
| | Port St. Lucie-Fort Pierce, FL MSA [GO Zone] | Martin County | St. Lucie County | | |
| | Punta Gorda, FL MSA | Charlotte County | | | |
| | Sebastian-Vero Beach, FL MSA [GO Zone] | Indian River County | | | |
| | Tampa-St. Petersburg-Clearwater, FL MSA | Hernando County | Hillsborough County | Pasco County | Pinellas County |
| | West Palm Beach-Boca Raton, FL HMFA [GO Zone] | Palm Beach County | | | |
| Hawaii | Honolulu, HI MSA | Honolulu County | | | |
| Louisiana | Baton Rouge, LA HMFA [GO Zone] | Ascension Parish | East Baton Rouge Parish | East Feliciana Parish | Livingston Parish |
| | | Pointe Coupee Parish | St. Helena Parish | West Baton Rouge Parish | West Feliciana Parish |
| | Houma-Bayou Cane-Thibodaux, LA MSA [GO Zone] | Lafourche Parish | Terrebonne Parish | | |
| | Iberville Parish, LA HMFA [GO Zone] | Iberville Parish | | | |
| | Lafayette, LA MSA [GO Zone] | Lafayette Parish | St. Martin Parish | | |
| | Lake Charles, LA MSA [GO Zone] | Calcasieu Parish | Cameron Parish | | |
| | New Orleans-Metairie-Kenner, LA MSA [GO Zone] | Jefferson Parish | Orleans Parish | Plaquemines Parish | St. Bernard Parish |
| | | St. Charles Parish | St. John the Baptist Parish | St. Tammany Parish | |
| Massachusetts | Barnstable Town, MA MSA | Barnstable County | | | |
| | Brockton, MA HMFA | Abington town | Avon town | Bridgewater town | Brockton city |
| | | East Bridgewater town | Halifax town | Hanson town | Lakeville town |
| | | Marion town | Mattapoisett town | Middleborough town | Plympton town |
| | | Rochester town | West Bridgewater town | Whitman town | |

**2010 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS**
**(OMB Metropolitan Area Definitions, November 20, 2007 [MSA] and derived FY2009 HUD Metro FMR Area Definitions [HMFA])**

| State | Metropolitan Area | Metropolitan Area Components | | | |
|---|---|---|---|---|---|
| Mississippi | Gulfport-Biloxi, MS MSA [GO Zone] | Hancock County | Harrison County | Stone County | |
| | Hattiesburg, MS MSA [GO Zone] | Forrest County | Lamar County | Perry County | |
| | Jackson, MS HMFA [GO Zone] | Copiah County | Hinds County | Madison County | Rankin County |
| | Pascagoula, MS MSA [GO Zone] | George County | Jackson County | | |
| | Simpson County, MS HMFA [GO Zone] | Simpson County | | | |
| | Tunica County, MS HMFA | Tunica County | | | |
| Nevada | Las Vegas-Paradise, NV MSA | Clark County | | | |
| New Jersey | Atlantic City, NJ MSA | Atlantic County | | | |
| | Jersey City, NJ HMFA | Hudson County | | | |
| | Vineland-Millville-Bridgeton, NJ MSA | Cumberland County | | | |
| New York | Nassau-Suffolk, NY HMFA | Nassau County | Suffolk County | | |
| | New York, NY HMFA | Bronx County | Kings County | New York County | Putnam County |
| | | Queens County | Richmond County | Rockland County | Westchester County |
| Texas | Beaumont-Port Arthur, TX MSA [GO Zone] | Hardin County | Jefferson County | Orange County | |
| | Brazoria County, TX HMFA [GO Zone] | Brazoria County | | | |
| | Corpus Christi, TX HMFA | Nueces County | San Patricio County | | |
| | Houston-Baytown-Sugar Land, TX HMFA (part) [GO Zone] | Chambers County | Fort Bend County | Galveston County | Harris County |
| | | Liberty County | Montgomery County | San Jacinto County | |
| Puerto Rico | Aguadilla-Isabela-San Sebastián, PR MSA | Aguada Municipio | Aguadilla Municipio | Añasco Municipio | Isabela Municipio |
| | | Lares Municipio | Moca Municipio | Rincón Municipio | San Sebastián Municipio |
| | Arecibo, PR HMFA | Arecibo Municipio | Camuy Municipio | Hatillo Municipio | |
| | Barranquitas-Aibonito-Quebradillas, PR HMFA | Aibonito Municipio | Barranquitas Municipio | Ciales Municipio | Maunabo Municipio |
| | | Orocovis Municipio | Quebradillas Municipio | | |
| | Caguas, PR HMFA | Caguas Municipio | Cayey Municipio | Cidra Municipio | Gurabo Municipio |
| | | San Lorenzo Municipio | | | |
| | Fajardo, PR MSA | Ceiba Municipio | Fajardo Municipio | Luquillo Municipio | |
| | Guayama, PR MSA | Arroyo Municipio | Guayama Municipio | Patillas Municipio | |
| | Mayagüez, PR MSA | Hormigueros Municipio | Mayagüez Municipio | | |
| | Ponce, PR MSA | Juana Díaz Municipio | Ponce Municipio | Villalba Municipio | |
| | San Germán-Cabo Rojo, PR MSA | Cabo Rojo Municipio | Lajas Municipio | Sabana Grande Municipio | San Germán Municipio |
| | San Juan-Guaynabo, PR HMFA | Aguas Buenas Municipio | Barceloneta Municipio | Bayamón Municipio | Canóvanas Municipio |
| | | Carolina Municipio | Cataño Municipio | Comerío Municipio | Corozal Municipio |
| | | Dorado Municipio | Florida Municipio | Guaynabo Municipio | Humacao Municipio |
| | | Juncos Municipio | Las Piedras Municipio | Loíza Municipio | Manatí Municipio |
| | | Morovis Municipio | Naguabo Municipio | Naranjito Municipio | Río Grande Municipio |
| | | San Juan Municipio | Toa Alta Municipio | Toa Baja Municipio | Trujillo Alto Municipio |
| | | Vega Alta Municipio | Vega Baja Municipio | Yabucoa Municipio | |

Metropolitan Difficult Development Areas labeled "[GO Zone]" are designated through 2010 in accordance with the Gulf Opportunity Zone Act of 2005, as amended by the U.S. Troops Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. Their populations do not count against the 20 percent population cap on metropolitan areas designated as Difficult Development Areas by reason of high contruction, land, and utility costs relative to Area Median Gross Income.

**2010 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, November 20, 2007)**

| State | Nonmetropolitan Counties or County Equivalents | | | |
|---|---|---|---|---|
| **Alabama** | Baldwin County [GO Zone] | Choctaw County [GO Zone] | Clarke County [GO Zone] | Marengo County [GO Zone] |
| | Pickens County [GO Zone] | Sumter County [GO Zone] | Washington County [GO Zone] | |
| **Alaska** | Aleutians East Borough | Bethel Census Area | Bristol Bay Borough | Dillingham Census Area |
| | Haines Borough | Juneau City and Borough | Ketchikan Gateway Borough | Kodiak Island Borough |
| | Lake and Peninsula Borough | Nome Census Area | North Slope Borough | Northwest Arctic Borough |
| | Prince of Wales-Outer Ketchikan Census Area | Sitka City and Borough | Skagway-Hoonah-Angoon Census Area | Southeast Fairbanks Census Area |
| | Valdez-Cordova Census Area | Wade Hampton Census Area | Wrangell-Petersburg Census Area | Yakutat City and Borough |
| | Yukon-Koyukuk Census Area | | | |
| **Arizona** | Apache County | Cochise County | Gila County | Graham County |
| | La Paz County | Navajo County | Santa Cruz County | |
| **Arkansas** | Baxter County | Montgomery County | | |
| **California** | Alpine County | Amador County | Calaveras County | Colusa County |
| | Del Norte County | Glenn County | Humboldt County | Inyo County |
| | Lake County | Lassen County | Mariposa County | Mendocino County |
| | Modoc County | Mono County | Nevada County | Plumas County |
| | Sierra County | Siskiyou County | Tehama County | Trinity County |
| | Tuolumne County | | | |
| **Colorado** | Archuleta County | Custer County | Dolores County | Eagle County |
| | Garfield County | Hinsdale County | Jackson County | Lake County |
| | Mineral County | Ouray County | Pitkin County | Rio Blanco County |
| | Routt County | San Juan County | San Miguel County | Summit County |
| **Florida** | Calhoun County | Citrus County | Columbia County | DeSoto County |
| | Franklin County | Glades County [GO Zone] | Gulf County | Hardee County |
| | Hendry County [GO Zone] | Highlands County | Holmes County | Liberty County |
| | Madison County | Monroe County [GO Zone] | Okeechobee County [GO Zone] | Putnam County |
| | Taylor County | Union County | Walton County | |
| **Georgia** | Decatur County | Gilmer County | Gordon County | Polk County |
| | Rabun County | Talbot County | Towns County | Troup County |
| | Union County | White County | | |
| **Hawaii** | Hawaii County | Kalawao County | Kauai County | Maui County |
| **Idaho** | Benewah County | Bonner County | Boundary County | Cassia County |
| | Gooding County | Idaho County | Jerome County | Lincoln County |
| | Twin Falls County | | | |
| **Kentucky** | Butler County | Carlisle County | Elliott County | Fulton County |
| | Lincoln County | Montgomery County | Nicholas County | Owen County |
| | Powell County | Simpson County | Todd County | Whitley County |
| **Louisiana** | Acadia Parish [GO Zone] | Allen Parish [GO Zone] | Assumption Parish [GO Zone] | Beauregard Parish [GO Zone] |
| | Bienville Parish | Claiborne Parish | Evangeline Parish [GO Zone] | Iberia Parish [GO Zone] |
| | Jefferson Davis Parish [GO Zone] | Natchitoches Parish | Red River Parish | Sabine Parish [GO Zone] |
| | St. James Parish [GO Zone] | St. Landry Parish [GO Zone] | St. Mary Parish [GO Zone] | Tangipahoa Parish [GO Zone] |
| | Vermilion Parish [GO Zone] | Vernon Parish [GO Zone] | Washington Parish [GO Zone] | |
| **Maine** | Knox County | Lincoln County | Piscataquis County | Waldo County |
| **Massachusetts** | Dukes County | Nantucket County | | |
| **Michigan** | Benzie County | Grand Traverse County | Otsego County | |
| **Mississippi** | Adams County [GO Zone] | Amite County [GO Zone] | Attala County [GO Zone] | Benton County |
| | Bolivar County | Chickasaw County | Choctaw County [GO Zone] | Claiborne County [GO Zone] |
| | Clarke County [GO Zone] | Coahoma County | Covington County [GO Zone] | Franklin County [GO Zone] |
| | Greene County [GO Zone] | Grenada County | Holmes County [GO Zone] | Humphreys County [GO Zone] |
| | Issaquena County | Jasper County [GO Zone] | Jefferson County [GO Zone] | Jefferson Davis County [GO Zone] |
| | Jones County [GO Zone] | Kemper County [GO Zone] | Lafayette County | Lauderdale County [GO Zone] |

**2010 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, November 20, 2007)**

| State | Nonmetropolitan Counties or County Equivalents | | | |
|---|---|---|---|---|
| **Mississippi (cont'd)** | Lawrence County [GO Zone] | Leake County [GO Zone] | Leflore County | Lincoln County [GO Zone] |
| | Lowndes County [GO Zone] | Marion County [GO Zone] | Montgomery County | Neshoba County [GO Zone] |
| | Newton County [GO Zone] | Noxubee County [GO Zone] | Oktibbeha County [GO Zone] | Panola County |
| | Pearl River County [GO Zone] | Pike County [GO Zone] | Quitman County | Scott County [GO Zone] |
| | Sharkey County | Smith County [GO Zone] | Sunflower County | Tallahatchie County |
| | Tippah County | Walthall County [GO Zone] | Warren County [GO Zone] | Washington County |
| | Wayne County [GO Zone] | Wilkinson County [GO Zone] | Winston County [GO Zone] | Yalobusha County |
| | Yazoo County [GO Zone] | | | |
| **Missouri** | Taney County | | | |
| **Montana** | Beaverhead County | Madison County | Meagher County | Mineral County |
| **Nevada** | Churchill County | Douglas County | | |
| **New Hampshire** | Belknap County | Carroll County | Cheshire County | Grafton County |
| | Merrimack County | | | |
| **New Mexico** | Guadalupe County | McKinley County | Mora County | San Miguel County |
| | Taos County | | | |
| **New York** | Clinton County | Columbia County | Cortland County | Delaware County |
| | Essex County | Fulton County | Genesee County | Greene County |
| | Hamilton County | Jefferson County | Otsego County | Schuyler County |
| | Seneca County | Sullivan County | Yates County | |
| **North Carolina** | Avery County | Chowan County | Cleveland County | Dare County |
| | Gates County | Hyde County | Jones County | McDowell County |
| | Mitchell County | Pasquotank County | Perquimans County | Rutherford County |
| | Transylvania County | Tyrrell County | Watauga County | Wilson County |
| **Oklahoma** | Hughes County | Muskogee County | Okfuskee County | Payne County |
| **Oregon** | Coos County | Crook County | Curry County | Douglas County |
| | Grant County | Hood River County | Josephine County | Lincoln County |
| | Linn County | Morrow County | Tillamook County | Wheeler County |
| **Pennsylvania** | Monroe County | Wayne County | | |
| **South Carolina** | Beaufort County | Jasper County | | |
| **Tennessee** | Bedford County | Haywood County | | |
| **Texas** | Anderson County | Angelina County [GO Zone] | Bailey County | Baylor County |
| | Bee County | Borden County | Brewster County | Briscoe County |
| | Brooks County | Brown County | Burnet County | Camp County |
| | Cass County | Castro County | Cherokee County | Childress County |
| | Cochran County | Coke County | Coleman County | Collingsworth County |
| | Comanche County | Cottle County | Crockett County | Culberson County |
| | Dallam County | Dawson County | Deaf Smith County | DeWitt County |
| | Dickens County | Dimmit County | Duval County | Eastland County |
| | Edwards County | Erath County | Falls County | Fisher County |
| | Floyd County | Foard County | Franklin County | Frio County |
| | Gaines County | Garza County | Gillespie County | Gonzales County |
| | Grimes County | Hale County | Hall County | Hamilton County |
| | Hardeman County | Haskell County | Henderson County | Hockley County |
| | Hopkins County | Houston County | Hudspeth County | Jasper County [GO Zone] |
| | Jim Hogg County | Jim Wells County | Karnes County | Kenedy County |
| | Kent County | Kerr County | Kimble County | Kinney County |
| | Kleberg County | Knox County | Lamar County | Lamb County |
| | La Salle County | Lavaca County | Leon County | Llano County |
| | Lynn County | McCulloch County | McMullen County | Madison County |
| | Marion County | Martin County | Maverick County | Menard County |

**2010 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, November 20, 2007)**

| State | Nonmetropolitan Counties or County Equivalents | | | |
|---|---|---|---|---|
| Texas (cont'd) | Mills County | Mitchell County | Montague County | Morris County |
| | Motley County | Nacogdoches County [GO Zone] | Navarro County | Newton County [GO Zone] |
| | Nolan County | Palo Pinto County | Parmer County | Pecos County |
| | Polk County [GO Zone] | Presidio County | Real County | Red River County |
| | Reeves County | Refugio County | Runnels County | Sabine County [GO Zone] |
| | San Augustine County [GO Zone] | San Saba County | Shelby County [GO Zone] | Starr County |
| | Stephens County | Stonewall County | Swisher County | Terrell County |
| | Terry County | Throckmorton County | Titus County | Trinity County [GO Zone] |
| | Tyler County [GO Zone] | Uvalde County | Val Verde County | Walker County [GO Zone] |
| | Ward County | Willacy County | Winkler County | Yoakum County |
| | Young County | Zapata County | Zavala County | |
| **Utah** | Duchesne County | Uintah County | | |
| **Vermont** | Addison County | Bennington County | Lamoille County | Orange County |
| | Rutland County | Windham County | Windsor County | |
| **Virginia** | Northampton County | | | |
| **Washington** | Clallam County | Jefferson County | Lewis County | San Juan County |
| **West Virginia** | Barbour County | Braxton County | Calhoun County | Doddridge County |
| | Fayette County | Gilmer County | Grant County | Lewis County |
| | Logan County | McDowell County | Mingo County | Nicholas County |
| | Pendleton County | Pocahontas County | Roane County | Summers County |
| | Taylor County | Upshur County | Webster County | Wyoming County |
| **Wyoming** | Teton County | | | |
| **American Samoa** | Eastern District | Manu'a District | Swains Island | Western District |
| **Guam** | Guam | | | |
| **Northern Mariana Islands** | Northern Islands Municipality | Rota Municipality | Saipan Municipality | Tinian Municipality |
| **Virgin Islands** | St. Croix | St. John | St. Thomas | |

Nonmetropolitan Difficult Development Areas labeled "[GO Zone]" are designated through 2010 in accordance with the Gulf Opportunity Zone Act of 2005, as amended by the U.S. Troops Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. Their populations do not count against the 20 percent population cap on nonmetropolitan areas designated as Difficult Development Areas by reason of high contruction, land, and utility costs relative to Area Median Gross Income.

[FR Doc. E9–23967 Filed 10–5–09; 8:45 am]
**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**[Docket No. MMS–2009–OMM–0013]**

### MMS Information Collection Activity: 1010–0006, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf and Outer Continental Shelf Oil and Gas Leasing, Extension of a Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0006).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf,'' and 30 CFR 260, ''Outer Continental Shelf Oil and Gas Leasing.''

**DATES:** Submit written comments by December 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter docket ID MMS–2009–OMM–0013 then click search. Under the tab ''View by Docket Folder'' you can submit public comments and view supporting and related materials available for this collection of information. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0006 in your subject line and include your name and return address.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf,'' and 30 CFR Part 260, ''Outer Continental Shelf Oil and Gas Leasing.''

*Form(s):* MMS–150, MMS–151, MMS–152, MMS–2028, and MMS–2028A.

*OMB Control Number:* 1010–0006.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*, and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify the filing fee for these transfer applications.

These authorities and responsibilities are among those delegated to the MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. This ICR addresses the regulations at 30 CFR Part 256, ''Leasing of Sulphur or Oil and Gas in the OCS,'' 30 CFR Part 260, ''OCS Oil and Gas Leasing,'' and the associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations. This ICR also concerns the use of forms to process bonds per subpart I, Bonding, the transfer of interest in leases per subpart J, Assignments, Transfers and Extensions, and the filing of relinquishments per subpart K, Termination of Leases. The forms are:

- MMS–2028, OCS Mineral Lessee's and Operator's Bond,
- MMS–2028A, OCS Mineral Lessee's and Operator's Supplemental Plugging and Abandonment Bond,
- MMS–150, Assignment of Record Title Interest in Federal OCS Oil and Gas Lease,
- MMS–151, Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease,
- MMS–152, Relinquishment of Federal OCS Oil and Gas Lease.

We will protect specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act, the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and 30 CFR 256.10(d). No items of a sensitive nature are collected. Responses are mandatory or are required to obtain or retain a benefit.

*Frequency:* The frequency of response is mostly on occasion, annual.

*Description of Respondents*: Respondents comprise Federal oil and gas or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 17,103 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR part 256 and NTLs | Reporting and/or recordkeeping requirement | Hour burden / Non-hour cost burden |
|---|---|---|
| Subparts A, C, E, H, L, M | None | 0 |

| Citation 30 CFR part 256 and NTLs | Reporting and/or recordkeeping requirement | Hour burden |
|---|---|---|
| | | Non-hour cost burden |
| Subparts G, H, I, J: 37; 53; 68; 70; 71; 72; 73. | Request approval for various operations or submit plans or applications. Burden included with other approved collections in 30 CFR Part 250 (1010–0114, 1010–0141, 1010–0142, 1010–0149, 1010–0151). | 0 |
| Subpart B: All sections | Submit suggestions and relevant information in response to request for comments on proposed 5-year leasing program, including information from States/local governments. Not considered IC as defined in 5 CFR 1320.3(h)(9). | 0 |
| Subpart D: All sections | Submit response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments. Not considered IC as defined in 5 CFR 1320.3(h)(9). | 0 |
| Subpart F: 31 | States or local governments submit comments/recommendations on size, timing, or location of proposed lease sale. | 4 |
| Subpart G: 35; 46(d), (e) | Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception. | 2 |
| 41; 43; 46(g) | Submit qualification of bidders for joint bids and statement or report of production, along with supporting information/appeal. | 2 |
| 44; 46 | Submit bids and required information | 5 |
| 47(c) | File agreement to accept joint lease on tie bids | 3½ |
| 47(e)(1), (e)(3) | Request for reconsideration of bid rejection. Not considered IC as defined in 5 CFR 1320.3(h)(9). | 0 |
| 47(f), (i); 50 | Execute lease (includes submission of evidence of authorized agent and request for dating of leases). | 1 |
| Subpart I: 52(f)(2), (g)(2) | Submit authority for Regional Director to sell Treasury or alternate type of securities | 2 |
| 53(a), 53(b); 54 | OCS Mineral Lessee's and Operator's Bond (Form MMS–2028) | ¼ |
| 53(c), (d), (f); 54(e) | Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required. | 3½ |
| 54 | OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form MMS–2028A). | ¼ |
| 55 | Notify MMS of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt. | 1 |
| 56 | Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds. | 12 |
| 57 | Provide third-party guarantee, indemnity agreement, financial information, related notices, reports, and annual update; notify MMS if guarantor becomes unqualified. | 19 |
| 57(d)(3); 58 | Notice of and request approval to terminate period of liability, cancel bond, or other security. | ½ |
| 59(c)(2) | Provide information to demonstrate lease will be brought into compliance | 16 |
| Subpart J: 62; 63; 64; 65; 67 | File application and required information for assignment or transfer for approval/comment on filing fee (Forms MMS–150 and MMS–151). | 1<br>$186 per application. |
| 63; 64(a)(8) | Submit non-required documents, for record purposes, which respondents want MMS to file with the lease document. Accepted on behalf of lessees as a service, MMS does not require nor need the filiings. | 0<br>$27 per filing. |
| 64(a)(7) | File required instruments creating or transferring working interests, etc., for record purposes. | 1 |
| Subpart K: 76; 92(a) | File written request for relinquishment (Form MMS–152) | 1 |
| 77(c) | Comment on lease cancellation (MMS expects 1 in 10 years) | 1 |
| Subpart N: 92(a) | Request a bonus or royalty credit; submit supporting documentation | 1 |
| 95 | Request approval to transfer bonus or credit to another party; submit supporting information. | 1 |
| 124(a) | Request MMS to reconsider field assignment of a lease. Exempt under 5 CFR 1230.4(a)(2), (c). | 0 |

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* There are three non-hour cost burdens to industry. They are as follows:

• § 256.64, Form MMS–150—Assignment of Record Title Interest in Federal OCS Oil and Gas Lease, $186/per response.

• § 256.64, Form MMS–151—Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease, $186/per response.

• § 256.64, Non-required document filing fee, $27/per response.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Procedures:* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: September 25, 2009.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. E9–24094 Filed 10–5–09; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1174–1175 (Preliminary)]**

## Seamless Refined Copper Pipe and Tube From China and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1174–1175 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Mexico of seamless refined copper pipe and tube, provided for in subheadings 7411.10.10, and 8415.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by November 16, 2009. The Commission's views are due at Commerce within five business days thereafter, or by November 23, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**DATES:** *Effective Date:* September 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.* These investigations are being instituted in response to a petition filed on September 30, 2009, by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc., Memphis, TN.

*Participation in the investigations and public service list.* Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.* The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 21, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than October 16, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these

investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.* As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 26, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 30, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–23988 Filed 10–5–09; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–678]**

### In the Matter of Certain Energy Drink Products; Notice of Commission Decision Not To Review an Initial Determination Granting Motion To Amend the Complaint and the Notice of Investigation To Add Six Additional Respondents

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation granting a motion filed by complainants Red Bull GmbH and Red Bull North America, Inc. (collectively, ''Red Bull'') to amend the complaint and notice of investigation to add six new respondents.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. 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 June 17, 2009, based on a complaint filed by Red Bull GmbH and Red Bull North America, Inc. (''Red Bull''). 74 FR 28725 (June 17, 2009). The complaint as amended 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 energy drink products by reason of infringement of U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607 and U.S. Copyright Registration No. VA0001410959. The complaint initially named six respondents: Chicago Import, Inc.; Lamont Dist., Inc. a/k/a Lamont Distributors Inc.; India Imports, Inc., a/k/a International Wholesale Club; Washington Food and Supply of DC, Inc., a/k/a Washington Cash & Carry; Vending Plus, Inc.; and Baltimore Beverage Co.

On September 8, 2009, the ALJ issued the subject ID, granting Red Bull's motion to amend the complaint and notice of investigation to add six new respondents: Posh Nosh Imports; Greenwich, Inc.; Advantage Food Distributors, Ltd.; Wheeler Trading, Inc.; Avalon International General Trading, LLC; and Central Supply, Inc. No petitions for review were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 30, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–23989 Filed 10–5–09; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–461 (Final)]**

### Ni-Resist Piston Inserts From Korea

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**SUMMARY:** On September 21, 2009, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation *(Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination,* 74 FR 48059, September 21, 2009). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning Ni-resist piston inserts from Korea (investigation No. 701–TA–461 (Final)) is terminated.

*DATES: Effective Date:* September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Angela M. W. Newell (202–708–5409),

Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov).* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**Authority:** This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: September 30, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–23990 Filed 10–5–09; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Certification of the Attorney General; Bethel Census Area, AK

In accordance with Section 8 of the Voting Rights Act, as amended, 42 U.S.C. 1973f, I hereby certify that in my judgment the appointment of federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in the Bethel Census Area, Alaska. This area is included within the scope of the determinations of the Attorney General and the Director of the Census made under Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), and published in the **Federal Register** on October 22, 1975 (40 FR 49,422).

Dated: October 1, 2009.

**Eric H. Holder Jr.,**

*Attorney General of the United States.*

[FR Doc. E9–24109 Filed 10–2–09; 11:15 am]

**BILLING CODE 4410–13–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (OJP) Docket No. 1503]**

### Meeting of the Public Safety Officer Medal of Valor Review Board

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to review applications for the 2008–2009 Medal of Valor Awards and to discuss upcoming activities. The meeting time and location are located below.

**DATES:** October 23, 2009, 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will take place at the Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregory.joy@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer. The purpose of this meeting is to review applications for the 2008–2009 Medal of Valor Awards and to discuss upcoming activities related thereto.

This meeting will be open to the public. For security purposes, members of the public who wish to attend must register at least five (5) days in advance of the meeting by contacting Mr. Joy. All attendees will be required to sign in at the front desk.

**Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least five (5) days in advance of the meeting.

**Pamela Cammarata,**

*Associate Deputy Director, Bureau of Justice Assistance.*

[FR Doc. E9–24018 Filed 10–5–09; 8:45 am]

**BILLING CODE 4410–18–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before November 5, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: request.schedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records

Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

*Schedules Pending:*

1. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (N1–545–08–3, 20 items, 17 temporary items). Records relating to budget and financial matters, including such records as budget estimates, routine project files, congressional presentations and other materials relating to congressional hearings. Proposed for permanent retention are such records as policy files, annual reports and summaries, and files on significant projects which set a precedent. The proposed disposition instructions are limited to paper records.

2. Department of Health and Human Services, Administration on Aging (N1–439–09–1, 8 items, 5 temporary items). Records of the Assistant Secretary including declined invitations and duplicate/working copies of daily activity schedules, phone logs, and briefing books. Proposed for permanent retention are accepted invitations and recordkeeping copies of telephone logs and briefing books. Recordkeeping copies of daily activity schedules were previously approved for permanent retention.

3. Department of Health and Human Services, Food and Drug Administration (N1–88–09–9, 5 items, 5 temporary items). Master files of electronic information systems used to track administrative workflow for such processes as new drug and biologic product applications, lot testing and distribution, and licensing.

4. Department of Homeland Security, U.S. Coast Guard (N1–26–09–1, 3 items, 3 temporary items). Reports and logs that relate to the movement of dangerous cargoes on inland waterways.

5. Department of the Interior, National Business Center (N1–48–09–6, 10 items, 10 temporary items). Electronic information systems relating to routine administrative matters, such as charge card transactions, finance and accounting activities, bank card training, personnel assignments, procurement actions, and equal employment opportunity reporting.

6. Department of Justice, Federal Bureau of Investigation (N1–65–09–15, 5 items, 5 temporary items). Master files, audit logs, and statistical reports associated with an electronic information system relating to surveillance activities.

7. Department of Justice, Federal Bureau of Investigation (N1–65–09–24, 2 items, 2 temporary items). Master files and usage agreements associated with an electronic information system that contains data concerning violent crimes.

8. Department of Justice, Federal Bureau of Investigation (N1–65–09–29, 3 items, 2 temporary items). Outputs and audit logs associated with an electronic information system that contains data concerning bank robberies. Master files are proposed for permanent retention.

9. Department of the Navy, Naval Criminal Investigative Service (N1–NU–09–7, 11 items, 11 temporary items). Web content records and web management and operations records for the agency's internal and external Web sites.

10. Department of Transportation, Federal Aviation Administration (N1–237–09–7, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to track use of computer applications by agency regional centers.

11. Department of Transportation, Federal Aviation Administration (N1–237–09–8, 2 items, 2 temporary items). Master files of electronic information systems used for surveys used in connection with ISO 9000 certification.

12. Department of Transportation, Federal Aviation Administration (N1–237–09–9, 3 items, 3 temporary items). Master files of electronic information systems used to track use and maintenance of tools, supplies, and equipment.

13. Department of Transportation, Federal Aviation Administration (N1–237–09–10, 1 item, 1 temporary item). Master files of an electronic information system used to maintain information concerning agency owned or leased real estate.

14. Department of Transportation, Federal Aviation Administration (N1–237–09–11, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning computer equipment.

15. Department of Transportation, National Highway Traffic Safety Administration (N1–416–09–3, 1 item, 1 temporary item). Master files associated with an electronic information system used to track and manage grants.

16. Department of the Treasury, Internal Revenue Service (N1–58–08–13, 3 items, 2 temporary items). Scanned and paper versions of forms relating to one participant pension benefit plans and related working papers. Master files containing

information from these forms are proposed for permanent retention.

17. Department of the Treasury, Internal Revenue Service (N1–58–09–49, 1 item, 1 temporary item). Master files of an electronic information system used by agency personnel to obtain information concerning individual taxpayer accounts in order to respond to inquiries.

18. Department of the Treasury, Internal Revenue Service (N1–58–09–52, 1 item, 1 temporary item). Master files of an electronic information system containing data concerning actions stemming from receipt of information from whistleblowers. Data includes identifying information concerning the whistleblower, status of the resulting investigation, and any subsequent payments made to the whistleblower.

19. Export-Import Bank of the United States, Chief Information Office (N1–275–09–5, 1 item, 1 temporary item). Master files of an electronic information system used to prepare reports relating to the Bank's financial activities.

20. Federal Energy Regulatory Commission, Agency-wide (N1–138–09–4, 79 items, 79 temporary items). Docketed formal case files for electric utilities, gas producers and utilities, oil producers and pipelines, hydropower licensing, and miscellaneous filings. Paper recordkeeping copies of these files were previously approved for disposal.

21. National Archives and Records Administration, Office of Presidential Libraries (DAA–0064–2009–0002, 1 item, 1 temporary item). Electronic data relating to the review under the Presidential Records Act and the Freedom of Information Act of unclassified electronic records of the administration of Presidents Ronald Reagan, George H. W. Bush, and William Clinton.

Dated: September 29, 2009.

**Sharon Thibodeau,**

*Deputy Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. E9–24038 Filed 10–5–09; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

*Learning in the Arts (application review):* October 19–23, 2009 in Room 716. A portion of this meeting, from 3:30 p.m. to 4 p.m. on October 22nd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on October 19th through 21st, from 9 a.m. to 3:30 p.m. and 4 p.m. to 5:30 p.m. on October 22nd, and from 9 a.m. to 4 p.m. on October 23rd, will be closed.

*Presenting (application review):* October 22–23, 2009 in Room 714. This meeting, from 9 a.m. to 5:15 p.m. on October 22nd and from 9 a.m. to 5 p.m. on October 23rd, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: September 30, 2009.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E9–23973 Filed 10–5–09; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Wednesday, October 14, 2009.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The Two items are open to the public.

**MATTERS TO BE CONSIDERED:**

8152—Aircraft Accident Report—Loss of Control and Impact with Water, Marlin Air Cessna Citation 550, N550BP, Milwaukee, Wisconsin, June 4, 2007

7979A—Pipeline Accident Report—Rupture of Hazardous Liquid Pipeline with Release and Ignition of Propane near Carmichael, Mississippi, on November 1, 2007

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for setup and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, October 9, 2009.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

**FOR MORE INFORMATION CONTACT:** Candi Bing, (202) 314–6403.

Dated: Friday, October 2, 2009

**Candi Bing,**

*Federal Register Alternate Liaison Officer.*

[FR Doc. E9–24198 Filed 10–2–09; 4:15 pm]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2009–0243]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment

period on this information collection on July 1, 2009.

1. *Type of submission, new, revision, or extension:* Extension with Burden Adjustment.

2. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee''.

3. *Current OMB approval number:* 3150–0090.

4. *The form number if applicable:* NRC Form 398.

5. *How often the collection is required:* On occasion and every six years (at renewal).

6. *Who will be required or asked to report:* Individuals requiring a license to operate controls at a nuclear reactor.

7. *An estimate of the number of annual responses:* 1,410 (one each per respondent).

8. *The estimated number of annual respondents:* 1,410.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,285 (2.33 hours per response).

10. *Abstract:* NRC Form 398 requests detailed information that should be submitted by a licensing applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 5, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Office of Information and Regulatory Affairs (3150–0090), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 25th day of September, 2009.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E9–24050 Filed 10–5–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–143; NRC–2009–0435]**

## Notice of Receipt of License Renewal Application From Nuclear Fuel Services, Erwin, Tennessee, and Opportunity to Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license renewal application and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by December 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Ramsey, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2–C40M, Washington, DC 20555–0001, Telephone: (301) 492–3123; Fax number: (301) 492–3359; e-mail: *kevin.ramsey@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letters dated June 30 and August 28, 2009, a request for renewal of Special Nuclear Material License No. SNM–124 from Nuclear Fuel Services, Inc. (NFS), located in Erwin, Tennessee. License No. SNM–124 authorizes NFS to manufacture reactor fuel at its fuel fabrication facility using high-enriched and low-enriched uranium. Specifically, the request would authorize NFS to continue licensed activities for 40 years.

An administrative review, documented in a letter to NFS dated September 3, 2009, found the application acceptable to begin a formal technical review. If the NRC approves the request, the approval will be documented in NRC License No. SNM–124. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

### II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application to renew Material License No. SNM–124 at NFS' fuel fabrication facility located in Erwin, Tennessee. Any person whose interest may be affected by this proceeding and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E-filing rule. The E-filing rule requires participants to submit and serve 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/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public website at *http://www.nrc.gov/site-help/e-submittals/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 website 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 website 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, in accordance with 10 CFR 2.302(g), file a motion 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, the presiding officer, or 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 social security 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 submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by December 7, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, environmental report, or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental assessment, environmental impact statement, or any supplements relating thereto that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical

Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

**III. Further Information**

Documents related to this action, including the application for amendment and other supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1. ML091900061: License Renewal Application dated June 30, 2009.

2. ML092450469: Additional Information for License Renewal dated August 28, 2009.

3. ML091450265: Acceptance of Application for Technical Review dated September 3, 2009.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.Resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. 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, Maryland 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@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the 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) The requester has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requester satisfies both D.(1) and D.(2) above, the NRC staff will notify the requester in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requester no later than 25 days after the requester is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted 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.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requester in writing, briefly stating the reason or reasons for the denial.

[1] 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] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 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 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. 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 with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

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.[3]

I. 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. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 30th day of September 2009.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

**ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding**

| Day | Event/activity |
|---|---|
| 0 ..... | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 ..... | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 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 ..... | Nuclear Regulatory Commission (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'' or no 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/Intervener reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. E9–24049 Filed 10–5–09; 8:45 am]

**BILLING CODE 7590–01–P**

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (August 28, 2007; 72 FR 49139) 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 request submitted to the NRC staff under these procedures.

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0433]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant

hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 10, 2009, to September 23, 2009. The last biweekly notice was published on September 22, 2009 (74 FR 48316).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 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. The basis for this proposed determination for each amendment request is shown below.

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 and Directives 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 O1F21, 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/requestor 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/requestor 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/requestor 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 in 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 an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should 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/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

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 an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition 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 which is available for public inspection 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 ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Genoa, Wisconsin (TAC J00359)

*Date of amendment request:* July 28, 2009.

*Description of amendment request:* The amendment application proposes changes to Technical Specifications, in support of the dry cask storage project at La Crosse Boiling Water Reactor. The application specifically proposes lower Fuel Element Storage Well water level limits and proposes changes to the definition of ''fuel handling.''

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? No.

The proposed change to the definition of FUEL HANDLING is an administrative

clarification and does not affect the operation of the plant or the postulated accidents in any way. The proposed changes to allow lower Fuel Element Storage Well (FESW) water level limits do not alter the manner in which individual fuel assemblies are moved or alter the design function of the FESW or any other structures, systems, and components used to ensure safe fuel storage. The total number of fuel assembly moves to the Dry Cask Storage System is exactly the same as that contemplated during original plant design when fuel was assumed to be transported from the plant directly to a disposal site. All of the accidents previously evaluated in the La Crosse Boiling Water Reactor (LACBWR) Decommissioning Plan have been reviewed for impact as a result of the proposed water level changes. The proposed changes do not affect the plant in such a manner that the likelihood or consequences of any previously evaluated accident is increased.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? No.

The proposed change to the definition of FUEL HANDLING is an administrative clarification and does not affect the operation of the plant in any way. The proposed changes to allow lower FESW water level limits do not alter the manner in which individual fuel assemblies are moved; or alter the design function of the FESW or any other structures, systems, and components used to ensure safe fuel storage. All of the accidents previously evaluated in the LACBWR Decommissioning Plan have been reviewed for impact as a result of the proposed water level changes. The existing accidents remain applicable and bounding for the LACBWR facility with the proposed changes in place and do not affect the plant in such a manner that a new accident has been created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety? No.

The proposed change to the definition of FUEL HANDLING is an administrative clarification and does not affect plant operation or safety margins in any way. The proposed changes to allow lower FESW water level limits do not alter the manner in which individual fuel assemblies are moved; or alter the design function of the FESW or any other structures, systems, and components used to ensure safe fuel storage. All of the accidents previously evaluated in the LACBWR Decommissioning Plan have been reviewed for impact as a result of the proposed water level changes. The likelihood and consequences of previously evaluated accidents remain applicable and bounding with the proposed changes in place; thus, safety margins remain the same.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The U.S. Nuclear Regulatory Commission (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.

*NRC Branch Chief:* Andrew Persinko.

*Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of amendment request:* July 23, 2009.

*Description of amendment request:* The proposed amendment would remove the level indicating instrument from the Technical Specification Surveillance Requirement (SR) for the refueling water storage tank, but leave the low level alarm function in the SR.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises the existing Indian Point 3 Refueling Water Storage Tank (RWST) Technical Specification (TS) Surveillance Requirement (SR) to remove the level indication function for the L–921 instrument loop. Removal of a TS SR for the level indication does not increase the probability of an accident occurring since it is not an accident initiator and does not increase the consequences of an accident since it is not performing any mitigating function and is not a post accident instrument. The proposed revision will not affect RWST lo-lo level alarm function used for operator guidance to begin sequencing to Recirculation Mode of Safety Injection during a postulated loss of coolant accident (LOCA). There will be no change in equipment qualification requirements or changes to the surveillance requirement for the lo-lo level alarm. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change removes the RWST level indication function from the RWST lo-lo level alarm surveillance requirement for the L–921 instrument loop. The proposed change does not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed change does not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change removes the RWST level indication function from the RWST io-lo level alarm surveillance requirement for the L–921 instrument loop. There is no change to the design requirements or the surveillance interval. The proposed change does not add the level indicating function elsewhere in the TS because it is a local level indication that is only used during normal operation and was never a post accident monitoring instrument. Therefore the proposed change does not involve a significant reduction in a 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.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Nancy L. Salgado.

*Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAFNPP), Oswego County, New York*

*Date of amendment request:* July 31, 2009.

*Description of amendment request:* The proposed change would revise the JAFNPP Technical Specifications (TSs) Surveillance Requirements (SR) for testing of the Residual Heat Removal (RHR) System Shutdown Cooling (SDC) mode Containment Isolation, Reactor Pressure—High Function by replacing the current requirement to perform TS SR 3.3.6.1.3, Perform Channel Calibration, with TS SR 3.3.6.1.1 Perform Channel Check, SR 3.3.6.1.2, Perform Channel Functional Test, SR 3.3.6.1.4, Calibrate the Trip Units, and SR 3.3.6.1.5, Perform Channel Calibration. These changes are to support a proposed plant modification to increase the reliability of SDC isolation logic by changing the source of the reactor high pressure input signal.

*Basis for proposed no significant hazards consideration determination:* 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the SRs that demonstrate the operability of the SDC Isolation, Reactor Pressure—High function. The current surveillance requirements include a 92-day calibration and a 24-month logic system functional test. These surveillance requirements are typical for pressure switches installed on dedicated process measurement lines. The proposed change in surveillance requirements is consistent with the use of ATTS [Analog Transmitter Trip System] transmitters installed on shared process measurement lines. The proposed surveillance requirements include the standard requirements applied to all ATTS equipment and thus will result in acceptable demonstration of the operability of the SDC Isolation Reactor Pressure—High function.

The ATTS equipment that will be used for the SDC Isolation, Reactor Pressure—High function is classified as safety related and is environmentally qualified. The logic input configuration of the ATTS equipment will be the same as the configuration of the pressure switches. This will assure the same functionality currently performed by the pressure switches currently used for the SDC Isolation Reactor Pressure—High function. The reliability of the ATTS has been proven in other RPS [Reactor Protection System], PCIS [Primary Containment Isolation System], and ECCS [Emergency Core Cooling System] functions and is comparable to the reliability of the pressure switches that currently perform the SDC Isolation, Reactor Pressure—High function. Therefore, the consequences of any accident mitigated by the SDC Isolation, Reactor Pressure—High function will not increase.

Based on these considerations, the proposed surveillance requirement changes do not involve a significant increase in the probability or consequences of an accident 'previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change aligns the TS surveillance requirements with the type of equipment that will be used to supply the reactor pressure input to the SDC Isolation Reactor Pressure—High logic. Since the transmitters that will be used to supply the reactor pressure input are currently installed equipment there are no new accidents introduced by the equipment. The proposed change in SRs aligns the requirements with the—requirements currently imposed on the equipment in other JAF TS applications. The performance of the SDC Isolation, Reactor Pressure—High function, is not altered by changing the input source for reactor pressure parameter. Redundant power sources within the ATTS assure the functionality of the system during all plant operating modes that require the SDC Isolation, Reactor Pressure—High function. The proposed change will not introduce any new failure modes and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The TS surveillance requirements that will be imposed on the SDC Isolation, Reactor Pressure—High function reflect the equipment that will perform that function. The proposed change in surveillance requirements will appropriately demonstrate the operability of the SDC Isolation, Reactor Pressure—High function.

Since the proposed changes to the SRs are consistent with the SRs for ATTS transmitters in other RPS, PCIS, and ECCS applications the proposed requirements have been demonstrated to provide an adequate margin of safety. 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.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Nancy L. Salgado.

*Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas*

*Date of amendment request:* August 5, 2009.

*Description of amendment request:* Current Technical Specification (TS) 5.5.8, ''Inservice Testing Program,'' contains references to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI as the source of requirements for the inservice testing (IST) of ASME Code Class 1, 2, and 3 pumps and valves. The proposed amendment would delete the references to Section XI of the Code and incorporate references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code). The proposed amendment would also indicate that there may be some nonstandard frequencies utilized in the IST Program in which the provisions of Surveillance Requirement 3.0.2 are applicable. The proposed changes are consistent with Technical Specification Task Force (TSTF) Technical Change Travelers 479–A, ''Changes to Reflect Revision to 10 CFR 50.55a,'' and 497–A, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS 5.5.8, Inservice Testing Program, for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code which is consistent with the expectations of 10 CFR 50.55(a).

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. The proposed change does not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change does not introduce a new accident initiator, accident precursor, or malfunction mechanism. Therefore, this proposed change does not create the possibility of an accident or a different kind than previously evaluated.

3. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS 5.5.8, Inservice Testing Program, for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code, which is consistent with the expectations of 10 CFR 50.55a. The safety function of the affected pumps and valves are maintained. Therefore, this proposed change does not involve a significant reduction in a 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.

*Attorney for licensee:* Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

*NRC Branch Chief:* Michael T. Markley.

*Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Date of amendment request:* July 30, 2009.

*Description of amendment request:* The proposed amendment would delete Technical Specification (TS) Section 3.6.3.1, ''Containment Atmosphere Dilution (CAD) System,'' to modify containment combustible gas control requirements as permitted by Title 10 of the *Code of Federal Regulations,* Part 50 Section 50.44 (10 CFR 50.44). 10 CFR 50.44 was revised on September 16, 2003, as noticed in the **Federal Register** (68 FR 54123).

The Nuclear Regulatory Commission (NRC) staff issued a ''Notice Of Opportunity To Comment On Model Safety Evaluation, Model No Significant Hazards Determination, And Model Application For Licensees that Wish To Adopt TSTF–478, Revision 2, 'BWR [Boiling-Water Reactor] Technical Specification Changes that Implement the Revised Rule for Combustible Gas Control,'' in the **Federal Register** on October 11, 2007 (72 FR 57970). The notice included a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination. On November 21, 2007, the NRC staff issued a notice in the **Federal Register** (72 FR 65610) announcing that the model SE and model NSHC determination may be referenced in plant-specific applications to adopt the changes. In its application dated July 30, 2009, the licensee affirmed the applicability of the model NSHC determination which is presented below.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The Containment Atmosphere Dilution (CAD) system is not an initiator to any accident previously evaluated. The TS Required Actions taken when a drywell cooling system fan is inoperable are not initiators to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased.

The revised 10 CFR 50.44 no longer defines a design-basis accident (DBA) hydrogen release and the Commission has subsequently found that the DBA loss-of-coolant accident (LOCA) hydrogen release is not risk significant. In addition, CAD has been determined to be ineffective at mitigating hydrogen releases from the more risk significant beyond DBAs that could threaten containment integrity. Therefore, elimination of the CAD system will not significantly increase the consequences of any accident previously evaluated. The consequences of an accident while relying on the revised TS Required Actions for drywell cooling system fans are no different than the consequences of the same accidents under the current Required Actions. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated

No new or different accidents result from utilizing the proposed change. The proposed change permits physical alteration of the plant involving removal of the CAD system. The CAD system is not an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building from any design basis event. The changes to the TS do not alter assumptions made in the safety analysis, but reflect changes to the design requirements allowed under the revised 10 CFR 50.44. The proposed change is consistent with the revised safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety

The Commission has determined that the DBA LOCA hydrogen release is not risk significant, therefore is not required to be analyzed in a facility accident analysis. The proposed change reflects this new position and, due to remaining plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, including postulated beyond design basis events, does not result in a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

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.

*Attorney for licensee:* Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Harold K. Chernoff.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* May 29, 2009.

*Description of amendment request:* The proposed amendment would: (1) Revise the definition for Operable-Operability in the FCS Technical Specifications (TS); (2) modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable; (3) delete TS limiting condition for operation (LCO) 2.0.1(2); (4) delete diesel generator surveillance requirement (SR) 3.7(1)e; and (5) relocate the guidance for inoperable power supplies and verifying operability of redundant components into the LCO for electrical equipment 2.7, *Electrical Systems.*

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to revise the definition of operable-operability, modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable, delete Technical Specification (TS) limiting conditions for operation (LCO) 2.0.1(2), and relocate the guidance for inoperable power supplies and verifying operability of redundant components into the LCO for electrical equipment is more aligned with NUREG–1432, *Standard Technical Specifications [STS] for Combustion Engineering Plants,* and does not adversely impact the probability of an accident

previously evaluated. The proposed changes are being made to address inconsistencies in guidance provided in TS 2.0.1(2) and TS 2.7(2). The proposed change does not affect the operability requirements for the emergency diesel generators (EDGs) or the house service transformers, and therefore does not impact the consequences of an analyzed accident.

The new requirement added to TS 2.7 provides assurance that a loss of offsite power during the period that an EDG (or house service transformer) is inoperable, or loss of an EDG during the period that a house service transformer is inoperable, or loss of a house service transformer during the period that an EDG is inoperable, does not result in a complete loss of safety function of critical systems; thereby such a loss does not significantly increase the probability of an accident.

Consistent with NUREG 1432, the 4-hour allowed time added to TS 2.7(2)j for the EDGs, takes into account the capacity and capability of the remaining alternating current (AC) sources, a reasonable time for repairs, and the low probability of a design basis accident (DBA) occurring during this period. On a component basis, single failure protection for the required feature's function may have been lost; however, function has not been lost.

Additionally, consistent with NUREG–1432, the 24-hour allowed time added to TS 2.7(2)b for the house service transformers takes into account the capacity and capability of the remaining AC sources, a reasonable time for repairs, and the low probability of a DBA occurring during this period.

The proposed change removes the surveillance requirement (SR) to perform an inspection of the EDG on a refueling inspection frequency in accordance with the manufacturer's recommendations. This inspection is considered a maintenance activity, not an SR, and has no impact on the probability of an accident since EDGs are not initiators for any analyzed event. Deletion of TS SR 3.7(1)e from the TS does not impact the capability of the EDGs to perform their accident mitigation functions. The required EDG maintenance inspections will continue to be performed in accordance with the licensee-controlled EDG maintenance process. The consequences of an accident are not impacted because EDG operability is controlled by other portions of TS 3.7, which ensures that required surveillances are performed. The appropriate LCOs are entered in the event that EDG surveillance criteria are not met.

As a result of redefining ''OPERABLE'' and adding the provision to TS 2.7(2)j, the statements ''provided there are no inoperable required engineered safeguards components which are redundant'' related to the electrical distribution components are being deleted from the other 2.7(2) TS for the buses, transformer, and motor control center (MCC) for clarification and consistency because these statements restrict only to engineered safeguards components. In addition, the administrative changes to renumber the existing TS sections ''TS 2.0.1(3) to 2.0.1(2)'' and TS 3.7(1)f to TS 3.7(1)e. are being made as a result of deletions to previous TS paragraphs and are being made for consistency and clarification. Rearranging the listing order of the MCCs in TS 2.7(1)f and TS 2.7(2)g in bus order clarifies the TS. As such, these editorial changes are not initiators of any accidents previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The proposed changes to TS 2.0.1(2) and TS 2.7 do not create the possibility of a new or different kind of accident since the design function of the affected equipment is not changed. No new interactions between systems or components are created. No new failure mechanisms of associated systems will exist.

By deleting TS LCO 2.0.1(2) and including the guidance in TS 2.7, inconsistencies in the existing TS will be eliminated. The new requirements added to TS 2.7 will include guidance to declare required systems or components without a normal or emergency power source available inoperable, when a redundant system or component is also inoperable. This provides assurance that a loss of offsite power, during the period that an EDG (or house service transformer) is inoperable, or loss of an EDG during the period that a house service transformer is inoperable (or vice versa), does not result in a complete loss of safety function of critical systems.

No new failure mechanisms would be created. The proposed changes do not alter any assumptions made in the safety analyses. For the most part, the proposed changes are more aligned with the STS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to delete TS 2.0.1(2) and relocate the guidance for inoperable power supplies and verifying operability of redundant components to TS LCO 2.7(2)j, to delete the statement that MCC–3C1 may be inoperable in excess of 8 hours if battery chargers No. 1 and No. 2 are operable, and to delete the SR for inspecting the DG on a refueling frequency in accordance with the manufacturer's recommendations do not alter the manner in which safety limits or limiting safety system settings are determined. The safety analysis acceptance criteria are not affected by these proposed changes. The sources of power credited for design basis events are not affected by the proposed changes.

The proposed changes to modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable, delete TS LCO 2.0.1(2), and relocate the guidance for inoperable power supplies and verifying operability of redundant components into the LCO for electrical equipment is more aligned with the STS. These changes are being made to address inconsistencies in guidance provided in TS 2.0.1(2) and TS 2.7(2). The proposed change does not reduce the operability requirements for the transformers, buses, MCCs, or EDGs and therefore will not result in plant operation in a configuration outside of the design basis.

Further, the proposed change does not change the design function of any equipment assumed to operate in the event of an accident.

Therefore, the proposed change does not involve a significant reduction in a 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.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Michael T. Markley.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES Units 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* March 24, 2009, as supplemented by letters dated April 24, and September 11, 2009.

*Description of amendment request:* The proposed change revises the allowable value in the Technical Specification (TS) Table 3.3.5.1–1 (Function 3.d) for the high-pressure coolant injection (HPCI) automatic pump suction transfer from the condensate storage tank (CST) to the suppression pool (SP). The present allowable value for this transfer is greater than or equal to 36 inches above the CST bottom. The proposed change is to increase the allowable value for this transfer to occur at greater than or equal to 40.5 inches above the CST bottom.

Additionally, the proposed amendment also includes an editorial/administrative change which corrects a typographical error in the SSES Units 1 and 2 TS Section 3.10.8.f.

*Basis for proposed no significant hazards consideration determination:* 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to TS Table 3.3.5.1–1 increases the Technical Specification allowable value for the HPCI suction low level automatic transfer function from ≥ 3 6 inches to ≥ 40.5 inches above the CST bottom. There are no process setpoint changes associated with this TS allowable value change. This TS change does not introduce the possibility of an increase in the probability or consequences of an accident because the HPCI automatic transfer function is not an initiator of any new accidents nor does it introduce any new failure modes. The CST is not safety related and therefore not credited in any design basis accident analyses. However, the CST reserve volume is credited in anticipated transients without scram (ATWS), Appendix R and station blackout (SBO) evaluations. The reserve volume available in the CST at the proposed allowable value of 40.5 inches above the CST bottom remains adequate to fully support these HPCI system support functions and the change fully supports HPCI system operation. The reserve volume is not reduced as a result of the proposed change in the TS allowable value since the transfer will still occur at the CST low level instrument setpoint of 43.5 inches above tank bottom, which remains unchanged.

The HPCI system automatic transfer function occurs at the point in a design basis accident (DBA) when the CST level reaches the low level transfer setpoint. This proposed change will require the HPCI pump suction to be transferred from the CST to the SP at 40.5 inches versus 36 inches above the CST bottom. Currently, the TS allow this transfer to occur at 36 inches. This proposed change is conservative because it assures the suction transfer will occur while there is more water in the tank, thus eliminating the possibility of vortex formation and air intrusion to the HPCI pump suction. Since this proposed change ensures the HPCI system automatic suction transfer function occurs without adversely impacting HPCI system operation, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed editorial/administrative change is necessary to correct a typographical error in the SSES Units 1 and 2 TS Section 3.10.8.f. This editorial change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As discussed above, the proposed change to TS Table 3.3.5.1–1 involves increasing the TS allowable value for the HPCI low level automatic transfer function from the CST to the SP at ≥ 36 inches to ≥ 40.5 inches above the CST tank bottom. This change ensures the HPCI automatic transfer function occurs without introducing the possibility of vortex formation or air intrusion in the HPCI pump suction path. All HPCI system support functions remain unaffected by this change. This TS change does not introduce the possibility of a new accident because the HPCI automatic transfer function is not an initiator of any accident and no new failure modes are introduced. There are no new types of failures or new or different kinds of accidents or transients that could be created by these changes. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed editorial/administrative change only corrects a typographical error in the SSES Units 1 and 2 TS Section 3.10.8.f. This editorial change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change to TS Table 3.3.5.1–1 involves increasing the allowable level at which the HPCI automatic suction transfer from the CST to the SP must occur to avoid the possibility of vortex formation or air intrusion into the HPCI pump. This change does not result in a change to the level switch setpoint, which initiates the HPCI suction transfer from the CST to the SP. Although the allowable value for the transfer is now closer to the process setpoint for activation of the level switch, this reduction in operating margin was reviewed and determined to be acceptable. The level switch setpoint tolerances were established based on historical instrument data and instrument characteristics. These tolerances provide adequate margin to the proposed TS allowable value of 40.5 inches above the CST bottom. The tolerances further ensure the transfer will occur prior to level reaching the technical specification allowable value. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The proposed editorial/administrative change only corrects a typographical error in the SSES Units 1 and 2 TS Section 3.10.8.f. This editorial change does not result in a significant reduction in a 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.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Branch Chief:* Nancy L. Salgado.

*PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of amendment request:* July 30, 2009.

*Description of amendment request:* The proposed amendment would relocate Technical Specification (TS) surveillance requirements (SRs) for the reactor recirculation system motor-generator (MG) set scoop tube stop settings to the Technical Requirements Manual (TRM). Specifically, the proposed amendment would relocate TS SR 4.4.1.1.3 to the TRM which is a licensee-controlled document. SR 4.4.1.1.3 requires that each MG set scoop tube mechanical and electrical stop be demonstrated operable with overspeed setpoints less than or equal to 109% and 107%, respectively, of rated core flow, at least once per 18 months.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The Nuclear Regulatory Commission (NRC) staff's review is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The major components in the MG set consist of a motor, fluid coupler and a generator. The motor drives the generator through the fluid coupler. The speed and output of the generator rise and fall as the volume of fluid in the coupler is varied by changing the position of the scoop tube. As the generator's output increases or decreases, the speed of the recirculation pump follows suit. The scoop tube mechanism has both mechanical and electrical overspeed stops that limit recirculation flow by limiting the MG set speed. The electrical stop actuates first. The mechanical stop is designed to prevent the scoop tube motion if the electrical stop fails or to mitigate overshoot of the electrical stop. The electrical stops are not credited in any of the accident or transient analyses. The mechanical stop settings are an input used in the determination of the flow dependent minimum critical power ratio (MCPR) and the linear heat generation rate (LHGR) or average planar linear heat generation rate (APLHGR) operating limits. These operating limits are established and documented on a cycle-specific basis in the core operating limits report (COLR) in accordance with TS 6.9.1.9. Operation within the MCPR, LGHR and APLHGR operating limits is required in accordance with TSs 3.2.3, 3.2.4, and 3.2.1, respectively.

Once relocated, any future changes to the surveillance requirements for the MG set scoop tube mechanical and electrical stop settings would be controlled by 10 CFR 50.59.

There are no physical plant modifications associated with this change. The proposed amendment would not alter the way any structure, system, or component (SSC) functions and would not alter the way the plant is operated. As such, the proposed

amendment would have no impact on the ability of the affected SSCs to either preclude or mitigate an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would not change the design function or operation of the SSCs involved and would not impact the way the plant is operated. As such, the proposed change would not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical plant modifications associated with the proposed amendment. The proposed amendment would not alter the way any SSC functions and would not alter the way the plant is operated. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the NRC staff concludes that the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

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.

*Attorney for licensee:* Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Branch Chief:* Harold K. Chernoff.

*Notice of Issuance of Amendments to Facility Operating Licenses*

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

*Date of application for amendments:* May 21, 2009.

*Brief description of amendments:* The amendments removed the Table of Contents from the Technical Specifications and place them under licensee control.

*Date of issuance:* September 21, 2009.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment Nos.:* 293 and 269.

*Renewed Facility Operating License Nos. DPR–53 and DPR–69:* Amendments revised the License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: June 30, 2009 (74 FR 31320).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 21, 2009.

No significant hazards consideration comments received: No.

Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina.

*Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.*

*Duke Power Company LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.*

*Date of application for amendments:* February 27, 2009.

*Brief description of amendments:* The amendments deleted those portions of the Technical Specifications (TSs) superseded by the *Code of Federal Regulations,* Part 26, Subpart I. The changes are consistent with Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

*Date of issuance:* September 21, 2009.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 251 and 246.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses and technical specifications.

*Amendment Nos.:* 253 and 233.

*Renewed Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the licenses and technical specifications.

*Amendment Nos.:* 365, 367, and 366.

*Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the licenses and technical specifications.

*Date of initial notices in* ***Federal Register***: August 11, 2009 (74 FR 40236) Catawba and McGuire; and August 11, 2009 (74 FR 40237) Oconee.

The Commission's related evaluation and final finding of no significant hazards consideration of the

amendments is contained in a Safety Evaluation dated September 21, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

*Date of application for amendment:* November 13, 2008, as supplemented by letters dated June 1, July 14, and August 17, 2009.

*Brief description of amendment:* The amendment modified Technical Specification 3.3.1.1, Reactor Protective Instrumentation, specifically Table 4.3–1 and associated Notes 7 and 8, to clarify and streamline Reactor Coolant System flow verification requirements associated with the Departure from Nucleate Boiling Ratio reactor trip signal.

*Date of issuance:* September 16, 2009.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 286.

*Renewed Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications/license.

*Date of initial notice in* ***Federal Register***: January 27, 2009 (74 FR 4769). The supplemental letters dated June 1, July 14, and August 17, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

*Date of application for amendment:* May 13, 2009, as supplemented by letter dated July 8, 2009.

*Brief description of amendment:* The amendment modified Technical Specification 2.1.1.1, departure from nucleate boiling ratio safety limit based upon the Combustion Engineering 16 $\times$ 16 Next Generation Fuel design and the associated departure from nucleate boiling correlations.

*Date of issuance:* September 18, 2009.

*Effective date:* As of the date of issuance and shall be implemented after the current cycle (Cycle 20) is completed and prior to startup for operating Cycle 21.

*Amendment No.:* 287.

*Renewed Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications/license.

*Date of initial notice in* ***Federal Register***: June 30, 2009 (74 FR 31321). The supplemental letter dated July 8, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

*Date of application for amendments:* July 25, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML082110187), as supplemented by letters dated October 31, 2008 (ADAMS Accession No. ML083080059), February 17, 2009 (ADAMS Accession No. ML090480372), May 8, 2009 (ADAMS Accession No. ML092380433) and July 27, 2009 (ADAMS Accession No. ML092100162).

*Brief description of amendments:* The amendments revised Technical Specification (TS) 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' Surveillance Requirement (SR) 3.3.1.1.8 and TS 3.3.1.3, ''Oscillation Power Range Monitor (OPRM) Instrumentation,'' SR 3.3.1.3.2 to increase the frequency interval between Local Power Range Monitor calibrations from 1000 effective full power hours (EFPH) to 2000 EFPH.

*Date of issuance:* September 16, 2009.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 195/182.

*Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Technical Specifications and License.

*Date of initial notice in* ***Federal Register***: January 23, 2009 (74 FR 4250–4251). The October 31, 2008, February 17, 2009, May 8, 2009, and July 27, 2009 supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration nor expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

*Date of application for amendment:* October 9, 2008, supplemented by letter dated April 2, 2009.

*Brief description of amendment:* The amendment reflects the planned installation of replacement steam generators (SGs). Specifically, the amendment modified the technical specifications to eliminate the existing requirements associated with tube sleeve repairs and alternate repair criteria which are not applicable to the replacement SGs. It also incorporated a revised primary-to-secondary leakage criterion, changes the required reporting period for SG inspection results, and incorporated revised tube integrity surveillance frequency requirements to reflect the new Alloy 690 tubing material.

*Date of issuance:* September 15, 2009.

*Effective date:* Upon installation of the replacement SGs and shall be implemented prior to exiting cold shutdown from the TMI–1 SG replacement refueling outage (T1R18), which is scheduled to begin in the fall of 2009.

*Amendment No.:* 271.

*Facility Operating License No. DPR–50:* Amendment revised the license and the technical specifications.

*Date of initial notice in* ***Federal Register***: March 10, 2009 (74 FR 10310).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2009.

No significant hazards consideration comments received: No.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

*Date of application for amendment:* January 30, 2009, as supplemented by a letter dated July 30, 2009.

*Brief description of amendment:* The amendment deleted the Duane Arnold Energy Center (DAEC) Technical Specification (TS) Section 5.2.2.e regarding work hour controls.

*Date of issuance:* September 18, 2009.

*Effective date:* As of the date of issuance and shall be implemented by October 1, 2009. *Amendment No.:* 274.

*Facility Operating License No. DPR–49:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: March 24, 2009 (74 FR 12393). The supplemental letter contained clarifying information, did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2009.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

*Date of amendment request:* October 13, 2008, as supplemented by letters dated April 8, May 29, June 12, and September 1, 2009.

*Brief description of amendment:* The amendment revised the licensing basis by approving adoption of the Alternative Source Term (AST), in accordance with Section 50.67 of Title 10 of the *Code of Federal Regulations* (10 CFR), for use in calculating the loss-of-coolant accident (LOCA) dose consequences. The amendment revised the Technical Specifications (TSs) to (1) change the TS definition for DOSE EQUIVALENT I–131 to adopt Federal Guidance Report 11 dose conversion factors; (2) require operability of the Standby Liquid Control system in Mode 3, to reflect its credit in the LOCA analysis; (3) establish a Main Steam (MS) Pathway leakage limit that effectively increases the previous MS isolation valve leakage limit; and (4) change TS Section 5.5.12 to reflect a requested permanent exemption from the requirements of 10 CFR Part 50, Appendix J, Option B, Section III.A, to allow exclusion of MS Pathway leakage from the overall integrated leakage rate measured during the performance of a Type A test, and from the requirements of Appendix J, Option B, Section III.B, to allow exclusion of the MS Pathway leakage from the combined leakage rate of the penetrations and valves subject to Type B and C tests.

*Date of issuance:* September 15, 2009.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment No.:* 234.

*Facility Operating License No. DPR–46:* Amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: January 23, 2009 (74 FR 4251). The supplemental letters dated April 8, May 29, June 12, and September 1, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2009.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

*Date of amendment request:* March 30, 2009.

*Brief description of amendment request:* The amendments revised Technical Specification (TS) by deleting the Reactor Coolant Pump breaker position reactor trip in TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation.''

*Date of Issuance:* September 18, 2009.

*Amendment Nos.:* Unit 1–183; Unit 2–176.

*Facility Operating License Nos. NPF–2 and NPF–8:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register****:* May 19, 2009 (74 FR 23448).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

*Date of application for amendment:* June 5, 2009.

*Brief description of amendment:* The amendment revised WBN Unit 1 technical specifications (TSs) to revise the completion time from 1 hour to 24 hours for Condition B of TS 3.5.1, ''Accumulators'' and its associated Bases.

*Date of issuance:* September 9, 2009.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment No.:* 81.

*Facility Operating License No. NPF–90:* Amendment revises TS 3.5.1.

*Date of initial notice in* ***Federal Register****:* June 30, 2009 (74 FR 31326).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 2009.

No significant hazards consideration comments received: No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been

issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (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/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. 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, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* 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 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.[1] 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.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

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

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 in 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 five (5) 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/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public website at *http://www.nrc.gov/site-help/e-submittals/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, the presiding officer, or 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 submission.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

*Date of application for amendment:* September 3, 2009, as supplemented on September 8, 2009.

*Brief description of amendment:* The amendment revised the Diablo Canyon Power Plant, Unit No. 2 Technical Specification (TS) 3.7.1, ''Main Steam Safety Valves (MSSVs),'' by increasing the Power Range Neutron Flux High setpoint in TS Table 3.7.1–1 from 87 percent rated thermal power (RTP) to 106 percent RTP. This will allow the unit to operate at full power with one main steam safety valve, MS–2–RV–224, inoperable for the remainder of Cycle 15.

*Date of issuance:* September 17, 2009.

*Effective date:* As of its date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 208.

*Facility Operating License No. DPR–82:* The amendment revised the Facility Operating License and Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes. A public notice of the proposed amendment was published in *The Tribune* newspaper, located in San Luis Obispo, California,

on September 11 and 12, 2009. The notice provided an opportunity to submit comments on the NRC staff's proposed NSHC determination.

The supplemental letter dated September 8, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in *The Tribune.*

The Commission's related evaluation of the amendment, finding of exigent circumstances, consideration of public comments, state consultation, and final NSHC determination are contained in a safety evaluation dated September 17, 2009.

*Attorney for licensee:* Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Branch Chief:* Michael T. Markley.

Dated at Rockville, Maryland, this 25th day of September 2009.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9–23780 Filed 10–5–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2008–0361]**

### Notice of Availability for Comment of Draft Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificates of Compliance

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of availability and opportunity to provide comments.

**DATES:** Comments must be provided by December 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ata Istar, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation Division, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 492–3409; fax number: (301) 492–3342; e-mail: *ata.istar@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Nuclear Regulatory Commission (NRC) has prepared a draft Standard Review Plan (SRP) NUREG–1927, entitled ''Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificate of Compliance.'' This draft SRP would provide guidance to the NRC staff when reviewing Safety Analyses Reports submitted by applicants for renewals of specific Independent Spent Fuel Storage Installation licenses or dry cask storage system certificates of compliance under 10 CFR part 72. This draft SRP is related to the proposed rule published in the **Federal Register** on September 15, 2009 (74 FR 47126). The NRC is soliciting public comments on this draft SRP, which will be considered before the NRC issues the final version.

**II. Further Information**

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *ata.istar@nrc.gov.*

| Interim staff guidance documents | ADAMS accession No. |
|---|---|
| Draft of SRP NUREG–1927. | ML092510340. |

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on this draft SRP should be directed to Ata Istar, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001 by December 21, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Comments can also be submitted by telephone, fax, or e-mail to the following: Telephone: (301) 492–3409; fax number: (301) 492–3342; e-mail: *ata.istar@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of September 2009.

For the U.S. Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Chief, Structural Mechanics and Materials Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9–24051 Filed 10–5–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362; NRC–2009–0439]**

### Southern California Edison Company; San Onofre Nuclear Generating Station, Unit 2 and Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a temporary exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.46 and 10 CFR 50, Appendix K, for Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison Company (SCE, the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Unit 2 and Unit 3, respectively, located in San Diego County, California. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The requirements in 10 CFR 50.46 specifically, and 10 CFR 50, Appendix K implicitly, refer to the use of Zircaloy or ZIRLO cladding. Therefore, a temporary exemption is required to use fuel rods clad with an advanced zirconium-based alloy that is not either Zircaloy or ZIRLO. Unlike the current fuel assemblies, the lead fuel assemblies (LFAs) manufactured by AREVA NP will contain M5 alloy cladding material. The licensee has requested a temporary exemption to allow the use of M5 alloy cladding.

The temporary exemption would allow up to 16 LFAs manufactured by AREVA NP with M5 alloy cladding material to be inserted into the SONGS Unit 2 or Unit 3 reactor cores during the

upcoming (Cycle 16) refueling outages for each unit. The temporary exemption would allow the LFAs to be used for up to three operating cycles (Cycles 16, 17, and 18). Currently, eight AREVA NP LFAs are scheduled for installation in SONGS Unit 2 for Cycle 16.

The proposed action is in accordance with the licensee's request for exemption dated January 30, 2009, as supplemented by letter dated March 16, 2009.

*The Need for the Proposed Action*

The proposed temporary exemption is needed by SCE to allow the use of M5 alloy clad LFAs to evaluate cladding material for use in future fuel assemblies and to provide a more robust design to eliminate grid to rod fretting fuel failures. The regulations specify standards and acceptance criteria only for fuel rods clad with Zircaloy or ZIRLO. Consistent with 10 CFR 50.46, a temporary exemption is required to use fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO. Therefore, the licensee needs a temporary exemption to insert up to 16 LFAs containing new cladding material into the SONGS Unit 2 or Unit 3 reactor cores.

*Environmental Impacts of the Proposed Action*

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present any undue risk to the public health and safety. The safety evaluation performed by Framatome ANP, Inc., ''BAW–10227P–A, Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel, Framatome Cogema Fuels, February 2000,'' demonstrates that the predicted chemical, mechanical, and material performance characteristics of the M5 cladding are within those approved for Zircaloy under anticipated operational occurrences and postulated accidents. Furthermore, the LFAs will be placed in non-limiting locations. In the unlikely event that cladding failures occur in the LFAs, the environmental impact would be minimal and is bounded by previous accident analyses.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents, does not affect any environmental resources, and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for SONGS Units 2 and 3, dated May 12, 1981.

*Agencies and Persons Consulted*

In accordance with its stated policy, on April 8, 2009, the NRC staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the California Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 30, 2009, as supplemented by letter dated March 16, 2009, Agency Documents Access and Management System (ADAMS) Accession Nos. ML090360738 and ML090780251, respectively. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of September 2009.

For the Nuclear Regulatory Commission.

**James R Hall,**

*Senior Project Manager,*

Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–24053 Filed 10–5–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act; Notice of Meetings

**DATES:** Weeks of October 5, 12, 19, 26, November 2, 9, 2009.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of October 5, 2009**

There are no meetings scheduled for the week of October 5, 2009.

*Week of October 12, 2009—Tentative*

Tuesday, October 13, 2009.

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 3)

*Week of October 19, 2009—Tentative*

There are no meetings scheduled for the week of October 19, 2009.

*Week of October 26, 2009—Tentative*

There are no meetings scheduled for the week of October 26, 2009.

*Week of November 2, 2009—Tentative*

Tuesday, November 3, 2009.

9:30 a.m.—Briefing on Fire Protection Lessons Learned from Shearon Harris (Public Meeting) (Contact: Alex Klein, 301–415–2822)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of November 9, 2009—Tentative**

Tuesday, November 10, 2009.

9:30 a.m.—Briefing on NRC International Activities (Public

Meeting), (Contact: Karen Henderson, 301 415–0202)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

**Additional Information**

The Briefing on Fire Protection Closure Plan previously scheduled on Thursday, May 28, 2009, at 9:30 a.m. has been cancelled. A more focused briefing has been scheduled in its place: The Briefing on Fire Protection Lessons Learned from Shearon Harris currently scheduled on Tuesday, November 3, 2009, at 9:30 a.m.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: October 1, 2009.

**Rochelle C. Bavol,**

*Office of the Secretary.*

[FR Doc. E9–24142 Filed 10–2–09; 4:15 pm]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2009–66; Order No. 310]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Postal Service recently filed a notice with the Commission announcing that it has entered into an additional Global Expedited Package Services Contract 2 contract. This document provides public notice of the Postal Service's filing and announces establishment of a formal docket to consider the Postal Service's action. It also invites public comment and addresses other procedural matters.

**DATES:** Comments are due October 7, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

### I. Introduction

On September 25, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.[1] GEPS 2 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to the previously submitted GEPS 2 contracts and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] *Id.* at 1.

*The instant contract.* The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 290.[3] The term of the instant contract is one year beginning October 1, 2009.[4] Notice at 2.

In support of its Notice, the Postal Service filed four attachments as follows:

1. *Attachment 1*—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;

2. *Attachment 2*—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote;

3. *Attachment 3*—a redacted copy of the contract, applicable annexes, and a provision to modify the mailer's tender requirements; and

4. *Attachment 4*—a certified statement required by 39 CFR 3015.5(c)(2).

*Functional equivalency.* The Postal Service asserts that the instant contract is functionally equivalent to the contract in Docket No. CP2009–50 and prior GEPS 2 contracts. *Id.* at 3–4. It also contends that the instant contract meets the requirements of Governors' Decision No. 08–7 for rates for GEPS contracts. *Id.* at 3. The Postal Service states that the basic difference between the contract in Docket No. CP2009–50 and the instant contract is customer-specific information including the customer's name, address, representative to receive notices, identity of the signatory, and provisions clarifying tender locations, minimum revenue and/or volume requirements, and liquidated damages. *Id.* at 3–4. The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08–7. *Id.* at 3. It asserts that the instant contract and all GEPS 2 contracts have similar cost and market characteristics and is functionally equivalent in all relevant aspects. *Id.* at 4. The Postal Service concludes that this contract is in compliance with 39 U.S.C. 3633, and requests that this contract be included within the GEPS 2 product. *Id.*

### II. Notice of Filing

The Commission establishes Docket No. CP2009–66 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than October 7, 2009. The public portions of these filings can be accessed via the

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, September 25, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

[3] *See* Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[4] *See* Docket Nos. CP2008–21 and CP2008–24, United States Postal Service Motion for Temporary Relief, September 25, 2009 (Motion). The Postal Service requests an extension of the expiration date for the original contract for this customer-based on extenuating circumstances. This motion was filed contemporaneously with the filing of this notice.

Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in this proceeding.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. CP2009–66 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than October 7, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register.**

Dated: September 30, 2009.

By the Commission.

**Judith M. Grady,**

*Acting Secretary.*

[FR Doc. E9–24002 Filed 10–5–09; 8:45 am]

**BILLING CODE 7710–FW–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before November 5, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disaster Assistance Customer Feedback Survey.

*SBA Form Number:* 2313.

*Frequency:* On Occasion.

*Description of Respondents:* SBIC Investment Companies.

*Responses:* 24,284.

*Annual Burden:* 2,014.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. E9–24003 Filed 10–5–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15c3–1, OMB Control No. 3235–0200, SEC File No. 270–197.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that the active broker-dealer respondents registered with the Commission incur an aggregate burden of 73,300 hours per year to comply with this rule.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: September 30, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23993 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 17f–1(b), OMB Control No. 3235–0032; SEC File No. 270–28.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17f–1(b) (17 CFR 240.17f–1(b)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'').

Rule 17f–1(b) under the Exchange Act requires approximately 26,000 entities in the securities industry to register in the Lost and Stolen Securities Program (''Program''). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

We estimate that 1,000 new entities will register in the Program each year. The staff estimates that the average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total burden is therefore 500 hours (1,000 times one-half) annually for all participants.

Rule 17f–1(b) is a registration obligation only. Registering under Rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Program. Reporting institutions required to register under Rule 17f–1(b) will not be kept confidential; however, the Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: September 30, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23996 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–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:*

Rule 30b1–6T, SEC File No. 270–599, OMB Control No. 3235–0652.

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 to the Office of Management and Budget for extension and approval.

Rule 30b1–6T (17 CFR 270.30b1–6T) under the Investment Company Act of 1940 (the ''Act'') is entitled: ''Weekly Portfolio Report for Certain Money Market Funds.'' The rule requires that if the market-based net asset value (''market-based NAV'') of a registered investment company, or series thereof, that is regulated as a money market fund under rule 2a–7 (17 CFR 270.2a–7) on any business day is less than $.9975 [1] that money market fund must promptly notify the Securities and Exchange Commission (''Commission'') by electronic mail and provide a portfolio schedule to the Commission within one business day. Subsequently, the money market fund must submit a portfolio schedule within two business days after the end of each week until the fund's market-based NAV at the end of the week equals or exceeds $.9975. The portfolio schedule must be sent electronically in Microsoft Excel format. The purpose of the rule is to facilitate the Commission's oversight of money market funds and ensure that the Commission receives substantially similar information to that which it received from money market funds participating in the Treasury Department's Temporary Guarantee Program for Money Market Funds (''Guarantee Program''), which had guaranteed the $1.00 share value of accounts held by investors as of September 19, 2008 in participating money market funds.[2] The Guarantee Program was established to help stabilize money market funds following a period of substantial redemptions that threatened the ability of some money market funds to maintain the $1.00 share value.[3] The program expired on September 18, 2009.

Commission staff estimates estimate, based on past experience under the Guarantee Program, that 10 money market funds are required by rule 30b1–6T to provide weekly reports disclosing certain information regarding the fund's portfolio holdings. Staff estimates that money market funds require an average of approximately 6 burden hours to compile and electronically submit the initial required portfolio holdings information, and an average of approximately 4 burden hours in subsequent reports.[4] Based on these estimates, we estimate that the annual burden will be 210 hours per money market fund that is required to provide the information and an aggregate annual burden of 2100 hours for all of the money market funds required to submit portfolio schedules.[5]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. Compliance with rule 30b1–6T is mandatory for any money market fund whose market-based NAV is less than $.9975. Responses to the disclosure requirements will be kept confidential.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens 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*.

[1] Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.,* $10.00. For convenience, we generally refer to the stable net asset value of $1.00 per share.

[2] Our staff estimates that approximately 79 percent of money market funds participated in the Guarantee Program, and that the money market funds that did not participate in the program were mostly funds that invest predominately in U.S. Treasury and U.S. Government securities.

[3] See Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), available at *http://www.treas.gov/press/releases/hp1147.htm*.

[4] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to gathering the required information.

[5] Because one report is required each week, a fund would submit 52 reports in one year. The first report would require 6 hours and subsequent reports would require 4 hours each. The difference between the hours is due to the fact that funds generally would not incur the additional start-up time applicable to the first report. The annual burden of the reporting requirement would be 210 hours (1 report × 6 hours = 6 hours, 51 reports × 4 hours = 204 hours, and 6 hours + 204 hours = 210 hours). 210 hours × 10 (the estimated number of money market funds that will be required to submit portfolio schedules under the rule each year) = 2,100 hours.

Dated: September 30, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23995 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28938; File No. 812–13030]**

## Evergreen Income Advantage Fund, et al.; Notice of Application

September 30, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a registered closed-end investment company to make periodic distributions of long-term capital gains with respect to its common shares as often as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of its preferred shares.

**APPLICANTS:** Evergreen Income Advantage Fund (''EIAF''), Evergreen Multi-Sector Income Fund (''EMSIF''), Evergreen Utilities and High Income Fund (''EUHIF''), Evergreen International Balanced Income Fund (''EIBIF''), and Evergreen Global Dividend Opportunity Fund (''EGDOF'') (each a ''Fund'' and collectively, the ''Funds''); and Evergreen Investment Management Company, LLC (the ''Investment Adviser'').

**FILING DATES:** The application was filed on October 14, 2003, and amended on October 28, 2008, June 29, 2009, and September 29, 2009.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 26, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Evergreen Income Advantage Fund, 200 Berkeley Street, Boston, MA 02116.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

### Applicants' Representations

1. Each of the Funds is a closed-end management investment company registered under the Act and organized as a Delaware statutory trust.[1] EIAF's primary investment objective is to seek a high level of income. EIAF's common shares are listed on the NYSE Amex. EIAF currently has six series of preferred shares outstanding, which are not listed on a national securities exchange. EMSIF's investment objective is to seek a high level of current income. EMSIF's common shares are listed on the NYSE Amex. EIAF currently has five series of preferred shares outstanding, which are not listed on a national securities exchange. EUHIF's investment objective is to seek a high level of current income and moderate capital growth. EUHIF's common shares are listed on the NYSE Amex. EIBIF's investment objective is to seek to provide a high level of income. EIBIF's common shares are listed on the New York Stock Exchange (''NYSE''). EGDOF's primary investment objective is to seek a high level of current income. EGDOF's common shares are listed on the NYSE. Applicants believe that the shareholders of each Fund are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy.

2. The Investment Adviser, a subsidiary of Wells Fargo, a bank holding company, is registered under the Investment Advisers Act of 1940 (''Advisers Act''). The Investment Adviser has provided investment advisory services to each Fund since its inception. Each Fund will be advised by investment advisers that are registered under the Advisers Act.

3. Applicants state that prior to relying on the order, the board of trustees (the ''Board'') of each Fund, including a majority of the members of the Board who are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), will review information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on such Fund's long-term total return (in relation to market price and net asset value (''NAV'') per common share) and the relationship between such Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV per share). Applicants state that prior to relying on the requested order the Independent Trustees also will consider what conflicts of interest the Investment Adviser and the affiliated persons of the Investment Adviser and each such Fund might have with respect to the adoption or implementation of such policy. Applicants further state that prior to relying on the requested order, and after considering such information, the Board, including the Independent Trustees, of each Fund will approve a distribution policy with respect to its Fund's common shares (the ''Plan'') and will determine that such Plan is consistent with such Fund's investment objective(s) and in the best interests of such Fund's common shareholders.

4. Applicants state that the purpose of each Fund's Plan is to permit such Fund to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of such Fund during such year. Applicants note that under the Plan, each Fund would distribute to its respective common shareholders a fixed monthly percentage of the market price of such Fund's common shares at a particular point in time or a fixed monthly percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted

[1] All registered closed-end investment companies that currently intend to rely on the order are named as applicants. Applicants request that the order also apply to each registered closed-end investment company that in the future: (a) Is advised by the Investment Adviser (including any successor in interest) or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Investment Adviser; and (b) complies with the terms and conditions of the application (included in the term ''Funds''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

from time to time. Applicants further state that the minimum annual distribution rate would be independent of each Fund's performance during any particular period, but would be expected to correlate with such Fund's performance over time. Applicants explain that except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (''Code'') for the calendar year, each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that prior to relying on the requested order, the Board will adopt policies and procedures under rule 38a-1 under the Act that are reasonably designed to ensure that all notices required to be sent to the Fund's shareholders pursuant to section 19(a) of the Act, rule 19a-1 under the Act, and condition 4 below (''19(a) Notices'') comply with condition 2.a. below, and that all other written communications by the Fund or its agents regarding distributions under the Plan include the disclosure required by condition 3.a. below. Applicants state that prior to relying on the requested order, the Board will adopt policies and procedures that require each of the Funds to keep records that demonstrate its compliance with all of the conditions of the requested order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

**Applicants' Legal Analysis**

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns underlying section 19(b) and rule 19b–1 is that shareholders might be unable to differentiate between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.,* net investment income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants also state that the same information is included in each Fund's annual reports to shareholders and similar information is included on its IRS Form 1099–DIV, which is sent to each common and, if applicable, preferred shareholder who received distributions during a particular year (including shareholders who have sold shares during the year).

4. Applicants further state that each Fund will make the additional disclosures required by the conditions set forth below, and each of them will adopt, prior to reliance on the requested order, compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is each Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Fund's compliance procedures and condition 3 set forth below will ensure that prospective shareholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, that do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds often trade in the marketplace at a discount to the funds' NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a periodic distribution plan imposes pressure on management (a) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (b) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b–1 may prevent the efficient operation of a periodic distribution plan whenever that fund's net realized long-term capital gains in any year exceed the total of the periodic distributions

that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may cause fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though net realized long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from section 19(b) and rule 19b–1 to permit each Fund to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year with respect to its common shares and, with respect to each Fund with outstanding preferred shares, to allocate to its preferred shares capital gain dividends as often as necessary in any one taxable year to comply with IRS Revenue Ruling 89–81.[3]

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. *Compliance Review and Reporting.* Each Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Investment Adviser have complied with the conditions of the order, and (ii) a material compliance matter, as defined in rule 38a–1(e)(2) under the Act, has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. *Disclosures to Fund Shareholders.*

a. Each 19(a) Notice disseminated to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

i. Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per share basis, together with the amounts of such distribution amount, on a per share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per share basis, together with the amounts of such cumulative amount, on a per share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

ii. Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' '';[4] and

(3) ''The amounts and sources of distributions reported in this 19(a)

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

[3] Applicants state that a future Fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future Fund and will be made at a future time.

[4] The disclosure in this condition 2.a.ii.(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

b. On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

i. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

ii. Include the disclosure required by condition 2.a.ii.(1) above;

iii. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

iv. Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

c. Each report provided to shareholders under rule 30e–1 under the Act and in each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. *Disclosure to Shareholders, Prospective Shareholders and Third Parties.*

a. Each Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2.a.ii. above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

b. Each Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2.a.ii. above, as an exhibit to its next filed Form N–CSR; and

c. Each Fund will post prominently a statement on its (or the Investment Adviser's) web site containing the information in each 19(a) Notice, including the disclosure required by condition 2.a.ii. above, and will maintain such information on such web site for at least 24 months.

4. *Delivery of 19(a) Notices to Beneficial Owners.* If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by a Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. *Additional Board Determinations for Funds Whose Shares Trade at a Premium.*

If:

a. A Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

b. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

i. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Investment Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its shareholders, after considering the information in condition 5.b.i.(1) above; including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5.b. above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5.b., or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

ii. The Board will record the information considered by it, including its consideration of the factors listed in condition 5.b.i.(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. *Public Offerings.* A Fund will not make a public offering of the Fund's common shares other than:

a. A rights offering below NAV to holders of the Fund's common shares;

b. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

c. An offering other than an offering described in conditions 6.a. and 6.b. above, provided that, with respect to such other offering:

i. The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[5] expressed as a percentage of NAV per share as of such

[5] If the Fund has been in operation fewer than six months, the measured period will being immediately following the Fund's first public offering.

date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [6] and

ii. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock as such Fund may issue.

7. *Amendments to Rule 19b–1.* The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–24005 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60743; File No. SR–OCC–2009–15]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Revise the Minimum Eligibility Criteria for Common Stock Loaned Through Stock Loan Programs and Deposited as Margin Collateral

September 29, 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 28, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change would revise minimum eligibility criteria applicable to common stock loaned through OCC's Stock Loan Programs and deposited as margin collateral.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to revise OCC's minimum eligibility requirements for stock borrows and loans accepted in the OCC's Stock Loan Programs and common stock accepted as margin collateral.[4]

Stock Loan Programs

OCC's clearing services involve common stock [5] in several ways. Stocks are: (i) Underlying securities for exchange-traded equity option contracts, (ii) constituent securities of stock indexes that underlie stock index options or of indexes on which underlying ETFs are based, (iii) constituent securities of ETFs that although are not underlying securities are based on indexes that underlie index options (''Index Option Related ETFs''), (iv) the subject of stock loan or borrow transactions cleared pursuant to OCC's Stock Loan Programs, and (v) deposited with OCC as margin collateral. Rationalizing the interrelationship among the criteria applied to stocks for these various purposes will maximize the potential for offsets and reduce risk in the clearing system.

Under OCC's Stock Loan Programs, only loans of stocks that are either underlying securities for options or futures or ETFs based on a stock index underlying an index option contract are eligible for clearance through OCC (collectively, ''Options-Related Stocks''). OCC restricted stock loan activity to limit its risk to loans supporting short sales that might be serving as hedges for options transactions or helping to add liquidity to the options markets. At the time this criterion was implemented in 2002, OCC managed the risk of stock loan transactions for most clearing members on a credit basis—that is OCC did not collect margin on such transactions. As noted above, OCC now requires margin on all stock loan transactions thus reducing the risk associated with this activity. Accordingly, OCC believes that it is no longer necessary or appropriate to limit stock loan transactions to Options-Related Stocks.

In connection with the foregoing change, OCC is proposing to supplement its existing criteria for stock eligible for the Stock Loan Programs by requiring that in order to qualify as an ''Eligible Stock'' for purposes of the Stock Loan Programs a stock must be a ''covered security'' as defined in Section 18(b)(1) of the Securities Act of 1933.[6] By agreement with the options exchanges, OCC already requires that all underlying stocks meet this criterion, and OCC believes that it is an appropriate minimum assurance of quality. In addition, OCC is imposing a $3 minimum share price requirement

[6] If the Fund has been in operation fewer than five years, the measured period will being immediately following the Fund's first public offering.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] This proposal furthers OCC's continuing efforts to utilize its System for Theoretical Analysis and Numerical Simulations (''STANS'') to its fullest risk-management potential resulting in lower risk to OCC while also increasing margin offset opportunities for OCC clearing members. Recent OCC rule filings with a similar objective include (i) a rule change eliminating the practice of allowing clearing members to carry stock loan and borrow positions without collecting risk margin and requiring instead that all such positions be included in the STANS margin calculation [Securities Exchange Act Release No. 59036 (December 12, 2006), 73 FR 74554 (December 8, 2008)] and (ii) a rule change (''Collateral in Margins'') providing that common stock deposited as collateral be included in the STANS calculation rather than valuing the collateral at a current market price less an arbitrary 30% haircut [Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 22, 2008)]. In addition, largely in response to market conditions, OCC recently reduced the minimum price for common stocks held as collateral from $10 to $3 and eliminated the 10% concentration test for certain ETFs held as collateral. Securities Exchange Act Release No. 59845 (April 29, 2009), 74 FR 21039 (May 6, 2009).

[5] The term ''common stock'' or ''stock'' is broadly used in this rule change to refer to different types of equity securities including ETFs but not preferred stock.

[6] ''Covered securities'' are securities that are authorized for listing on the New York Stock Exchange, the American Stock Exchange, the National Market System of the Nasdaq Stock Market (collectively, ''Exchanges''), or any other national securities exchange, or tiers thereof, that the Commission determines are substantially similar to the listing standards applicable to securities on the Exchanges. 15 U.S.C. 77r(b)(1).

that would be applicable only to stocks other than Options-Related Stocks.[7] OCC would, however, retain the ability to waive the $3 minimum price where specified other factors suggest that the stock is nevertheless suitable for inclusion in the Stock Loan Programs.

Common Stock as Collateral

Under current OCC Rule 604(b)(4), clearing members can deposit common stocks that meet the following criteria: minimum price of $3 per share and traded on a national securities exchange, or traded in the Nasdaq Global Market or the Nasdaq Capital Market. The aggregate value of margin attributed to a single stock cannot exceed 10% of a clearing member's total margin requirement. Stocks are haircut by 30% for margin valuation purposes. Stocks that have been suspended from trading by or are subject to special margin requirements under the rules of a listing market because of volatility, lack of liquidity, or similar characteristics are not eligible for deposit as margin.

Under the approved but not yet implemented Collateral in Margins program, any common stock that meets the above criteria except the minimum price requirement and that is deliverable upon exercise or maturity of a cleared contract (*i.e.,* is an underlying security), as well as index option related ETFs, will be afforded collateral value as determined by STANS. Moreover, the margin concentration requirement will be inapplicable to such deposits. Thus, upon implementation of the Collateral in Margins proposal, the minimum price requirement and margin concentration requirement would be eliminated for common stocks that are underlying securities or index option related ETFs. The minimum price requirement is being eliminated for these securities in order to provide a greater opportunity for members to hedge their equity options positions with pledges of the underlying securities. This decision also reflects OCC's judgment that the minimum price requirement is less important in the current environment where OCC is able to closely monitor collateral in the form of common stock and to apply the sophisticated risk management technique incorporated in STANS in order to determine the appropriate value to assign to such collateral. The concentration test requirement is being eliminated because STANS contains its own built-in functionality that adequately handles concentrated options and collateral holdings.

*In anticipation of the implementation of the Collateral in Margins program, and effective with such implementation, OCC proposes to further amend Rule 604(b)(4)(i) as follows:*

(1) Replace the requirement of listing on a national securities exchange or specific Nasdaq markets with the requirement that all common stocks deposited as margin must be ''covered securities'' as described above;

(2) Provide that the $3 minimum share price requirement will apply to deposits of common stocks that are not Options Related Stocks;

(3) permit OCC to waive the $3 minimum share price if it determines that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such action;

(4) delete Interpretation and Policy .13, adopted in SR–OCC–2009–08, which made the 10% concentration test inapplicable to certain ETFs because the 10% test will be eliminated for all stocks (including ETFs) when Collateral in Margins is implemented.

In addition, OCC proposes to amend Rule 1001 to provide that the determination of ''average aggregate daily margin requirement'' and ''daily margin requirement'' would be performed without reference to any deposits of securities (*e.g.,* common stocks including fund shares) that were valued within STANS pursuant to Rule 601. This change ensures that contributions to the clearing fund will be determined without taking into account any reduction in margin requirements resulting from valuing deposits of such securities under STANS. Other proposed changes to Rule 1001 are conforming or clarifying in nature.

The changes proposed in this rule filing more closely align both the stock collateral and stock loan eligibility criteria with the criteria for selection of underlying equity securities. While some differences still exist, OCC believes that the proposed discretionary authority will provide OCC with sufficient flexibility to treat equity options, stock loan transactions, and stock collateral in a consistent manner when appropriate. For example, the $3 minimum price requirement is similar or identical to requirements contained in the equity options listing criteria of the options exchanges. In addition, the factors that OCC proposes to be considered in determining whether an exception to the $3 minimum may be granted are consistent with those reflected in such criteria. These factors are widely regarded as among the most relevant in determining whether a stock is liquid.

STANS's functionality permits OCC to propose there changes. STANS considers a security's historical price volatility in generating its simulated market moves resulting in coverage parameters that vary based on the overall risk of a particular underlying security. STANS also identifies and addresses concentrated positions. By incorporating equity options positions, stock loan positions, and upon implementation of the Collateral in Margins changes common stock deposits within a single concentration analysis, OCC can identify where hedged positions exist and can also identify areas of cumulative exposure where additional collateral may be appropriate (*e.g.,* where a clearing member has long options, stock loan positions, and margin deposits all relating to the same security).

Upon Commission approval, OCC proposes to implement the changes to stock loan eligibility criteria immediately. OCC proposes that the changes in eligibility criteria for common stock deposited as margin be implemented concurrently with implementation of the Collateral in Margins program, which is currently scheduled for implementation in the fourth quarter 2009.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[8] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of transactions in securities and safeguard assets within OCC's custody or control by facilitating appropriate offsets among equity options, stock loan and borrow positions, and stock collateral that are held in a single clearing member account thereby increasing market efficiency without increasing risk.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none

[7] This minimum price requirement corresponds to the minimum price standard contained in the criteria used by the options exchanges for initial selection of underlying securities that are also ''covered securities''

[8] 15 U.S.C. 78q–1.

have been received. OCC will notify the Commission of any written comments received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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 Commissions 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–OCC–2009–15 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–OCC–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, D.C. 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the OCC and on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_09_15.pdf.* 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–OCC–2009–15 and should be submitted on or before October 27, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23992 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60741; File No. SR–NYSEAmex–2009–45]**

## Self-Regulatory Organizations; NYSE Amex LLC; Order Approving Proposed Rule Change Amending Rule 476A (Imposition of Fines for Minor Violation(s) of Rules)

September 29, 2009.

On July 29, 2009, NYSE Amex LLC (''NYSE Amex'' 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 amending its Minor Rule Plan (''MRP'') to incorporate additional violations into the MRP and to increase the fine levels for certain MRP violations. The proposed rule change was published for comment in the **Federal Register** on August 26, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend its MRP to incorporate violations for opening transactions in restricted classes, failure to report position and account information, and failure to complete mandatory annual training. The Exchange proposes to implement a fine schedule for Amex Options Trading Permit (''ATP'') Holders that effect opening transactions in restricted series of options, inconsistent with the terms of any such restriction, in violation of Rule 916 or 916C. This fine will consist of $1,000 for the first violation during a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation during the same period. The Exchange also proposes to incorporate violations for failing to accurately report position and account information to the Exchange on a Large Option Position Report (''LOPR'') pursuant to Rules 906(a) and 906C(a). This fine will consist of $1,000 for the first violation in a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation within the same period. The Exchange believes that, in most cases, violations of trading in restricted classes and violations of LOPR reporting may be handled efficiently through the MRP. However, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.[4] The Exchange also proposes to implement a fine schedule for individuals who fail to complete a mandatory regulatory training program in violation of Rule 50, Commentary .03–.04. This fine will consist of $1,000 for the first violation in a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation within the same period.

The Exchange also proposes to increase fines for violations of NYSE Amex Rules 933NY(a),[5] 935NY,[6] and 963NY[7] to $1,000 for the first violation in a rolling 24-month period, $2,500 for

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60520 (August 18, 2009), 74 FR 43176 (''Notice'').

[4] *See* Notice, *supra* note 3, 74 FR at 43177.

[5] NYSE Amex Rule 933NY(a) requires that a Floor Broker handling an order use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.

[6] NYSE Amex Rule 935NY states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the User has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer.

[7] NYSE Amex Rule 963NY states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 963NY also contains certain provisions related to split-price priority and priority of complex orders.

a second violation within the same period, and $5,000 for a third violation within the same period. The MRP currently provides for fines of $1,000 for the first violation of Rule 933NY(a) in a rolling 24-month period, $2,500 for a second violation within the same period, and $3,500 for a third violation within the same period. The MRP currently provides for fines of $500 for the first violation of Rule 935NY in a rolling 24-month period, $1,000 for a second violation within the same period, and $2,500 for a third violation within the same period. The MRP currently provides for a fine of $500 for the first violation of Rule 963NY in a rolling 24-month period, $1,000 for a second violation within the same period, and $2,000 for a third violation within the same period. The Exchange believes that, given the nature of these violations, the current fine levels are inadequate, and that increased fines for these violations are needed to deter future violations.[8]

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[11] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[12] which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Amex rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under NYSE Amex Rule 476.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[13] and Rule 19d–1(c)(2) under the Act,[14] that the proposed rule change (SR–NYSEAmex–2009–45) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23991 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60744; File No. SR–NYSEAmex–2009–62]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 900.3NY

September 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 900.3NY to (i) offer PNP Blind orders to its Participants and (ii) make technical corrections to the numbering of Rule 900.3NY. 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex has an existing order type known as PNP (Post No Preference)[5] which is a limit order that is only to be executed on the Exchange, and may be ranked in the Consolidated Book if not marketable, but is never to be routed. A PNP order that is marketable against the NBBO when entered is cancelled back to the entering ATP Holder.

Certain ATP Holders have asked for a similar order type that will also not route if marketable against the NBBO, but, unlike a PNP order, will not be cancelled if similarly marketable.

A PNP Blind order is a limit order that is to be executed on the Exchange, but never routed to another market. The

[8] *See* Notice, *supra* note 3, 74 FR at 43178.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[12] 17 CFR 240.19d–1(c)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 240.19d–1(c)(2).

[15] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Amex Rule 900.3NY(p).

unexecuted portion of a PNP Blind order is to be ranked in the Consolidated Book. Unlike a conventional PNP order, a PNP Blind Order that is marketable against the NBBO will not be cancelled; however, the price and size will not be disseminated to OPRA. If the NBBO moves so that the PNP Blind Order no longer locks or crosses the NBBO, the order's price and size will be disseminated. When a PNP Blind order is not displayed, it provides price improvement to any incoming contra-side order. A PNP Blind order will be executed at its limit price, if displayed, or at a price that matches the contra side of the NBBO, if undisplayed.

The Exchange believes that the implementation of the aforementioned rule change modifying NYSE Amex order entry options will preserve order execution opportunities on the NYSE Amex market, provide greater control over the circumstances of executions, and provide an opportunity for enhanced executions.

The Exchange is also making technical corrections to the numbering of the subparagraphs in Rule 900.3NY.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it 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, by providing investors with additional order types that allow greater flexibility in maintaining compliance with the rules, or providing an opportunity for enhanced executions, or managing the circumstances in which their orders are executed.

*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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request.[8] The proposed rule is identical to that in use by NYSE Arca, Inc. (''NYSE Arca'')[9] and does not raise any novel or significant issues. Therefore, the Commission believes that waiving the 30-day period to allow the proposed rule change to become operative upon filing is consistent with the protection of investors and the public interest and designates the proposal as 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. Comments may be submitted by any of the following methods:

**Electronic Comments**

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2009–62 on the subject line.

**Paper Comments**

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE Amex'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–NYSEAmex–2009–62 and should be submitted on or before October 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23994 Filed 10–5–09; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b 4(f)(6). In addition, Rule 19b 4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has provided such a notice.

[8] 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).

[9] *See* NYSE Arca Rule 6.62(u); *see also* Securities Exchange Act Release No. 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (amending Rule 6.62 to provide additional order types).

[10] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submion@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 7, 2009. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Response to Notice of Revised Determination—20 CFR 404.913–.914, 404.992(b), 416.1413–.1414 and 416.1492(d)–0960–0347.* When SSA determines that (1) claimants for initial disability benefits do not actually have a disability or (2) current disability recipients' disability ceased, the agency must notify the disability claimants/recipients of this decision. In response to this notice, the affected claimants and disability recipients have the following recourse: (1) They may request a disability hearing to contest SSA's decision, and (2) they may submit additional information or evidence for SSA to consider. Disability claimants, recipients, and their representatives use Form SSA–765, the Response to Notice of Revised Determination, to accomplish these two actions. The respondents are disability claimants, current disability recipients, or their representatives.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,925.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 963 hours.

2. *Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148–0960–0456.* SSA uses the information from Form SSA–8011–F3, to determine whether the claimant or recipient receives in-kind support and maintenance. This is necessary to determine the claimant or recipient's eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. SSA does not use this form for all claims and post eligibility determinations. SSA uses this form only in cases where SSA needs the householder's (head of household) corroboration of in-kind support and maintenance. Respondents are householders where an SSI applicant or recipient resides.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 400,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 100,000 hours.

3. *Request for Reinstatement (Title II)—20 CFR 404.1592b–404.1592f–0960–0742.* Through Form SSA–371, SSA obtains a signed statement from individuals stating a request for Expedited Reinstatement (EXR) of their Title II disability benefits, and proof the requestor meets the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the individual's awareness of the EXR requirements and their choice to request EXR. Respondents are individuals requesting expedited reinstatement of his or her Title II disability benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 10,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2 minutes.

*Estimated Annual Burden:* 333 hours.

4. *Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d–0960–0744.* Through the SSA–372, SSA obtains a signed statement from individuals stating a request for Expedited Reinstatement (EXR) of their Title XVI SSI payments, and proof the requestor meets the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the individual's awareness of the EXR requirements and their choice to request EXR. Respondents are individuals requesting expedited reinstatement of his or her Title XVI SSI payments.

*Type of Request:* Revision of an OMB approved information collection.

*Number of Respondents:* 2,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2 minutes.

*Estimated Annual Burden:* 67 hours.

II. SSA has submitted the information collections we list below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 5, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Continuing Disability Review Report—20 CFR 404.1589, 416.989–0960–0072.* SSA may conduct a review to determine whether individuals receiving disability benefits are still entitled to or eligible for those benefits. SSA uses Form SSA–454 to collect the information it needs to complete the review for continued disability from recipients or from their representatives. SSA conducts reviews on a periodic basis depending on the respondent's disability. We obtain information on sources of medical treatment, participation in vocational rehabilitation programs (if any), attempts to work (if any), and the opinions of individuals regarding whether their conditions have improved. The respondents are Title II and/or Title XVI disability recipients or their representatives.

*Type of Request:* Revision of an OMB approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Total annual burden (hours) |
|---|---|---|---|---|
| SSA–454–BK | 258,700 | 1 | 60 | 258,700 |
| SSA–454–ICR | 300 | 1 | 30 | 150 |
| EDCS Interview | 300 | 1 | 30 | 150 |
| Total | 259,300 | ..... | ..... | 259,000 |

Dated: September 30, 2009.

**Elizabeth A. Davidson,**

*Director, Center for Reports Clearance, Social Security Administration.*

[FR Doc. E9–24054 Filed 10–5–09; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 6777]**

## Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2011) Visa Program

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** This public notice provides information on how to apply for the DV–2011 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

### Instructions for the 2011 Diversity Immigrant Visa Program (DV–2011)

The congressionally mandated Diversity Immigrant Visa Program (DV–2011) is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) amended INA 203 and provides for a class of immigrants known as ''diversity immigrants.'' Section 203(c) of the INA provides a maximum of 55,000 Diversity Visas (DVs) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for DVs. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the period of the past five years. Within each region, no single country may receive more than seven percent of the available DVs in any one year.

For DV–2011, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the United States in the previous five years:

Brazil, Canada, China (Mainland-Born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, South Korea, United Kingdom (Except Northern Ireland) and Its Dependent Territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible. For DV–2011, no countries have been added or removed from the previous year's list of eligible countries.

The Department of State implemented the electronic registration system beginning with DV–2005 in order to make the DV process more efficient and secure. The Department utilizes special technology and other means to identify those who commit fraud for the purposes of illegal immigration or who submit multiple entries.

### DV Registration Period

Entries for the DV–2011 DV Lottery must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT–4), Friday, October 2, 2009, and noon, Eastern Standard Time (EST) (GMT–5) Monday, November 30, 2009. Applicants may access the electronic Diversity Visa (E–DV) Entry Form at *http://www.dvlottery.state.gov* during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in Web site delays. No entries will be accepted after noon, EST, on November 30, 2009.

### Requirements for Entry

To enter the DV lottery, you must be a native of one of the listed countries. See ''List of Countries by Region Whose Natives Qualify.'' In most cases, this means the country in which you were born. However, there are two other ways you may be able to qualify. First, if you were born in a country whose natives are ineligible but your spouse was born in a country whose natives are eligible, you can claim your spouse's country of birth, provided both you and your spouse are on the selected entry, are issued visas, and enter the United States simultaneously. Second, if you were born in a country whose natives are ineligible, but neither of your parents was born there or resided there at the time of your birth, you may claim nativity in one of your parents' country of birth, if it is a country whose natives qualify for the DV–2011 program.

To enter the lottery, you must meet either the education or work experience requirement of the DV program. You must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's *O*Net OnLine* database will be used to determine qualifying work experience. For more information about qualifying work experience, see Frequently Asked Question #13. If you cannot meet either of these requirements, you should not submit an entry to the DV program.

### Procedures for Submitting an Entry to DV–2011

The Department of State will only accept completed E–DV Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period between noon, EDT (GMT–4), Friday, October 2, 2009 and noon, EST (GMT–5) Monday, November 30, 2009.

All entries by an individual will be disqualified if more than ONE entry for that individual is received, regardless of who submitted the entry. You may prepare and submit your own entry, or have someone submit the entry for you.

A successfully registered entry will result in the display of a confirmation screen containing your name and a

unique confirmation number. You may print this confirmation screen for your records using the print function of your web browser. Starting July 1, 2010, you will be able to check the status of your DV–2011 entry by returning to the Web site and entering your unique confirmation number and personal information.

Paper entries will not be accepted.

*It is very important that all required photographs be submitted.* Your entry will be disqualified if all required photographs are not submitted. Recent photographs of the following people must be submitted electronically with the E–DV Entry Form: You; your spouse; each unmarried child under 21 years of age at the time of your electronic entry, including all natural children as well as all legally-adopted children and stepchildren, even if a child no longer resides with you or you do not intend for a child to immigrate under the DV program. You do not need to submit a photo for a child who is already a U.S. citizen or a Legal Permanent Resident.

Group or family photographs will not be accepted; there must be a separate photograph for each family member. Failure to submit the required photographs for your spouse and each child listed will result in an incomplete entry to the E–DV system. The entry will not be accepted and must be resubmitted. Failure to enter the correct photograph of each individual in the case into the E–DV system will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

A digital photograph (image) of you, your spouse, and each child must be submitted online with the E–DV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification and visa refusal for cases in which the photographs are not recent or have been manipulated or fail to meet the specifications explained below.

**Instructions for Submitting a Digital Photograph (Image)**

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: taking a new digital image or using a digital scanner to scan a submitted photograph. Entrants may test their photos for suitability through the photo validator link on the E–DV Web site before submitting their entries. The photo validator provides additional technical advice on photo composition along with examples of acceptable and unacceptable photos.

**Compositional Specifications**

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified: The person being photographed must directly face the camera; the head of the person should not be tilted up, down, or to the side; the head height or facial region size (measured from the top of the head, including the hair, to the bottom of the chin) must be between 50 percent and 69 percent of the image's total height. The eye height (measured from the bottom of the image to the level of the eyes) should be between 56 percent and 69 percent of the image's height; the photograph should be taken with the person in front of a neutral, light-colored background; dark or patterned backgrounds are not acceptable; the photograph must be in focus; photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted; photographs of applicants wearing head coverings or hats are only acceptable if the head covering is worn because of religious beliefs, and even then, the head covering may not obscure any portion of the face of the applicant. Photographs of applicants with tribal or other headgear not specifically religious in nature will not be accepted; photographs of military, airline, or other personnel wearing hats will not be accepted.

Color photographs in 24-bit color depth are required. Photographs may be downloaded from a camera to a file on a computer, or they may be scanned to a file in the computer. If you are using a scanner, the settings must be for True Color or 24-bit color mode. Color photographs must be scanned at this setting for the requirements of the DV program. See the additional scanning requirements below.

**Technical Specifications**

The submitted digital photograph must conform to the following specifications or the system will automatically reject the E–DV Entry Form and notify the sender.

When taking a new digital image: the image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of two hundred forty kilobytes (240 KB); the minimum acceptable image resolution and dimensions are 600 pixels (width) x 600 pixels (height). Image pixel dimensions must be in a square aspect ratio (meaning the height must be equal to the width). The image color depth must be 24-bit color. [**Note:** Color photographs are required. Black and white, monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.]

Before a photographic print is scanned, it must meet the compositional specifications listed above. If the photographic print meets the print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be at least 150 dots per inch (dpi); the image file in JPEG format; the maximum image file size must be two hundred forty kilobytes (240 KB); the image resolution 600 by 600 pixels; the image color depth 24-bit color. [Note that black and white, monochrome, or grayscale images will not be accepted.]

**Information Required for the Electronic Entry**

There is only one way to enter the DV–2011 lottery. You must submit the DS 5501, the Electronic Diversity Visa Entry Form (E–DV Entry Form), which is accessible only online at *http://www.dvlottery.state.gov*. Failure to complete the form in its entirety will disqualify the entry.

**Note:** The Department of State strongly encourages applicants to complete the application without the assistance of ''Visa Consultants,'' ''Visa Agents,'' or other individuals who offer to submit an application on behalf of applicants. In many cases, these facilitators substitute their address for an applicant's address and thereby receive the selection notification instead of it being received by the actual applicant. Subsequently, the visa facilitators extort money from the selectees in order to receive the notification information that should have rightly gone directly to the DV selectee.

Those who submit the E–DV Entry Form will be asked to include the following information:

1. *Full name*—Last/family name, first name, middle name.
2. *Date of birth*—Day, Month, Year.
3. *Gender*—Male or Female.
4. City Where You Were Born.
5. *Country where you were born*—The name of the country should be that which is currently in use for the place where you were born.
6. *Country of Eligibility or Chargeability for the DV Program*—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible for the DV program, please review the instructions to see if there is another option for country of chargeability available for you. For additional information on

chargeability, please review ''Frequently Asked Question #1'' of these instructions.

7. *Entry Photograph(s)*—See the technical information on photograph specifications. Make sure you include photographs of your spouse and all your children, if applicable. *See:* Frequently Asked Question #3.

8. *Mailing Address*—In care of, address line 1, address line 2, city/town, district/country/province/state, postal code/zip code, and country.

9. Country where you live today.

10. Phone Number (optional).

11. *E-Mail Address*—Provide an e-mail address to which you have direct access. You will not receive an official selection letter at this address. However, if your entry is selected and you respond to the official letter you receive from the Kentucky Consular Center (KCC), you may receive follow-up communication from them by e-mail.

12. *What is the highest level of education you have achieved, as of today?* You must indicate which one of the following represents your own highest level of educational achievement: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master degree, (9) Some doctorate level courses, and (10) Doctorate degree.

13. *Marital Status*—Unmarried, married, divorced, widowed, legally separated.

14. *Number of Children*—Entries must include the name, date, and place of birth of your spouse and all natural children, as well as all legally adopted children and stepchildren who are unmarried and under the age of 21 on the date of your electronic entry (do not include children who are already U.S. citizens or Legal Permanent Residents), even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older are not eligible for the DV; however, U.S. law protects children from ''aging out'' in certain circumstances. If your E–DV entry is made before your unmarried child turns 21, and the child turns 21 before visa issuance, he/she may be protected from aging out by the Child Status Protection Act and be treated as though he/she were under 21 for visa-processing purposes. Failure to list all children who are eligible will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. See: Frequently Asked Question #11.

15. *Spouse Information*—Name, date of birth, gender, city/town of birth, country of birth, and photograph. Failure to list your spouse will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

16. *Children Information*—Name, date of birth, gender, city/town of birth, country of birth, and photograph: Include all children declared in question #14 above.

**Selection of Applicants**

The computer will randomly select individuals from among all qualified entries. The selected individuals will be notified by mail between May and July 2010; the notification letters will provide further instructions, including information on fees connected with immigration to the United States. Those selected in the random drawing are not notified by e-mail. Those individuals not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful entrants. Successful entrants' spouses and unmarried children under age 21 may also apply for visas to accompany or follow-to-join the principal applicant. DV–2011 visas will be issued between October 1, 2010 and September 30, 2011.

Processing of entries and issuance of DVs to successful individuals and their eligible family members MUST occur by midnight on September 30, 2011. Under no circumstances can DVs be issued or adjustments approved after this date, nor can family members obtain DVs to follow-to-join the principal applicant in their case in the United States after this date.

In order to receive a DV to immigrate to the United States, those chosen in the random drawing must meet ALL eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing for natives of some countries listed in this notice, including, but not limited to, countries identified as state sponsors of terrorism.

**Important Notice**

No fee is charged for the electronic lottery entry in the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV entries do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the entrant's discretion.

A qualified electronic entry submitted directly by an applicant has an equal chance of being randomly selected by the computer at the KCC as does a qualified electronic entry received from an outside intermediary on behalf of the applicant. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

**Frequently Asked Questions About E–DV Registration**

*1. What Do the Terms ''Eligibility,'' ''Native,'' and ''Chargeability'' Mean? Are There Any Situations in Which Persons Who Were Not Born in a Qualifying Country May Apply?*

Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. ''Native'' ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. For immigration purposes, ''native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the INA. For example, if you were born in a country that is not eligible for this year's DV program, you may claim chargeability to the country where your derivative spouse was born, but you will not be issued a DV–1 unless your spouse is also eligible for and issued a DV–2, and both of you must enter the United States together with the DVs. In a similar manner, a minor dependent child can be ''charged'' to a parent's country of birth.

Finally, if you were born in a country not eligible to participate in this year's DV program, you can be ''charged'' to the country of birth of either of your parents as long as neither parent was a resident of the ineligible country at the time of the your birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country, studying in the country temporarily, or stationed temporarily in the country for business or professional reasons on behalf of a company or government from a country other than the country in which the applicant was born. If you claim alternate chargeability, you must indicate such information on the E–DV Entry Form in question #6. Please be aware that listing an incorrect country of eligibility or chargeability (i.e., one to which you cannot establish a valid claim) may disqualify your entry.

*2. Are There Any Changes or New Requirements in the Application Procedures for This DV Registration?*

Yes, you must provide an e-mail address this year as part of your entry, it is no longer optional. If you are selected, you will still receive an official letter from the KCC by regular mail, but KCC may send other communication to you by e-mail. Please provide a personal e-mail address that you can access, rather than using someone else's address or a standard company address. All other requirements for DV–2011 remain the same as for the previous year. The Entry Status Check will be available for DV–2011 beginning July 1, 2010. If you applied for the DV–2010 program, you may check the status of your entry until the end of June 2010.

*3. Are Signatures and Photographs Required for Each Family Member, or Only for the Principal Entrant?*

Signatures are not required on the E–DV Entry Form. Recent and individual photographs of you, your spouse, and all children under 21 years of age are required. Family or group photographs are not accepted. Refer to information on the photograph requirements located in this notice.

*4. Why Do Natives of Certain Countries Not Qualify for the DV Program?*

DVs are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the United States. The law states that no DVs shall be provided for natives of ''high admission'' countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the period of the previous five years. Each year, the U.S. Citizenship and Immigration Services (USCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives will be ineligible for the annual diversity lottery. Because there is a separate determination made before each annual E–DV entry period, the list of countries whose natives are not eligible may change from one year to the next.

*5. What Is the Numerical Limit for DV–2011?*

By law, the U.S. DV program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–1999, and for as long as necessary, up to 5,000 of the 55,000 annually allocated DVs will be made available for use under the NACARA program. The actual reduction of the limit by up to 5,000 DVs began with DV–2000 and is likely to remain in effect through the DV–2011 program.

*6. What Are the Regional DV Limits for DV–2011?*

USCIS determines the DV regional limits for each year according to a formula specified in Section 203(c) of the INA. Once the USCIS has completed the calculations, the regional visa limits will be announced.

*7. When Will Entries for the DV–2011 Program Be Accepted?*

The DV–2011 entry period will run through the registration period listed above. Each year, millions of people apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful individuals. Holding the entry period during October, November, and December will ensure that selectees are notified in a timely manner, and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance. You are strongly encouraged to enter early in the registration period. Excessive demand at end of the registration period may slow the system down. No entries whatsoever will be accepted after noon EST Monday, November 30, 2009.

*8. May Persons Who Are in the United States Apply for the Program?*

Yes, an applicant may be in the United States or in another country, and the entry may be submitted from the United States or from abroad.

*9. Is Each Applicant Limited to Only One Entry During the Annual E–DV Registration Period?*

Yes, the law allows only one entry by or for each person during each registration period. Individuals for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals who submit multiple entries during the registration period. People submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Individuals may apply for the program each year during the regular registration period.

*10. May a Husband and a Wife Each Submit a Separate Entry?*

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either is selected, the other is entitled to derivative status.

*11. What Family Members Must I Include on My E–DV Entry?*

On your entry you must list your spouse (husband or wife), and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (*i.e.,* there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. You must list all your children who are unmarried and under 21 years of age at the time of your initial E–DV entry, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age at the time of your E–DV entry even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question #10 above.

*12. Must I Submit My Own Entry, or May Someone Act on My Behalf?*

You may prepare and submit your own entry, or have someone submit the entry for you. Regardless of whether an entry is submitted by the individual directly, or assistance is provided by an attorney, friend, relative, *etc.,* only one entry may be submitted in the name of each person and the entrant remains responsible for insuring that information in the entry is correct and complete. If the entry is selected, the notification letter will be sent only to

the mailing address provided on the entry. All entrants, including those not selected, will be able to check the status of their entry through the official DV Web site. Entrants should keep their own confirmation page information so they may independently check the status of their entry.

*13. What Are the Requirements for Education or Work Experience?*

The law and regulations require that every entrant must have at least a high school education or its equivalent or have, within the past five years, two years of work experience in an occupation requiring at least two years training or experience. A ''high school education or equivalent'' is defined as successful completion of a 12-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Only formal courses of study meet this requirement; correspondence programs or equivalency certificates (such as the G.E.D.) are not acceptable. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview.

*What Occupations qualify for the Diversity Visa Program?* To determine eligibility based on work experience, definitions from the Department of Labor's (DOL) O*Net Online Database will be used. The O*Net Online Database groups job experience into five ''job zones.'' While many occupations are listed on the DOL Web site, only certain specified occupations qualify for the DV Program. To qualify for a DV on the basis of your work experience, you must have, within the past five years, two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

*How Do I Find the Qualifying Occupations on the DOL Web site?* Qualifying DV Occupations are shown on the DOL *O*Net Online Database*. Follow these steps to find out if your occupation qualifies: Select ''Find Occupations'' and then select a specific ''Job Family.'' For example, select Architecture and Engineering and click ''GO.'' Then click on the link for the specific Occupation. Following the same example, click Aerospace Engineers. After selecting a specific Occupation link, select the tab ''Job Zone'' to find out the designated Job Zone number and SVP rating range.

*14. How Will Successful Entrants Be Selected?*

At the KCC, all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered; the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the entrant will be sent a notification letter by the KCC, which will provide visa application instructions. The KCC will continue to process the case until those selected to be visa applicants are instructed to appear for visa interviews at a U.S. consular office or until those qualifying to change status in the United States apply at a domestic USCIS office.

**Important Note:** Notifications to those selected in the random lottery are *not* sent by e-mail. Should you receive an e-mail notification about your E–DV selection, be aware that the message is not legitimate. If you are selected, you will receive an official letter from the KCC by postal mail. After you reply and begin processing your case, you may receive additional communication by e-mail from the KCC. The KCC will *not* ask you to send money to them by mail or by services such as Western Union.

*15. May Selectees Adjust Their Status With USCIS?*

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected individuals who are physically present in the United States may apply to the USCIS for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2011, since on that date registrations for the DV–2011 program expire. No visa numbers for the DV–2011 program will be available after midnight on September 30, 2011, under any circumstances.

*16. Will Entrants Who Are Not Selected Be Informed?*

All entrants, including those not selected, may check the status of their entry through the E–DV Web site and find out if their entry was or was not selected. Entrants should keep their own confirmation page information from the time of their entry until they may check the status of their entry online. Status information for DV–2011 will be available online from July 1, 2010, until June 30, 2011. (Status information for the previous DV lottery, DV–2010, is available online from July 1, 2009, until June 30, 2010.) All official notification letters are sent to the address indicated on the entry within five to seven months from the end of the application period.

*17. How Many Individuals Will Be Selected?*

There are 50,000 DV visas available for DV–2011, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the KCC to ensure that all of the available DVs are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews for the DV–2011 program will begin in October 2010. The KCC will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month, visas will be issued to those applicants who are ready for issuance during that month, visa number availability permitting. Once all of the 50,000 DVs have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2011. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the KCC computer as a selectee does not automatically guarantee that you will receive a visa. You must qualify for the visa as well.

*18. Is There a Minimum Age for Applicants To Apply for the E–DV Program?*

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

*19. Are There Any Fees for The DV Program?*

There is no fee for submitting an electronic lottery entry. DV applicants must pay all required visa fees at the time of visa application directly to the consular cashier at the embassy or consulate. Details of required DV and immigrant visa (IV) application fees will be included with the instructions sent

by the KCC to applicants who are selected.

*20. Do DV Applicants Receive Waivers of Any Grounds of Visa Ineligibility or Receive Special Processing for a Waiver Application?*

Applicants are subject to all grounds of ineligibility for IVs specified in the INA. There are no special provisions for the waiver of any ground of visa ineligibility aside from those ordinarily provided in the Act, nor is there special processing for waiver requests. Some general waiver provisions for people with close relatives who are U.S. Citizens of Lawful Permanent Resident aliens may be available to DV applicants as well, but the time constraints in the DV program will make it difficult for applicants to benefit from such provisions.

*21. May Persons Who Are Already Registered for an IV in Another Category Apply for the DV Program?*

Yes, such persons may apply for the DV program.

*22. How Long Do Applicants Who Are Selected Remain Entitled To Apply for Visas in the DV Category?*

Persons selected in the DV–2011 lottery are entitled to apply for visa issuance only during fiscal year 2011, from October 1, 2010, through September 30, 2011. Applicants must obtain the DV or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas by September 30, 2011 (the end of the fiscal year). Also, spouses and children who derive status from a DV–2011 registration can only obtain visas in the DV category between October 2010 and September 2011. Applicants who apply overseas will receive an appointment letter from the KCC four to six weeks before the scheduled appointment.

*23. If an E–DV Selectee Dies, What Happens to The DV Case?*

The death of an individual selected in the lottery results in automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV, for that entry.

*24. When Will The E–DV Entry Form Be Available?*

Online entry will be available during the registration period beginning at noon EDT (GMT–4) on October 2, 2009, and ending at noon EST (GMT–5) on November 30, 2009.

*25. Will I Be Able To Download and Save The E–DV Entry Form to a Microsoft Word Program (or Other Suitable Program) and Then Fill It Out?*

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more ''universal'' than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while online.

*26. If I Don't Have Access to a Scanner, Can I Send Photographs to My Relative in the United States To Scan the Photographs, Save the Photographs to a Diskette, and Then Mail the Diskette Back to Me To Apply?*

Yes, this can be done as long as the photograph meets the photograph requirements in the instructions and the photograph is electronically submitted with, and at the same time as, the E–DV Entry Form is submitted. The applicants must already have the scanned photograph file when they submit the entry online. The photograph cannot be submitted separately from the online application. Only one online entry can be submitted for each person. Multiple submissions will disqualify the entry for that person for DV–2011. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

*27. Can I Save the Form Online So That I Can Fill Out Part and Then Come Back Later and Complete the Remainder?*

No, this cannot be done. The E–DV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to permit up to sixty (60) minutes between when the forms are downloaded and when the entry is received by the E–DV Web site. If more than 60 minutes elapse and the entry has not been electronically received, the information already received is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. The DV–2011 instructions explain clearly and completely what information is required to fill in the form. Thus you can be fully prepared, making sure you have all of the information needed before you start to complete the form online.

*28. If the Submitted Digital Images Do Not Conform to the Specifications, the Procedures State That the System Will Automatically Reject the E–DV Entry Form and Notify the Sender. Does This Mean I Will Be Able To Resubmit My Entry?*

Yes, the entry can be resubmitted. Since the entry was automatically rejected, it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent, because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable given the nature of the Internet. If the problem can be fixed by the applicant, and the Form Part One or Two is resent within 60 minutes, there is no problem. Otherwise, the applicant will have to restart the submission process. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

*29. Will the Electronic Confirmation Notice That the Completed E–DV Entry Form Has Been Received Through the Online System Be Sent Immediately After Submission?*

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV Web site immediately. However, how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the 'Submit' button, there is no harm in pressing the 'Submit' button a second time. The E–DV system will not be confused by a situation where the 'Submit' button is hit a second time because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. However, once you receive a confirmation notice, do not resubmit your information.

*30. How Will I Know If The Notification of Selection That I Have Received Is Authentic? How Can I Confirm That I Have in Fact Been Chosen in the Random DV Lottery?*

Keep your confirmation page. You will need it to check the status of your entry yourself at the official DV Web site

after the electronic lottery is conducted (usually March). If you lose your confirmation information, you will not be able to check your DV entry status by yourself and we will not resend the confirmation page to you. If selected, you will also receive a letter from the KCC by mail sometime between May and July 2010 at the addresses listed on your E–DV entry. Only the randomly selected individuals will be notified by mail. Persons not selected may check their entry using their confirmation information through the official DV Web site, but will not receive additional official notification by e-mail or by mail. We will not resend confirmation page information to you. If you lose your confirmation page information, you will only find out if you were selected if you receive an official letter by mail. U.S. embassies and consulates will not be able to provide a list of those selected to continue the visa process.

The KCC will send the letters notifying those selected. These letters will contain instructions for the visa application process. The instructions say the selected applicants will pay all DV and IV fees in person only at the U.S. embassy or consulate at the time of the visa application. The consular cashier or consular officer immediately gives the visa applicant a U.S. Government receipt for payment. You should never send money for DV fees through the mail, through Western Union, or any other delivery service.

The E–DV lottery entries are made on the Internet, on the official U.S. Government E–DV Web site at *www.dvlottery.state.gov*. KCC sends letters only to the selected applicants. KCC, consular offices, or the U.S. Government has never sent e-mails to notify selected individuals, and there are no plans to use e-mail for this purpose for the DV–2011 program.

The Department of State's Bureau of Consular Affairs advises the public that only Internet sites including the ''.gov'' indicator are official government Web sites. Many other non-governmental Web sites (*e.g.,* using the suffixes ''.com'' or ''.org'' or ''.net'') provide immigration and visa-related information and services. Regardless of the content of non-governmental Web sites, the Department of State does not endorse, recommend, or sponsor any information or material shown at these other Web sites.

Some Web sites may try to mislead customers and members of the public into thinking they are official Web sites and may contact you by e-mail to lure you to their offers. These Web sites may attempt to require you to pay for services such as forms and information about immigration procedures, which are otherwise free on the Department of State Visa Services Web site or overseas through the U.S. embassy consular sections' Web sites. Additionally, these other Web sites may require you to pay for services you will not receive (such as fees for DV applications and visas) in an effort to steal your money. If you send in money to one of these scams, you will never see it again. Also, you should be wary of sending any personal information to these Web sites that might be used for identity fraud/theft.

*31. How Do I Report Internet Fraud or Unsolicited E–Mail?*

If you wish to file a complaint about Internet fraud, please see the econsumer.gov Web site, hosted by the Federal Trade Commission, in cooperation with consumer protection agencies from 17 nations (*http://www.econsumer.gov/english/*). You may also report fraud to the Federal Bureau of Investigation (FBI) *Internet Crime Complaint Center*. To file a complaint about unsolicited e-mail, contact the *Department of Justice Contact Us page*.

*32. If I Am Successful In Obtaining A Visa Through The DV Program, Will The U.S. Government Assist With My Airfare to the United States, Provide Assistance To Locate Housing and Employment, Provide Healthcare, or Provide Any Subsidies Until I Am Fully Settled?*

No, applicants who obtain a DV are not provided any type of assistance such as airfare, housing assistance, or subsidies. If you are selected to apply for a DV, before you can be issued a visa, you will be required to provide evidence that you will not become a public charge in the United States. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support (Form I–134) from a relative or friend residing in the United States, and/or an offer of employment from an employer in the United States.

**List of Countries by Region Whose Natives Are Eligible for DV–2011**

The lists below show the countries whose natives are eligible for DV–2011, grouped by geographic region. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for the DV–2011 program were identified by the USCIS according to the formula in Section 203(c) of the INA. The countries whose natives are not eligible for the DV program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration or ''high admission'' countries) are noted after the respective regional lists.

*Africa*

Algeria; Angola; Benin; Botswana; Burkina Faso; Burundi; Cameroon; Cape Verde; Central African Republic; Chad; Comoros; Congo; Congo, Democratic Republic of the; Cote D'Ivoire (Ivory Coast); Djibouti; Egypt; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Gambia, The; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Libya; Madagascar; Malawi; Mali; Mauritania; Mauritius; Morocco; Mozambique; Namibia; Niger; Nigeria; Rwanda; Sao Tome and Principe; Senegal; Seychelles; Sierra Leone; Somalia; South Africa; Sudan; Swaziland; Tanzania; Togo; Tunisia; Uganda; Zambia; Zimbabwe.

Persons born in the Gaza Strip are chargeable to Egypt.

**List of Countries by Region Whose Natives Are Eligible for DV–2011**

*Asia*

Afghanistan; Bahrain; Bangladesh; Bhutan; Brunei; Burma; Cambodia; East Timor; Hong Kong Special Administrative Region; Indonesia; Iran; Iraq; Israel; Japan; Jordan; Kuwait; Laos; Lebanon; Malaysia; Maldives; Mongolia; Nepal; North Korea; Oman; Qatar; Saudi Arabia; Singapore; Sri Lanka; Syria; Taiwan; Thailand; United Arab Emirates; Yemen.

*Natives of the following Asian countries are not eligible for this year's DV program:* China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. Hong Kong S.A.R., and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below. Persons born in the areas administered prior to June 1967 by Israel, Jordan and Syria are chargeable, respectively, to Israel, Jordan and Syria.

**List of Countries by Region Whose Natives Are Eligible for DV–2011**

*Europe*

Albania; Andorra; Armenia; Austria; Azerbaijan; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark (including components and dependent areas overseas); Estonia; Finland; France (including components and dependent areas overseas); Georgia; Germany; Greece; Hungary; Iceland; Ireland; Italy; Kazakhstan; Kosovo; Kyrgyzstan; Latvia; Liechtenstein; Lithuania; Luxembourg; Macedonia, the Former Yugoslav Republic; Macau Special Administrative Region; Malta; Moldova; Monaco; Montenegro; Netherlands (including components and dependent areas

overseas); Northern Ireland; Norway; Portugal (including components and dependent areas overseas); Romania; Russia; San Marino; Serbia; Slovakia; Slovenia; Spain; Sweden; Switzerland; Tajikistan; Turkey; Turkmenistan; Ukraine; Uzbekistan; Vatican City.

*Natives of the following European countries are not eligible for this year's DV program:* Great Britain and Poland. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and Turks and Caicos Islands. Note that for purposes of the DV program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

**List of Countries by Region Whose Natives Are Eligible for DV–2011**

*North America*

The Bahamas.

In North America, natives of Canada and Mexico are not eligible for this year's DV program.

*Oceania*

Australia (including components and dependent areas overseas); Fiji; Kiribati; Marshall Islands; Micronesia, Federated States of; Nauru; New Zealand (including components and dependent areas overseas); Palau; Papua New Guinea; Samoa; Solomon Islands; Tonga; Tuvalu; Vanuatu.

*South America, Central America, and the Caribbean*

Antigua and Barbuda; Argentina; Barbados; Belize; Bolivia; Chile; Costa Rica; Cuba; Dominica; Grenada; Guyana; Honduras; Nicaragua; Panama; Paraguay; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Suriname; Trinidad and Tobago; Uruguay; Venezuela.

*Countries in this region whose natives are not eligible for this year's DV program:*

Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, and Peru.

Dated: September 30, 2009.

**Janice L. Jacobs,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. E9–24077 Filed 10–5–09; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 6775]**

### Javits Report 2010

**SUMMARY:** In accordance with Section 25 of the Arms Export Control Act (AECA), as amended, 22 U.S.C. 2765, the State Department prepares an annual report to Congress (the ''Javits'' Report) regarding an arms sales proposal covering all Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) of major weapons or weapons-related defense equipment worth $7,000,000 or more, and of any other weapons or weapons-related defense equipment worth $25,000,000 or more, which are considered eligible for approval during the relevant calendar year.

**DATES:** All DCS Javits Report 2010 submissions must be received by October 23, 2009.

**FOR FURTHER INFORMATION:** Members of the public who need additional information regarding the DCS portion of the Javits Report should contact Allie Frantz, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 736–9220; or e-mail *FrantzA@state.gov*.

**SUPPLEMENTARY INFORMATION:**

The Javits Report 2010 is an Arms Sales Proposal, to Congress, which covers all sales and licensed commercial exports under the Arms Export Control Act of major weapons or weapons-related defense equipment worth $7,000,000 or more, and of any other weapons or weapons-related defense equipment worth $25,000,000 or more, which are considered eligible for approval during calendar year 2010, together with an indication of which sales and licensed commercial exports are deemed most likely to result in a letter of offer or the issuance of an export license during 2010.

Javits Report entries for proposed Direct Commercial Sales should be submitted on the DS–4048 form to *javitsreport@state.gov,* no later than October 23, 2009. The DS–4048 form and instructions are located on the DDTC's Web site at *http://www.pmddtc.state. gov/reports/javits_report.html.* Submissions should be limited to those activities for which a prior marketing license or other approval from DDTC has been authorized and ongoing contract negotiations will result in either a procurement date in 2010 or the likely award of the contract to the reporting company during 2010. To complete the DS–4048 form, the following information is required: Country to which sale or export is proposed; Category of proposed sale or export (aircraft, missile, ships, satellite, etc.); Type of activity (direct commercial sale or foreign military sale); Value of proposed sale or export and quantity of items anticipated. Include a concise description of the article to be sold or exported, including any details of what is expected to be included in the contract (maintenance, upgrade, etc.).

Dated: September 29, 2009.

**Robert S. Kovac,**

*Managing Director, Directorate of Defense Trade Controls, Department of State.*

[FR Doc. E9–24093 Filed 10–5–09; 8:45 am]

**BILLING CODE 4710–25–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Fiscal Year 2010 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year (FY) 2010 in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined and specialty sugar, and sugar-containing products.

**DATES:** *Effective Date:* October 6, 2009.

**ADDRESSES:** Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Leslie O'Connor, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

**SUPPLEMENTARY INFORMATION:** Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas (TRQs) for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas.

The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On September 25, 2009, the Secretary of Agriculture (Secretary) announced the sugar program provisions for fiscal year (FY) 2010 (Oct. 1, 2009, through Sept. 30, 2010). The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for FY 2010 of 1,117,195 metric tons* raw value (MTRV), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. USTR is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

| Country | FY 2010 Raw Cane Sugar Allocations (MTRV) |
|---|---|
| Argentina | 45,281 |
| Australia | 87,402 |
| Barbados | 7,371 |
| Belize | 11,583 |
| Bolivia | 8,424 |
| Brazil | 152,691 |
| Colombia | 25,273 |
| Congo | 7,258 |
| Costa Rica | 15,796 |
| Cote d'Ivoire | 7,258 |
| Dominican Republic | 185,335 |
| Ecuador | 11,583 |
| El Salvador | 27,379 |
| Fiji | 9,477 |
| Gabon | 7,258 |
| Guatemala | 50,546 |
| Guyana | 12,636 |
| Haiti | 7,258 |
| Honduras | 10,530 |
| India | 8,424 |
| Jamaica | 11,583 |
| Madagascar | 7,258 |
| Malawi | 10,530 |
| Mauritius | 12,636 |
| Mexico | 7,258 |
| Mozambique | 13,690 |
| Nicaragua | 22,114 |
| Panama | 30,538 |
| Papua New Guinea | 7,258 |
| Paraguay | 7,258 |
| Peru | 43,175 |
| Philippines | 142,160 |
| South Africa | 24,220 |
| St. Kitts & Nevis | 7,258 |
| Swaziland | 16,849 |
| Taiwan | 12,636 |
| Thailand | 14,743 |
| Trinidad & Tobago | 7,371 |
| Uruguay | 7,258 |
| Zimbabwe | 12,636 |

These allocations are based on the countries' historical shipments to the United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On September 25, 2009, the Secretary announced the establishment of the in-quota quantity of the FY 2010 refined sugar TRQ at 90,039 MTRV for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. This amount includes the minimum level to which the United States is committed under the WTO Uruguay Round Agreements (22,000 MTRV of which 1,656 MTRV is reserved for specialty sugar) and an additional 68,039 MTRV for specialty sugars. USTR is allocating a total of 10,300 MTRV of refined sugar to Canada, 2,954 MTRV of refined sugar to Mexico, and 7,090 MTRV of refined sugar to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Secretary has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV included in the WTO minimum plus an additional 68,039 MTRV. The first tranche of 1,656 MTRV will open October 20, 2009. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 25,000 MTRV will open on November 10, 2009. The third, fourth, and fifth tranches of 14,346 MTRV each will open on January 12, 2010, May 17, 2010 and August 24, 2010, respectively. The second, third, fourth and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to Chapter 17 of the HTS, USTR is allocating 59,250 MT to Canada. The remainder, 5,459 MT, of the in-quota quantity is available for other countries on a first-come, first-served basis.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

**Ronald Kirk,**

*United States Trade Representative.*

[FR Doc. E9–23582 Filed 10–5–09; 8:45 am]

**BILLING CODE 3190–WP–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program (NCP) submitted by the Metropolitan Airport Authority of Peoria for General Wayne A. Downing Peoria International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, herein referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). The General Wayne A. Downing Peoria International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 26, 2009. Notice of this determination was published in the **Federal Register** on July 2, 2009, 74 FR 31791.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and effected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land

uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grants agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use of navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

The submitted program included eleven proposed actions for noise mitigation on and off the airport, as applicable. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied.

On September 16, 2009, the FAA approved the General Wayne A. Downing Peoria International Airport noise compatibility program. All eleven of the recommendations of the program were approved.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office.

These determinations are set forth in detail in a Record of Approval signed by Deb Roth on September 16, 2009. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the General Wayne A. Downing Peoria International Airport.

**DATES:** *Effective Date:* The effective date of the FAAs approval of the General Wayne A. Downing Peoria International Airport noise compatibility program is September 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Hanson, Environmental Protection Specialist, CHI–603, Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7354. Documents reflecting this FAA action may also be reviewed at this same location.

Issued in Des Plaines, IL September 17, 2009.

**Jack Delaney,**

*Acting Manager, Chicago Airports District Office.*

[FR Doc. E9–23926 Filed 10–5–09; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the purchase of foreign Mobile Harbor Cranes in the Federal-aid/American Recovery and Reinvestment Act of 2009 project for the Toledo Port Authority General Cargo Facility.

**DATES:** The effective date of the waiver is October 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov.* Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

#### Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application of such requirements would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the acquisition of Mobile Harbor Cranes at the General Cargo Facility in Ohio. While funded by funds made available to the FHWA and subject to the Buy America requirements under 23 U.S.C. 313 and 23 CFR 635.410, the project is being administered by the Maritime Administration. The FHWA has coordinated this Buy America waiver for administrative convenience.

In accordance with the Division I, section 126 of the ''Omnibus Appropriations Act, 2009'' (Pub. L. 111–8), the FHWA published a notice of intent to issue a waiver on the Mobile Harbor Cranes (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=38*) on August 25, 2009. The FHWA received no comments in response to this notice which suggested that the Mobile Harbor Cranes may not be available domestically. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for the Mobile Harbor Cranes. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers for the Mobile Harbor Cranes. Thus, the FHWA concludes that a Buy America waiver is appropriate as provided by 23 CFR 635.410(c)(1).

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Ohio waiver page noted above.

**Authority:** 23 U.S.C. 313; Public Law 110–161, 23 CFR 635.410.

Issued on: September 23, 2009.

**King Gee,**

*Associate Administrator for Infrastructure.*

[FR Doc. E9–23662 Filed 10–5–09; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 09–22–C–00–ORD To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC Chicago O'Hare International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before date which is 30 days after date of publication in the **Federal Register**.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jack Delaney, Federal Aviation Administration, Acting Manager, Chicago Airports District Office, 2300 E. Devon, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Rosemarie Andolino, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, 10510 West Zemke Road, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Jack Delaney, Federal Aviation Administration, Acting Manager, Chicago Airports District Office, 2300 E. Devon, Des Plaines, Illinois 60018, (847) 294–7336. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose, use the revenue from, impose and use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 17, 2009, the FAA determined that the application to impose, use the revenue from, impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 1, 2010.

The following is a brief overview of the application.

*Proposed charge effective date:* May 1, 2026.

*Proposed charge expiration date:* April 1, 2028.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $274,750,247.

*Brief description of proposed project(s):* Remaining O'Hare Modernization Program Residential Sound Insulation.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air taxi.

Any person may inspect the application in person at the FAA Office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 2300 E. Devon, Des Plaines, Illinois 60018.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on September 21, 2009.

**Elliott Black,**

*Manager, Planning/Programming Branch, Airports Division Great Lakes Region.*

[FR Doc. E9–23942 Filed 10–5–09; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Advisory Committee to the Internal Revenue Service; Meeting

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–927–3641 (not a toll-free number). E-mail address: **public_liaison@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Wednesday, October 28, 2009 from 9 a.m. to 12 p.m. in the Main IRS Building, 1111 Constitution Avenue, NW., Room 3313, Washington, DC. Issues that may be discussed include: reporting of customer's basis in securities transactions, supplemental W–4 instructions and simplification of tax compliance—Non-resident Aliens, proposed regulations under IRC 3402(t) Withholding on Certain Payments Made by Government Entities, TIN masking on payee 1099s, reporting of payments in settlement of payment card and third party network transactions, Form SSA–7028, notice to third party of Social Security number assignment, 5500 enhancements, use of logos on substitute information returns, Section 530 relief, Barter Exchange education, back-up withholding and B–Notice, Forms 3921 and 3922, Administration's Proposals—Tax Information Reporting and withholding, expansion of e-Services, federally declared, disaster casualty losses, proposed ETA e-Channel program, Build American Bonds, Form 1098—Mortgage Interest Statement, Form 5498—Reporting for Successor Beneficiaries, Form 945–X, IRM 4.10.21—Examinations, Form 8886—Reportable Transaction Disclosure Statement, Form 1098–T—Tuition Statement, Form 1099–MISC—missing or incorrect TIN, Notice 2009–46—personal usage of employer-provided cell phones, and WHIFTS—Widely Held Fixed Investment Trusts. Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–927–3641 or **public_liaison@irs.gov.* Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Should you wish the IRPAC to consider a written statement, please call 202–927–3641, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue, NW., Washington, DC 20224 or e-mail: **public_liaison@irs.gov.*

Dated: *September 28, 2009.*

**Mark Kirbabas,**

*Branch Chief, National Public Liaison.*

[FR Doc. E9–24006 Filed 10–5–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, November 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia Robb at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, November 10, 2009, at 9:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E9–24097 Filed 10–5–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Pricing for the 2009 United States Mint Lincoln Coin and Chronicles Set

**SUMMARY:** The United States Mint is announcing the price of the 2009 United States Mint Lincoln Coin and Chronicles Set. As part of the 2009 Abraham Lincoln Commemorative Silver Dollar Program, the United States Mint is producing a limited edition collectible product capturing the life and legacy of President Abraham Lincoln. This set contains one proof 2009 Abraham Lincoln Commemorative Silver Dollar and four proof 95% copper one-cent coins featuring the four 2009 one-cent coin reverse designs. The slip-covered tri-fold case features a reproduction of a photograph of Abraham Lincoln and a reproduction of the original Gettysburg Address in Lincoln's handwriting. The 2009 United States Mint Lincoln Coin and Chronicles Set will be offered for sale on October 15, 2009, at a price of $55.95 per set.

**FOR FURTHER INFORMATION CONTACT:** B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701; Public Law 109–285, the Abraham Lincoln Commemorative Coin Act.

Dated: September 30, 2009.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E9–24062 Filed 10–5–09; 8:45 am]

**BILLING CODE 4810–02–P**

Federal Register

**Tuesday,**
**October 6, 2009**

## Part II

# Environmental Protection Agency

**40 CFR Part 60**

**Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/ Medical/Infectious Waste Incinerators; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[EPA–HQ–OAR–2006–0534; FRL–8959–9]**

**RIN 2060–A004**

## Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On September 15, 1997, EPA adopted new source performance standards (NSPS) and emissions guidelines (EG) for hospital/medical/infectious waste incinerators (HMIWI). The NSPS and EG were established under Sections 111 and 129 of the Clean Air Act (CAA or Act). In a response to a suit filed by the Sierra Club and the Natural Resources Defense Council (Sierra Club), the U.S. Court of Appeals for the District of Columbia Circuit (the Court) remanded the HMIWI regulations on March 2, 1999, for further explanation of EPA's reasoning in determining the minimum regulatory ''floors'' for new and existing HMIWI. The HMIWI regulations were not vacated and were fully implemented by September 2002. On February 6, 2007, we published our proposed response to the Court's remand. Following recent court decisions and receipt of public comments regarding the proposal, we re-assessed our response to the remand, and on December 1, 2008, we published another proposed response and solicited public comments. This action promulgates our response to the Court's remand and also satisfies the CAA Section 129(a)(5) requirement to conduct a review of the standards every 5 years.

**DATES:** The amendments to 40 CFR 60.32e, 60.33e, 60.36e, 60.37e, 60.38e, 60.39e, Table 1A and 1B to subpart Ce, and Tables 2A and 2B to subpart Ce are effective as of December 7, 2009. The amendments to 40 CFR 60.17, 60.50c, 60.51c, 60.52c, 60.55c, 60.56c, 60.57c, 60.58c, and Tables 1A and 1B to subpart Ec are effective as of April 6, 2010. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0534 and Legacy Docket ID No. A–91–61. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ketan D. Patel, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9736; fax number: (919) 541–3470; e-mail address: *patel.ketan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Organization of This Document.* The following outline is provided to aid in locating information in this preamble.

I. General Information
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B. Where Can I Get a Copy of This Document?
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VII. Relationship of the Final Action to Section 112(c)(6) of the Clean Air Act
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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E. Executive Order 13132: Federalism
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G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

## I. General Information

### *A. Does the Final Action Apply to Me?*

*Regulated Entities.* Categories and entities potentially affected by the final action are those which operate hospital/medical/infectious waste incinerators (HMIWI). The new source performance standards (NSPS) and emissions guidelines (EG) for HMIWI affect the following categories of sources:

| Category | NAICS Code | Examples of potentially regulated entities |
|---|---|---|
| Industry | 622110, 622310, 325411, 325412, 562213, 611310. | Private hospitals, other health care facilities, commercial research laboratories, commercial waste disposal companies, private universities. |
| Federal Government | 622110, 541710, 928110 | Federal hospitals, other health care facilities, public health service, armed services. |

| Category | NAICS Code | Examples of potentially regulated entities |
|---|---|---|
| State/local/Tribal Government ..... | 622110, 562213, 611310 ..... | State/local hospitals, other health care facilities, State/local waste disposal services, State universities. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action. To determine whether your facility would be affected by the final action, you should examine the applicability criteria in 40 CFR 60.50c of subpart Ec and 40 CFR 60.32e of subpart Ce. If you have any questions regarding the applicability of the final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Where Can I Get a Copy of This Document?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Judicial Review*

Under Section 307(b)(1) of the Clean Air Act (CAA or Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by December 7, 2009. Under Section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. CAA Section 307(d)(7)(B) also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under Section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

## II. Background

Section 129 of the CAA, entitled ''Solid Waste Combustion,'' requires EPA to develop and adopt new source performance standards (NSPS) and emissions guidelines (EG) for solid waste incineration units pursuant to CAA Sections 111 and 129. Sections 111(b) and 129(a) of the CAA (NSPS program) address emissions from new HMIWI, and CAA Sections 111(d) and 129(b) (EG program) address emissions from existing HMIWI. The NSPS are directly enforceable Federal regulations, and under CAA Section 129(f)(1) become effective 6 months after promulgation. Under CAA Section 129(f)(2), the EG become effective and enforceable as expeditiously as practicable after EPA approves a State plan implementing the EG but no later than 3 years after such approval or 5 years after the date the EG are promulgated, whichever is earlier.

A HMIWI is defined as any device used to burn hospital waste or medical/infectious waste. Hospital waste means discards generated at a hospital, and medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals (*e.g.,* vaccines, cultures, blood or blood products, human pathological waste, sharps). As explained in EPA's regulations, hospital/medical/infectious waste does not include household waste, hazardous waste, or human and animal remains not generated as medical waste. A HMIWI typically is a small, dual-chamber incinerator that burns on average about 800 pounds per hour (lb/hr) of waste. Smaller units burn as little as 15 lb/hr while larger units burn as much as 3,700 lb/hr, on average.

Incineration of hospital/medical/infectious waste causes the release of a wide array of air pollutants, some of which exist in the waste feed material and are released unchanged during combustion, and some of which are generated as a result of the combustion process itself. These pollutants include particulate matter (PM); heavy metals, including lead (Pb), cadmium (Cd), and mercury (Hg); toxic organics, including chlorinated dibenzo-p-dioxins/dibenzofurans (CDD/CDF); carbon monoxide (CO); nitrogen oxides ($NO_X$); and acid gases, including hydrogen chloride (HCl) and sulfur dioxide ($SO_2$). In addition to the use of pollution prevention measures (*i.e.,* waste segregation) and good combustion control practices, HMIWI are typically controlled by wet scrubbers or dry sorbent injection fabric filters (dry scrubbers).

Waste segregation is the separation of certain components of the waste stream in order to reduce the amount of air pollution emissions associated with that waste when incinerated. The separated waste may include paper, cardboard, plastics, glass, batteries, aluminum cans, food waste, or metals. Separation of these types of wastes reduces the amount of chlorine- and metal-containing wastes being incinerated, which results in lower potential emissions of HCl, CDD/CDF, Hg, Cd, and Pb.

Combustion control includes the proper design, construction, operation, and maintenance of HMIWI to destroy or prevent the formation of air pollutants prior to their release to the atmosphere. Test data indicate that as secondary chamber residence time and temperature increase, emissions decrease. Combustion control is most effective in reducing CDD/CDF, PM, and CO emissions. The 2-second combustion level, which includes a minimum secondary chamber temperature of 1800 °F and residence time of 2 seconds, is considered to be the best level of combustion control (*i.e.,* good combustion) that is applied to HMIWI. Wet scrubbers and dry scrubbers provide control of PM, CDD/CDF, HCl, and metals, but do not influence CO or $NO_X$ and have little impact on $SO_2$ at the low concentrations emitted by HMIWI. (*See* Legacy Docket ID No. A–91–61, item II–A–111; 60 FR 10669, 10671–10677; and 61 FR 31742–31743.)

The CAA sets forth a two-stage approach to regulating emissions from

incinerators. EPA has substantial discretion to distinguish among classes, types and sizes of incinerator units within a category while setting standards. In the first stage of setting standards, CAA Section 129(a)(2) requires EPA to establish technology-based emissions standards that reflect the maximum levels of control EPA determines are achievable for new and existing units, after considering costs, non-air quality health and environmental impacts, and energy requirements associated with the implementation of the standards. Section 129(a)(5) then directs EPA to review those standards and revise them as necessary every 5 years. In the second stage, Section 129(h)(3) requires EPA to determine whether further revisions of the standards are necessary in order to provide an ample margin of safety to protect public health or to prevent (taking into consideration costs, energy, safety and other relevant factors) an adverse environmental effect. *See, e.g., NRDC and LEAN* v. *EPA,* 529 F.3d 1077, 1079–80 (DC Cir. 2008) (addressing the similarly required two-stage approach under CAA Sections 112(d) and (f), and upholding EPA's implementation of same).

In setting forth the methodology EPA must use to establish the first-stage technology-based NSPS and EG, CAA Section 129(a)(2) provides that standards ''applicable to solid waste incineration units promulgated under Section 111 and this Section shall reflect the maximum degree of reduction in emissions of [certain listed air pollutants] that the Administrator, taking into consideration the cost of achieving such emissions reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing units in each category.'' This level of control is referred to as a ''maximum achievable control technology,'' or MACT, standard.

In promulgating a MACT standard, EPA must first calculate the minimum stringency levels for new and existing solid waste incineration units in a category, generally based on levels of emissions control achieved or required to be achieved by the subject units. The minimum level of stringency is called the MACT ''floor,'' and CAA Section 129(a)(2) sets forth differing levels of minimum stringency that EPA's standards must achieve, based on whether they regulate new and reconstructed sources, or existing sources. For new and reconstructed sources, CAA Section 129(a)(2) provides that the ''degree of reduction in emissions that is deemed achievable [* * *] shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator.'' Emissions standards for existing units may be less stringent than standards for new units, but ''shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).''

The MACT floors form the least stringent regulatory option EPA may consider in the determination of MACT standards for a source category. EPA must also determine whether to control emissions ''beyond-the-floor,'' after considering the costs, non-air quality health and environmental impacts, and energy requirements of such more stringent control. EPA made such MACT floor and beyond-the-floor determinations and on September 15, 1997, adopted NSPS (40 CFR part 60, subpart Ec) and EG (40 CFR part 60, subpart Ce) using this approach for entities which operate HMIWI. The NSPS and EG are designed to reduce air pollution emitted from new and existing HMIWI, including HCl, CO, Pb, Cd, Hg, PM, CDD/CDF (total, or 2,3,7,8-tetrachlorinated dibenzo-p-dioxin toxic equivalent (TEQ)), $NO_X$, $SO_2$, and opacity. The 1997 NSPS apply to HMIWI for which construction began after June 20, 1996, or for which modification began after March 16, 1998. The 1997 NSPS became effective on March 16, 1998, and apply as of that date or at start-up of a HMIWI, whichever is later. The 1997 EG apply to HMIWI for which construction began on or before June 20, 1996, and required compliance by September 2002.

On November 14, 1997, the Sierra Club and the Natural Resources Defense Council (Sierra Club) filed suit in the Court. The Sierra Club claimed that EPA violated CAA Section 129 by setting emissions standards for HMIWI that are less stringent than required by Section 129(a)(2); that EPA violated Section 129 by not including pollution prevention or waste minimization requirements; and that EPA had not adequately considered the non-air quality health and environmental impacts of the standards.

On March 2, 1999, the Court issued its opinion in *Sierra Club* v. *EPA,* 167 F.3d 658 (DC Cir. 1999). While the Court rejected the Sierra Club's statutory arguments under CAA Section 129, the Court remanded the rule to EPA for further explanation regarding how EPA derived the MACT floors for new and existing HMIWI. Furthermore, the Court did not vacate the regulations, and the regulations have remained in effect during the remand.

On February 6, 2007, EPA proposed a response to the HMIWI remand. The proposed response was based on a reassessment of information and data that were available at the time of promulgation in 1997, in light of the EPA's understanding of the Court's rulings in the *Sierra Club, National Lime Association (NLA) II, Cement Kiln Recycling Coalition (CKRC)* and other cases discussed in our 2007 proposal notice. The proposed response would have revised some of the emissions limits in both the NSPS and EG. Relative to the NSPS, the emissions limits for CO, Pb, Cd, Hg, PM, and CDD/CDF would have been revised. Relative to the EG, the emissions limits for HCl, Pb, Cd, and CDD/CDF would have been revised. EPA believed that the revised emissions limits proposed in February 2007 as a result of its response to the remand could be achieved with the same emissions control technology currently used by HMIWI to meet the 1997 rule.

On December 1, 2008, EPA re-proposed its response to the Court's remand. EPA's decision to re-propose was based on a number of factors, including further rulings by the U.S. Court of Appeals that were issued after our 2007 proposal was published. In addition, public comments regarding the 2007 proposal raised issues that, upon further consideration, we believed would best be addressed through a re-proposal. One issue regarded the use of emissions limits included in State regulations and State-issued permits as surrogates for estimated actual emissions limitations achieved. Another issue regarded EPA's previous reliance on control technology performance as the sole indicator of HMIWI performance in making MACT floor determinations, which did not necessarily account for other factors that affect emissions (*e.g.,* waste mix, combustion conditions).

As mentioned above, every 5 years after adopting a MACT standard under Section 129, CAA Section 129(a)(5) requires EPA to review and, if appropriate, revise the incinerator standards. In addition to responding to the Court's remand, today's final action constitutes the first 5-year review of the HMIWI standards.

## III. Summary of the Final Rule and Changes Since Proposal

### *A. Remand Response*

Today's final response to the remand revises the December 2008 proposed emissions limits for both the NSPS and EG. The emissions limits are being revised in response to a public comment on the December 2008 re-proposal, which requested that EPA adjust the statistical approach used to account for variability in the data and consider the distribution of the emissions data in determining the MACT floor emissions limits. The revised statistical approach results in generally higher limits compared to the December 2008 re-proposal. (*See* section IV.C.6 of this preamble for further information about this revised approach.) We expect most sources should be able to meet the revised limits using control technology already available to the industry (*e.g.,* wet scrubbers, dry scrubbers, or some combination of these controls). (*See* section IV.C.2 of this preamble for further information.) Similar to the 2008 re-proposal, the emissions limits in today's final action do not include percent reduction alternative standards, as discussed further in section IV.D.4 of this preamble.

Table 1 of this preamble summarizes the NSPS emissions limits being promulgated in this action in response to the Court remand for new HMIWI.

TABLE 1—SUMMARY OF EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR NEW HMIWI

| Pollutant (units) | Unit size [1] | Final remand response limit [2] |
|---|---|---|
| HCl (ppmv) | L | 5.1 |
| | M | 7.7 |
| | S | 15 |
| CO (ppmv) | L | 11 |
| | M | 1.8 |
| | S | 20 |
| Pb (mg/dscm) | L | 0.00069 |
| | M | 0.018 |
| | S | 0.31 |
| Cd (mg/dscm) | L | 0.00013 |
| | M | 0.0098 |
| | S | 0.017 |
| Hg (mg/dscm) | L | 0.0013 |
| | M | 0.0035 |
| | S | 0.014 |
| PM (gr/dscf) | L | 0.0080 |
| | M | 0.0095 |
| | S | 0.029 |
| CDD/CDF, total (ng/dscm) | L | 9.3 |
| | M | 0.47 |
| | S | 16 |
| CDD/CDF, TEQ (ng/dscm) | L | 0.035 |
| | M | 0.014 |
| | S | 0.013 |
| $NO_X$ (ppmv) | L | 130 |
| | M, S | 67 |
| $SO_2$ (ppmv) | L | 1.6 |
| | M, S | 1.4 |
| Opacity (%) | L, M, S | 6.0 |

[1] L = Large (>500 lb/hr of waste); M = Medium (>200 to ≤500 lb/hr of waste); S = Small (≤200 lb/hr of waste).
[2] All emissions limits are reported as corrected to 7 percent oxygen.

Table 2 of this preamble summarizes the emissions limits being promulgated in this action in response to the Court remand for existing HMIWI.

TABLE 2—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI

| Pollutant (units) | Unit size [1] | Final remand response limit [2] |
|---|---|---|
| HCl (ppmv) | L | 6.6 |
| | M | 7.7 |
| | S | 44 |
| | SR | 810 |
| CO (ppmv) | L | 11 |
| | M | 5.5 |
| | S, SR | 20 |
| Pb (mg/dscm) | L | 0.036 |
| | M | 0.018 |
| | S | 0.31 |
| | SR | 0.50 |
| Cd (mg/dscm) | L | 0.0092 |

TABLE 2—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI—Continued

| Pollutant (units) | Unit size [1] | Final remand response limit [2] |
|---|---|---|
| | M | 0.013 |
| | S | 0.017 |
| | SR | 0.11 |
| Hg (mg/dscm) | L | 0.018 |
| | M | 0.025 |
| | S | 0.014 |
| | SR | 0.0051 |
| PM (gr/dscf) | L | 0.011 |
| | M | 0.020 |
| | S | 0.029 |
| | SR | 0.038 |
| CDD/CDF, total (ng/dscm) | L | 9.3 |
| | M | 0.85 |
| | S | 16 |
| | SR | 240 |
| CDD/CDF, TEQ (ng/dscm) | L | 0.054 |
| | M | 0.020 |
| | S | 0.013 |
| | SR | 5.1 |
| $NO_X$ (ppmv) | L | 140 |
| | M, S | 190 |
| | SR | 130 |
| $SO_2$ (ppmv) | L | 9.0 |
| | M, S | 4.2 |
| | SR | 55 |
| Opacity (%) | L, M, S, SR | 6.0 |

[1] L = Large (>500 lb/hr of waste); M = Medium (>200 to ≤500 lb/hr of waste); S = Small (≤200 lb/hr of waste); SR = Small Rural (Small HMIWI >50 miles from boundary of nearest SMSA, burning <2,000 lb/wk of waste).
[2] All emissions limits are reported as corrected to 7 percent oxygen.

*B. Clean Air Act Section 129(a)(5) 5-Year Review Response*

We are promulgating our response to the remand in *Sierra Club* such that the revised MACT standards, reflecting floor levels determined by actual emissions data, would be more stringent than what we proposed in 2007 for both the remand response and the 5-year review, with the exceptions noted and discussed in sections IV.A. and IV.B of this preamble. Consequently, we believe that our obligation to conduct a 5-year review based on implementation of the 1997 emissions standards will also be fulfilled through this action's final remand response, even as amended compared to the 2008 re-proposed standards. This is supported by the fact that the revised MACT floor determinations and emissions limits associated with the remand response are based on performance data for the 57 currently operating HMIWI that are subject to the 1997 standards, and by the final rule's accounting for non-technology factors that affect HMIWI emissions performance, which the 2007 proposed remand response and 5-year review did not fully consider. Thus, the final remand response more than addresses the technology review's goals of assessing the performance efficiency of the installed equipment and ensuring that the emissions limits reflect the performance of the technologies required by the MACT standards. In addition, the final remand response addresses whether new technologies and processes and improvements in practices have been demonstrated at sources subject to the emissions limits. Accordingly, the remand response in this final action fulfills EPA's obligations regarding the first 5-year review of the HMIWI standards and, therefore, replaces the 2007 proposal's 5-year review proposed revisions.

*C. Other Amendments*

This final action puts forward the same changes based on information received during implementation of the HMIWI NSPS and EG that were proposed in 2007 and 2008. The changes proposed in 2007 included provisions allowing existing sources to use previous emissions test results to demonstrate compliance with the revised emissions limits; annual inspections of air pollution control devices (APCD); a one-time visible emissions test of ash handling operations; CO continuous emissions monitoring systems (CEMS) and bag leak detection systems for new sources; and several approved monitoring alternatives. The 2008 proposal included changes regarding requirements for $NO_x$ and $SO_2$ emissions testing for all HMIWI; performance testing requirements for small rural HMIWI; monitoring requirements for HMIWI that install selective non-catalytic reduction (SNCR) technology to reduce $NO_x$ emissions; and procedures for test data submittal. The changes included in this final action include revised provisions regarding waste segregation and removal of exemptions regarding startup, shutdown, and malfunction (SSM). The removal of SSM exemptions is discussed in section III.F of this preamble. The performance testing and monitoring amendments, electronic data submittal provisions, waste segregation amendments, and miscellaneous other amendments are summarized in the following sections.

1. Performance Testing and Monitoring Amendments

The amendments require all HMIWI to demonstrate initial compliance with the revised $NO_x$ and $SO_2$ emissions limits. The 1997 standards did not require testing and demonstration of compliance with the $NO_x$ and $SO_2$

emissions limits. In addition to demonstrating initial compliance with the $NO_x$ and $SO_2$ emissions limits, small rural HMIWI are required to demonstrate initial compliance with the other seven regulated pollutants' emissions limits and the opacity standard. Under the 1997 standards, small rural HMIWI were required to demonstrate only initial compliance with the PM, CO, CDD/CDF, Hg, and opacity standards. Small rural HMIWI also are required to determine compliance with the PM, CO, and HCl emissions limits by conducting an annual performance test. On an annual basis, small rural HMIWI are required by the 1997 standards to demonstrate compliance with the opacity limit. The amendments allow sources to use results of their previous emissions tests to demonstrate initial compliance with the revised emissions limits as long as the sources certify that the previous test results are representative of current operations. Only those sources who could not so certify and/or whose previous emissions tests do not demonstrate compliance with one or more revised emissions limits would be required to conduct another emissions test for those pollutants. (Note that most sources were already required under the 1997 standards to test for HCl, CO, and PM on an annual basis, and those annual tests are still required.)

The amendments require, for existing HMIWI, annual inspections of scrubbers, fabric filters, and other air pollution control devices that may be used to meet the emissions limits. The amendments require a visible emissions test of the ash handling operations using Method 22 in appendix A–7 of this part to be conducted during the next performance test. For new HMIWI, the amendments require CO CEMS; bag leak detection systems for fabric-filter controlled units; annual inspections of scrubbers, fabric filters, and other air pollution control devices that may be used to meet the emissions limits; and Method 22 visible emissions testing of the ash handling operations to be conducted during each compliance test. For existing HMIWI, use of CO CEMS is an approved option, and specific language with requirements for CO CEMS is included in the amendments. For new and existing HMIWI, use of PM, HCl, multi-metals, and Hg CEMS, and integrated sorbent trap Hg monitoring and dioxin monitoring (continuous sampling with periodic sample analysis) also are approved options, and specific language for those options is included in the amendments. HMIWI that install SNCR technology to reduce $NO_X$ emissions are required to monitor the reagent (*e.g.,* ammonia or urea) injection rate and secondary chamber temperature.

2. Electronic Data Submittal

The EPA must have performance test data to conduct effective 5-year reviews of CAA Section 129 standards, as well as for many other purposes, including compliance determinations, development of emissions factors, and determining annual emissions rates. In conducting 5-year reviews, EPA has found it burdensome and time-consuming to collect emissions test data because of varied locations for data storage and varied data storage methods. One improvement that has occurred in recent years is the availability of stack test reports in electronic format as a replacement for burdensome paper copies.

In this action, we are taking a step to improve data accessibility. HMIWI have the option of submitting to an EPA electronic database an electronic copy of annual stack test reports. Data entry will be through an electronic emissions test report structure used by the staff as part of the emissions testing project. The electronic reporting tool (ERT) was developed with input from stack testing companies who generally collect and compile performance test data electronically. The ERT is currently available, and access to direct data submittal to EPA's electronic emissions database (WebFIRE) will become available December 31, 2011.[1]

Please note that the option to submit source test data electronically to EPA will not require any additional performance testing. In addition, when a facility elects to submit performance test data to WebFIRE, there will be no additional requirements for data compilation. Instead, we believe industry will benefit from development of improved emissions factors, fewer follow-up information requests, and better regulation development, as discussed below. The information to be reported is already required in the existing test methods and is necessary to evaluate the conformance to the test method. One major advantage of electing to submit source test data through the ERT is to provide a standardized method to compile and store all the documentation required to be reported by this rule. Another important benefit of submitting these data to EPA at the time the source test is conducted is that it will substantially reduce the effort involved in data collection activities in the future. Specifically, because EPA would already have adequate source category data to conduct residual risk assessments or technology reviews, there would be fewer data collection requests (*e.g.,* CAA Section 114 letters). This results in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests). Finally, another benefit of electing to submit these data to WebFIRE electronically is that these data will greatly improve the overall quality of the existing and new emissions factors by supplementing the pool of emissions test data upon which the emissions factor is based and by ensuring that data are more representative of current industry operational procedures. A common complaint we hear from industry and regulators is that emissions factors are outdated or not representative of a particular source category. Receiving most performance tests will ensure that emissions factors are updated and more accurate. In summary, receiving test data already collected for other purposes and using them in the emissions factors development program will save industry, State/local/Tribal agencies, and EPA time and money.

The electronic data base that will be used is EPA's WebFIRE, which is a Web site accessible through EPA's TTN. The WebFIRE Web site was constructed to store emissions test data for use in developing emissions factors. A description of the WebFIRE data base can be found at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.* The ERT will be able to transmit the electronic report through EPA's Central Data Exchange (CDX) network for storage in the WebFIRE data base. Although ERT is not the only electronic interface that can be used to submit source test data to the CDX for entry into WebFIRE, it makes submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.* The ERT can be used to document stack tests data for various pollutants including PM (EPA Method 5 of appendix A–3), $SO_2$ (EPA Method 6 or 6C of appendix A–4), $NO_X$ (EPA Method 7 or 7E of appendix A–4), CO (EPA Method 10 of appendix A–4), Cd (EPA Method 29 of appendix A–8), Pb (Method 29), Hg (Method 29), and HCl (EPA Method 26A of appendix A–8). Presently, the ERT does not handle dioxin/furan stack test data (EPA

[1] *See http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main, http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

Method 23 of appendix A–7), but the tool is being upgraded to handle dioxin/furan stack test data. The ERT does not currently accept opacity data or CEMS data.

3. Waste Segregation

The amendments revise the waste management plan provisions for new and existing HMIWI. Commenters on the 2008 re-proposal recommended that EPA minimize or eliminate from the HMIWI waste stream any plastic wastes, Hg and other hazardous wastes (*e.g.,* Hg-containing dental waste, Hg-containing devices), pharmaceuticals, and confidential documents and other paper products that could be shredded and recycled. One commenter recommended that EPA take action to regulate emissions of polychlorinated biphenyls (PCBs) and polycyclic organic matter (POM) from HMIWI. To address the various commenters' concerns, the waste management plan provisions in §§ 60.35e and 60.55c are revised to promote the segregation of the aforementioned wastes. (*See* section IV.H of this preamble for further information about the change to waste management plan provisions.)

5. Miscellaneous Other Amendments

The amendments revise the definition of ''Minimum secondary chamber temperature'' to read ''*Minimum secondary chamber temperature* means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, and dioxin/furan emissions limits.''

The amendments add definitions for ''Bag leak detection system,'' ''commercial HMIWI,'' and ''minimum reagent flow rate.'' ''*Bag leak detection system''* is defined to mean ''an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures,'' and examples of such a system are provided. ''*Commercial HMIWI''* is defined to mean ''a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.'' ''*Minimum reagent flow rate''* is defined to mean ''90 percent of the highest 3-hour average reagent flow rate at the inlet to the selective noncatalytic reduction technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the $NO_X$ emissions limit.''

The amendments require HMIWI to submit, along with each test report, a description, including sample calculations, of how operating parameters are established during the initial performance test and, if applicable, re-established during subsequent performance tests.

To provide greater clarity, the amendments also include averaging times and EPA reference test methods in the emissions limit tables for existing and new sources. It should be noted that the averaging times and EPA reference test methods added to the emissions limits tables are not new requirements but simply a restating of requirements presented elsewhere in the HMIWI regulations. Also, the inclusion of these additional table columns should not be interpreted as reopening the 1997 standards themselves.

The amendments also incorporate by reference two alternatives to EPA reference test methods (ASME PTC 19.10–1981 and ASTM D6784–02) to provide HMIWI with greater flexibility in demonstrating compliance. These alternative methods are described in greater detail in section VIII.I of this preamble and were first presented in the preamble to the December 1, 2008 re-proposal.

*D. Implementation Schedule for Existing Hospital/Medical/Infectious Waste Incinerators*

Under the amendments to the EG, and consistent with CAA Section 129, revised State plans containing the revised existing source emissions limits and other requirements in the amendments will be due within 1 year after promulgation of the amendments. That is, revised State plans have to be submitted to EPA on October 6, 2010.

The amendments to the EG then allow existing HMIWI to demonstrate compliance with the amended standards as expeditiously as practicable after approval of a State plan, but no later than 3 years from the date of such approval or 5 years after promulgation of the revised standards, whichever is earlier. Because many HMIWI will find it necessary to retrofit existing emissions control equipment and/or install additional emissions control equipment in order to meet the revised limits, States may wish to consider providing the maximum compliance period allowed by CAA Section 129(f)(2).

In revising the emissions limits in a State plan, a State has two options. First, it could include both the current and the new emissions limits in its revised State plan, which would allow a phased approach in applying the new limits. That is, the State plan would make it clear that the 1997 emissions limits remain in force and apply until the date the revised existing source emissions limits are effective (as defined in the State plan). States whose existing HMIWI do not find it necessary to improve their performance in order to meet the revised emissions limits may want to consider a second approach, where the State would insert the revised emissions limits in place of the 1997 emissions limits, follow procedures in 40 CFR part 60, subpart B, and submit a revised State plan to EPA for approval. If the revised State plan contains only the revised emissions limits (*i.e.,* the 1997 emissions limits are not retained), then the revised emissions limits must become effective immediately, since the 1997 limits would be removed from the State plan.

EPA will revise the existing Federal plan to incorporate the changes to existing source emissions limits and other requirements that EPA is promulgating. The Federal plan applies to HMIWI in any State without an approved State plan. The amendments to the Federal plan for the EG would require existing HMIWI demonstrate compliance with the amended standards not later than 5 years after today's final rule, as required by CAA Section 129(b)(3).

*E. Changes to the Applicability Date of the 1997 New Source Performance Standards*

HMIWI are treated differently under the amended standards than they were under the 1997 standards in terms of whether they are ''existing'' or ''new'' sources, and there are new dates defining what are ''new'' sources and imposing compliance deadlines regarding the amended standards. All HMIWI that complied with the NSPS as promulgated in 1997 are ''existing'' sources under the amended standards and are required to meet the emissions limits under the revised EG or the 1997 NSPS, whichever is more stringent, by the applicable compliance date for the revised EG. (Note that the HCl emissions limit for small HMIWI and the PM emissions limit for medium HMIWI are more stringent under the 1997 NSPS than under the revised EG, and HMIWI that complied with those 1997 NSPS are required to continue to do so.) In the interim, those sources will continue to be subject to the NSPS as promulgated in 1997 until the date for compliance with the revised EG. Units for which construction is commenced after the December 1, 2008 proposal, or for which modification is commenced on or after the date 6 months after today's

promulgation of the amended NSPS, are ''new'' units subject to more stringent revised NSPS emissions limits.

Thus, under these specific amendments, units that commenced construction after June 20, 1996, and on or before December 1, 2008, or that are modified before the date 6 months after the date of promulgation of the revised final NSPS, continue to be or would become subject to the 40 CFR part 60, subpart Ec NSPS emissions limits that were promulgated in 1997 until the applicable compliance date for the revised EG, at which time those units must comply with the amended ''existing'' source EG or 1997 NSPS, whichever is more stringent for each pollutant. Similarly, HMIWI that met the 1997 EG must meet the revised EG by the applicable compliance date for the revised EG. HMIWI that commence construction after December 1, 2008 or that are modified 6 months or more after the date of promulgation of the revised NSPS must meet the revised NSPS emissions limits being added to the subpart Ec NSPS within 6 months after the promulgation date of the amendments or upon startup, whichever is later.

This approach is justified because most HMIWI will have to install additional emissions controls to comply with the revised standards. CAA Sections 129(g)(2) and (3) define ''new solid waste incineration unit'' and ''modified solid waste incineration unit'' based on whether construction of the new unit commences after the date of proposed standards under Section 129 and on whether modification occurs after the effective date of a Section 129 standard, respectively. While these definitions might be read as referring to the dates EPA first proposes standards for the source category as a whole and on which such standards first become effective for the source category, we are interpreting and applying them in this rulemaking to refer to the proposal and effective dates for standards under this new rulemaking record. The evident intent of the definitions plus the substantive new unit and modified unit provisions is that it is technically more challenging and potentially more costly to retrofit a control system to an existing unit than to incorporate controls when a unit is initially designed.

*F. Startup, Shutdown, and Malfunction Exemption*

The 1997 standards included provisions in 40 CFR 60.56c and 60.37e that exempted HMIWI from the standards during periods of SSM, provided that no hospital waste or medical/infectious waste is charged to the unit during those SSM periods. Neither our 2007 proposal nor our 2008 re-proposal would have changed these provisions. However, soon after the date of our re-proposal, the U.S. Court of Appeals in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), vacated provisions in EPA's CAA Section 112 regulations governing emissions of hazardous air pollutants during SSM periods. Specifically, the Court vacated 40 CFR 63.6(f)(1) and 63.6(h)(1), which, when incorporated into CAA Section 112(d) standards for specific source categories, exempt sources from the requirement to comply with otherwise applicable Section 112(d) standards during periods of SSM. While the Court's vacatur did not have a direct impact on source category-specific SSM exemptions such as those contained in the 1997 HMIWI standards, one commenter on the 2008 re-proposal stressed that the legality of SSM exemptions such as those in the 1997 standards is questionable, and urged EPA to remove the exemptions in the final rule. For the reasons set forth later in this notice responding to comments, today's final rule removes the SSM exemption from the HMIWI standards, such that the emissions limits under these subparts apply at all times.

**IV. Summary of Major Comments and Responses**

A total of 22 separate sets of public comments were received on the December 1, 2008 re-proposal. (One additional comment, received after the deadline for public comments, was an addendum to an earlier comment. *See http://www.regulations.gov*, docket ID no. EPA–HQ–OAR–2006–0534, for the complete public comments.) The comment period ended on February 17, 2009. In addition to the comment letters, speaker comments from a January 15, 2009, public hearing on the re-proposal were recorded, and a transcript of the hearing was placed in the project docket (document no. EPA–HQ–OAR–2006–0534–0361). The following sections summarize the major public comments received on the re-proposal and present EPA's responses to those comments. The major comment topics are applicability; subcategorization; MACT floor approach; emissions limits; monitoring; emissions testing; alternatives to on-site incineration; medical waste segregation; startup, shutdown, and malfunction; and economic impacts.

*A. Applicability*

*Comment:* While this issue was not raised in our re-proposal, one commenter stated that subpart Ec should be amended to exempt units already complying with subpart AAAA—the NSPS for new small municipal waste combustors (MWCs)—or subpart BBBB—the EG for existing small MWCs—consistent with the exemptions provided to MWCs in the 1997 HMIWI rule.

*Response:* We are aware of two HMIWI at one facility that are currently subject to rules for both HMIWI and small MWCs. We have considered the appropriateness of exempting the two units from the HMIWI rule or creating a separate HMIWI subcategory for the units, and have concluded that exemptions and creation of a separate subcategory are not warranted. One issue is the technological feasibility for the facility to meet both the HMIWI and small MWC rules if there is the possibility that the facility would have to implement different control strategies to meet the limits in both rules. (Note that we do not currently have any information to suggest that the facility would find it technically impossible to meet both the revised HMIWI standards and the small MWC standards.) For example, if the HMIWI rule were to include stringent CO limits and the small MWC rule were to include stringent $NO_X$ limits, it may be challenging for the facility to meet the limits of both rules simultaneously by controlling secondary chamber temperature; increasing the temperature to reduce CO emissions would invariably increase $NO_X$ emissions. However, by choosing to burn both types of waste and operate as both a small MWC and a HMIWI, the facility has the responsibility to meet whatever set of rules that applies based on its operating scenario and could avoid this situation by choosing to burn one type of waste or the other exclusively, or at least reducing the other type of waste to co-fired levels. Also, the facility already employs additional control strategies besides combustion control for reducing $NO_X$ emissions (urea injection).

The facility typically burns 50 percent hospital/medical/infectious (HMI) waste and 50 percent municipal waste in its two units. If we were to grant an exemption to the HMIWI rule for this facility due to it being subject to the small MWC rule and the facility were to increase the amount of HMI waste burned to 70 percent and reduce the amount of municipal waste burned to 30 percent, we could create a total compliance loophole for the facility, given that the small MWC rule includes a co-fired exemption for units burning 30 percent or less of municipal waste. This would be an unacceptable outcome.

Another option to address this situation would be to create a hybrid waste subcategory to include the two units, based on the rationale that the units are burning a unique mixture of waste. However, we did not provide an opportunity to comment on such an option in the re-proposal, and have not had the opportunity to develop a record to support such a new approach or its possibly unique regulatory framework. Moreover, it is also not clear that such a hybrid subcategory would fit within the statutory divisions of incinerator categories set forth in Section 129(a)(1) of the CAA. Therefore, we decided not to pursue that option for the final rule.

We believe it is reasonable for the facility to be subject to both the HMIWI and small MWC rules when switching back and forth among the types of waste burned, since this ensures that, when the facility operates as either a HMIWI or small MWC, it is regulated as such and does not avoid compliance obligations that all other incinerators operating continuously as either HMIWI or small MWC must meet. We do not expect that continuing to require the facility to comply with both rules will be overly burdensome. The facility should be able to control to the more stringent of the two rules.

*B. Subcategorization*

*Comment:* Four commenters stated that EPA's rationale for subcategorization does not reflect any analysis of how the proposed subcategories will help assure that what has been ''achieved'' by better performers in a proposed subcategory results in a standard that is ''achievable'' by other sources in that subcategory. Two of the commenters argued that, without this assessment, the final subcategory decisions will be arbitrary and may result in standards that are unlawfully stringent. The commenters urged EPA to provide the necessary assessment and rationale for its subcategory proposal. Another commenter further urged EPA to reconsider its decision to retain the categories defined by the 1997 HMIWI rule without defining additional subcategories. The commenter suggested that EPA could keep the relation between ''achieved'' and ''achievable'' by grouping existing units based on control technology type and that EPA could address variability by establishing subcategories that take into account non-technology factors that affect emissions, as the commenter claimed is required under Section 112(d)(3).[2]

Three commenters stated that EPA must develop a new subcategory for commercial facilities, based on the claimed significant operational differences between commercial and so-called ''captive'' units that are attached to HMI waste generators. The commenters defined a captive unit as one that is co-owned and co-operated by the generator of the waste, while a commercial operator is in business to receive wastes from third parties. The commenters stated that commercial HMIWI, unlike operators of captive units, cannot use alternative forms of disposal (*e.g.,* landfills), and claimed that EPA views their only alternative to the standards as closure. According to the commenters, EPA not only has the authority under Section 129(a)(2) to further subcategorize HMIWI, but it is also mandated to do so due to an overly stringent standard that is not ''achievable'' by commercial units. The commenters claimed that wastes sent to a commercial unit are more heterogeneous than for captive units. They also noted that the handling of medical wastes is subject to numerous Federal and State requirements related to worker and public health and safety, which the commenters claimed makes segregation of wastes hazardous and impractical for operators of commercial facilities. Thus, the commenters argued that waste segregation cannot be a control ''achieved in practice'' that can be used to determine floors for commercial units.

The same three commenters also argued that EPA provides no rationale for its retention of the small rural class in the re-proposed rule, and that its prior rationale regarding the unavailability of alternative means of medical waste treatment beyond 50 miles from the nearest standard metropolitan statistical area (SMSA) is unsupported. According to the commenters, EPA's proposed retention of the small rural subcategory is arbitrary and capricious.

Another commenter recommended that EPA establish new size classifications, claiming that the distribution of HMIWI no longer matches the three size categories EPA identified in 1995 when the rule was first being developed. The commenter also noted that current standards are based on subcategories defined in terms of feed rates with no corresponding heating value. According to the commenter, a reference waste heating characteristic must be established to adjust or rate incinerators, given that there is currently no consistency or basis for determining equivalent charging rate.

The same commenter further recommended that, based on its facility's unique attributes—extremely large processing capacity, customer generated waste material variability, waste mix, waste-to-energy heat recovery technology, CEMS, 2+ second combustion gas retention time, and high British thermal unit (BTU) waste content—EPA should place its facility in a separate subcategory for extra-large HMIWI. The commenter provided a list of suggested standards for such a subcategory, based on upper confidence limits (UCLs) calculated using EPA's methodology, that indicate 7 of the 11 promulgated standards applicable to it could be tightened. The commenter noted that residual risk analyses conducted under Maryland's stringent air toxics regulations (provided in the commenter's public comments) show that the resulting ambient emissions would meet all applicable requirements.

*Response:* Regarding the commenters' argument that EPA must show how the proposed subcategories will result in a standard that is ''achievable,'' we do not believe that the CAA requires such an analysis. In facing a similar claim, the U.S. Court of Appeals for the DC Circuit recently rejected the argument that a facility's claimed differences between itself and other members of a source category in the plywood and composite wood products (PCWP) MACT rule compels EPA to set a unique standard that is achievable for that source. In *NRDC* v. *EPA,* 489 F.3d 1364 (DC Cir. 2007), Louisiana-Pacific Corp. (L–P) objected to EPA's refusal to establish a separate subcategory for its wet/wet press process apart from the subcategory of all other press processes, claiming that, at L–P's plant, EPA's identified MACT floor control technology was not feasible and that L–P would experience greater costs in complying with the MACT floor compared to other press operators. *Id.,* at 1375–76. The Court denied L–P's claims, explaining that ''cost is not a factor that EPA may permissibly consider in setting a MACT floor. [* * *] To the extent that L–P maintains that it cannot comply with the MACT floor based on complete enclosure and capture of emissions because it cannot enclose its presses, L–P also relies on an incorrect premise that the MACT level of emissions reduction is invalid if it is based on control technology that a source cannot install. The 2004 rule does not require a source to use any particular method to

[2] While the commenter cited to CAA Section 112(d)(3), which does not literally apply to NSPS and EG promulgated under Sections 111 and 129, we assume the commenter was referring to factors relevant to MACT floor analyses in general, including those under Section 129(a)(2).

achieve compliance: If L–P cannot use enclosure and capture, it may utilize other compliance techniques. Hence, L–P fails to show that EPA was arbitrary or capricious in refusing to create a subcategory for it.'' *Id.* at 1376. The option provided by one commenter to subcategorize based on control technology type is inappropriate, as it would essentially endorse the type of unique treatment that L–P demanded in the PCWP rule and that the Court rejected. Moreover, we are unaware of any situations in the HMIWI industry where one type of control would be technically applicable, but not another, such that subcategorizing based on the ability to use certain controls would be justified.

We evaluated three different subcategory options to try and address the concerns stated by the commenters. The three options included: (1) Option 1—no change to existing size categories; (2) Option 2—creating a commercial subcategory (as suggested by three commenters) and redistributing the size categories for the captive HMIWI (as suggested by another commenter); and (3) Option 3—redistributing the existing size categories to more evenly distribute the number of HMIWI (also suggested by the other commenter).

Under Option 1, the size distributions would remain the same—large (>500 lb/hr of waste), medium (>200 to ≤500 lb/hr of waste), and small (≤200 lb/hr of waste), with the latter category divided into small rural and non-rural subcategories based on distance from the nearest SMSA.

Under Option 2, commercial HMIWI would be categorized separately from captive HMIWI, and the captive HMIWI further subcategorized as follows—large (>1,000 lb/hr of waste), medium (>500 to ≤1,000 lb/hr of waste), and small (≤500 of waste), with no further subcategorization of the latter category.

Under Option 3, the sizes would be redistributed as follows—large (>1,500 lb/hr of waste), medium (>500 to ≤1,500 lb/hr of waste), and small (≤500 lb/hr of waste), with the latter category divided into small rural and non-rural subcategories as under Option 1.

We conducted MACT floor analyses on all three options, using the following methodology, which is described in more detail later in this notice—(1) Ranking the emissions data from lowest to highest for each pollutant; (2) determining the units in the MACT floor for each pollutant; (3) determining the distribution of test run data for the MACT floor units; and (4) calculating a 99 percent UCL for each pollutant based on that distribution, using Student's t-test statistics. We developed floor-based emissions limits based on these UCL values, rounding up to two significant figures. We compared the emissions limits to average emissions estimates for each HMIWI and determined whether the HMIWI would meet the limits. We estimated the number of HMIWI expected to meet *at least* nine limits, eight limits, seven limits, *etc.* under each option. Based on our analysis, Options 1, 2, and 3 resulted in similar numbers of HMIWI meeting the limits. (For more detailed results, *see* 2009 memorandum entitled ''Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI,'' which is included in the docket for today's rulemaking.)

However, since we did not propose any subcategorization option other than the small, medium and large size subcategories identified in the 1997 rule, and did not provide an opportunity to comment on this issue in the re-proposal, we have concluded that it would not be appropriate at this time to promulgate emissions limits based on Options 2 and 3. Moreover, we do not see a compelling need to make the adjustments of Options 2 or 3, given that similar numbers of HMIWI meet the limits under all three options. Simply re-adjusting the size thresholds to reflect an even distribution of units post-MACT compliance among the subcategories is not necessarily reasonable, whereas the size thresholds from the 1997 rule continue to correspond to the basic distinctions between the subcategories of units as currently operated. Therefore, we selected Option 1 (no change to existing size subcategories) as the best subcategory option on which to base the emissions limits for promulgation.

Two other subcategory options were considered and rejected without further analysis. The two options include (1) an extra-large subcategory for one HMIWI facility (as suggested by one commenter), and (2) a mixed waste subcategory for another HMIWI facility (an outgrowth of a comment by another commenter, as discussed in the previous section). In addition to the fact that we did not provide opportunity to comment on this issue, we found no basis for creating a new subcategory for this particular rulemaking to fit a single facility.

We disagree with the argument by three commenters that EPA's retention of the small rural subcategory is unsupported by any rationale. As we explained in the September 15, 1997 notice of final rulemaking (62 FR 48370), alternative means of medical waste treatment may not be available to some facilities that operate small HMIWI in rural or remote locations. Facilities that operate small HMIWI in remote locations could be faced with unique adverse impacts if required to meet the more stringent emissions limits associated with small non-rural HMIWI. Therefore, we continue to support subcategorizing facilities based on the location of the facility and the amount of waste burned, as allowed under Section 129(a)(2). The only remaining small rural units are in Alaska and Hawaii, and the options are very limited for alternative medical waste treatment in those States. There are a very limited number of landfills and MWC facilities in those States, and there are no commercial HMIWI. (The basis for this information is a 2004 Chartwell Information document entitled *Directory & Atlas of Solid Waste Facilities*.)

### *C. MACT Floor Approach*

#### 1. MACT-on-MACT

*Comment:* Several commenters argued that EPA's recalculation of the 1997 MACT floors using post-MACT compliance data results in so-called ''MACT-on-MACT'' standards that cannot be achieved and are contrary to the CAA and the intent of Congress. Three of the commenters stated that the CAA provides for a one-time setting of the MACT floor based on what sources achieved at the time of the initial promulgation, not at the time of subsequent revisions. According to those three commenters, the proposed standards would force the HMIWI industry to shut down and prevent installation of new HMIWI, without any consideration of the costs of additional reductions or whether the emissions posed any risks to human health and the environment. The commenters urged EPA to use the population of pre-1997 HMIWI and their emissions data to establish the revised MACT floors. One commenter stated that new data should only be used for those units that have the same control equipment in place as when EPA undertook the original rulemaking.

Three of the commenters objected to EPA's arguments for using the post-MACT compliance data, namely that EPA is no longer confident in the regulatory limits used in 1997 (based on a comparison of the regulatory limits and emissions test data in the 1997 record) and that the EPA questions their use as surrogates because they do not account for non-technology factors (based on waste segregation data EPA received after the 2007 proposal). Specifically, the three commenters stated that EPA provides no justification for its change in using the post-MACT

compliance data, noting that the Court, in *Sierra Club* v. *EPA,* 167 F.3d 658 (DC Cir. 1999), upheld EPA's data-gathering for the 1997 rule, and did not dispute that EPA could make estimates based on the lack of data. The three commenters further stated that EPA provides no support for reassessing its determination in 1997 that emissions controls significantly impact emissions, which the commenters indicated is a finding that EPA continues to assert and that is supported by the data.

Regarding EPA's claim that it reset the floors in response to the remand of the regulation in *Sierra Club* v. *EPA,* 167 F.3d 658 (DC Cir. 1999), the same three commenters argued that the Court's remand was limited and did not vacate the 1997 floors. According to the commenters, EPA cites no legal support that subsequent case law invalidates a promulgated regulation not at issue in that case. The commenters stated that, in the past, EPA has declined to account for changes in law after its decision to impose new regulatory obligations, based in part on the general presumption against law having a retroactive effect. According to the commenters, this approach is supported by case law, which holds that agencies are required to apply the law at the time the decision is made. *Aaacon Auto Transport* v. *ICC,* 792 F.2d 1156, 1161 (DC Cir. 1986). The commenters also noted that the 2002 data used to set the proposed standards would not have been available had the EPA responded to the 1999 remand in a more timely manner.

The three commenters also argued that new public comments raising issues with the 1997 floors are out of time and insufficient to require EPA to go beyond the Court's remand order. The commenters pointed out that Section 307(b) of the CAA requires any challenges to regulations to be filed within 60 days, which has been held up in the relevant case law. According to the commenters, any required revisions to address the Court's limited remand does not justify reopening the time period for judicial challenge of the floors. The commenters also argued that another exception to the 60-day jurisdictional bar, that there was a substantive violation of the statute, does not apply since the Court did not find the 1997 floors in conflict with the statute.

*Response:* First, we disagree with the commenters' assertion that we are employing a MACT-on-MACT approach to set limits that are not achievable by HMIWI. The purpose of this action is not to force units who have complied with a lawfully adopted MACT standard to have to subsequently comply with another round of updated MACT standards, but to respond to the Court's ruling that questioned the basis for the 1997 MACT standards and revise them such that they are clearly compliant with the Court's several pronouncements of how MACT should be set in the first instance. Moreover, the actual emissions data upon which the revised standards rely comes directly from HMIWI that have in fact achieved the resulting levels, which necessarily belies the assertion that no HMIWI can achieve them. Regarding the commenters' argument that our recalculation of the MACT floors was contrary to the CAA and intent of Congress, it is clear from the Court's opinion in *Sierra Club* v. *EPA* that EPA needed to revisit the MACT floors in order to respond to the Court's concerns about the MACT floor approach we used in 1997, as noted in its remand of the HMIWI regulations. The Court explicitly ''conclude[d] that there are serious doubts about the reasonableness of EPA's treatment of the floor requirements, and remand[ed] the rule for further explanation.'' 167 F.3d at 660. Regarding the existing source floors, the Court even went so far as to suggest that, based on its review of the record for the 1997 rule, ''EPA's method looks hopelessly irrational.'' *Id.* at 664. Ultimately, the Court ordered the case ''remanded to EPA for further explanation of its reasoning in determining the 'floors' for new and existing [HMIWI].'' *Id.* at 666. This remedy squarely placed the responsibility on EPA to either develop an explanation for the MACT standards derived from the 1997 data set that fully addressed the Court's concerns, or develop a different methodology and/or data set that did so.

In the 2008 re-proposal, we decided to use post-compliance data to recalculate the MACT floors because, based on our analysis, it became impossible to fully address the Court's concerns about the suitability of using regulatory limits and uncontrolled emissions values from the 1997 data set in rationally explaining the MACT floors for the 1997 rule. To respond to those concerns, we conducted an analysis comparing the regulatory limits used in the 1997 data set to actual emissions data for those HMIWI, and we determined that the regulatory limits used to establish the MACT floors were not representative of actual operation and did not account for non-technology factors that affected HMIWI emissions performance. (For further information, *see* 2008 memorandum ''Comparison of Regulatory Limits with Emissions Test Data,'' which is included in the docket.) Since it was no longer possible to obtain actual emissions data from the full set of HMIWI that were operating at the time of the 1997 rule's promulgation, the most available alternative was to use the actual emissions data we received from sources who chose to remain in operation and comply with the 1997 MACT standards. With such data, we could actually identify the emissions levels achieved by use of the MACT technologies and control measures that HMIWI employed in order to meet the 1997 standards—technology and measures which we had at that time assumed would be necessary to comply with the standards. This verifying approach was eminently reasonable, since it relied upon data that HMIWI recorded and reported specifically for purposes of demonstrating compliance with the 1997 HMIWI MACT standards, and it addressed the Court's stated concerns regarding the existing source floors. Those concerns, namely, were that permit levels might not accurately estimate actual emissions performance if sources are over-achieving the permit limits (167 F.3d at 663), and that the assumption that unpermitted HMIWI did not deploy emissions controls of any sort was not substantiated (*Id.* at 664).

While we agree with the commenters that control technology has a major impact on pollutant emissions from HMIWI, we also acknowledge that factors other than control technology (*e.g.,* waste mix, combustion conditions) can affect pollutant emissions and should be accounted for in the MACT floor analysis. These non-control technology factors, however, were not considered or reflected by the permit data and uncontrolled emissions values data used in the 1997 rule. Therefore, we needed to take further steps in order to be able to account for these factors and ''provide a reasonable estimate of the performance of the top 12 percent of units.'' *Id.* at 662. It is true that the Court in *Sierra Club* did not rule that EPA had impermissibly ignored these factors. *Id.* at 666. However, subsequent case law, specifically *National Lime Ass'n* v. *EPA,* 233 F.3d 625 (DC Cir. 2000) (NLA II), *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (DC Cir. 2001) (CKRC), and *Sierra Club* v. *EPA,* 479 F.3d 875 (DC Cir. 2007) (Brick MACT case), have made it abundantly clear that, in any MACT analysis, EPA is currently expected by the Court to address non-technology factors. Based on the actual emissions data we received, which necessarily reflects both the use of

control technologies and any non-technology measures the best performing sources happen to use, we were able to provide the ''reasonable estimate'' of the best performers' emissions levels that the Court required in its remand. Therefore, we stand by the reassessment we presented in the re-proposal, although, as discussed later in this notice, we have made some adjustments in our statistical analysis to correct for errors in the 2008 re-proposal.

Regarding the commenters' arguments about the impact of subsequent case law, we do not expect that we could reasonably respond to the Court's 1999 remand of the HMIWI rule in a manner that knowingly disregards other flaws in EPA's prior MACT methodology that the Court has since identified. In a recent MACT ruling in which the Court found that EPA had failed to follow the rulings issued in other MACT cases, the Court admonished the EPA that if ''[EPA] disagrees with the Clean Air Act's requirements for setting emissions standards, it should take its concerns to Congress. If EPA disagrees with this court's interpretation of the Clean Air Act, it should seek rehearing en banc or file a petition for a writ of certiorari. In the meantime, it must obey the Clean Air Act as written by Congress and interpreted by this court.'' 479 F.3d at 884. EPA takes this directive seriously and acted consistently with the Court decisions in preparing this response to the remand. We do not believe that the Court would view its own post-1999 MACT rulings as having changed ''the law'' (namely, the MACT requirement of Sections 112 and 129) such that following those rulings' instructions would reflect retroactive application of ''new'' law. The commenters' reliance on *Aaacon Auto Transport* v. *ICC,* 792 F.2d 1156 (DC Cir. 1986) is inapposite, as that case addressed an entirely different situation of retroactive application of a new statutory provision; here, instead, the governing statutory requirements have not changed, EPA is acting in response to a Court's ruling that it had not adequately shown that it had complied with those provisions, and the Agency is acting subsequent to further rulings that interpret those same provisions and purport to set forth general directions for EPA to follow in all cases.

As for the comment that EPA could not have relied upon the 2002 compliance data if it had more swiftly responded to the remand, this only suggests that if EPA had acted earlier the EPA would have been forced to take additional steps to require the HMIWI industry to supply emissions data. In no way would this support EPA disregarding the 2002 data we have in-hand and allow us to continue to rely upon data that does not reasonably estimate emissions levels achieved by the best performing units. Based on our analysis of the record, we determined that the 1997 floors did not in all cases meet the requirements of the CAA as interpreted by the DC Circuit. We attempted to explain one set of revisions to the 1997 floors in a subsequent (February 2007) **Federal Register** notice that relied upon the 1997 data set, and received new public comments on that notice and took account of new case law that convinced us that a new approach was required. Consequently, we have chosen on our own to re-open the issues addressed in the 2008 re-proposal.

*Comment:* One commenter stated that EPA's approach to revising HMIWI standards under CAA Section 129(a)(5) is correct. The commenter said that revising the MACT floors to reflect the actual performance of the relevant best units satisfies Section 129(a)(5). However, four other commenters objected to revising the floors under the technology review provisions of Section 129(a)(5). The commenters argued that Section 129(a)(5) does not require resetting the floors, but only requires EPA to consider developments in pollution control at the sources and revise the standards based on our evaluation of the costs and non-air quality impacts. The commenters stated that the use of new emissions data is inconsistent with the reasoning EPA presented in other contexts (*e.g.,* in the coke ovens residual risk/technology review rulemaking) that MACT floors need not be recalculated when the EPA conducts its technology review under CAA Section 112(d)(6). The commenters also argued that this approach is inconsistent with the Court's decision on litigation challenging the Hazardous Organic NESHAP (HON) residual risk/technology review rule that there need not be an ''inexorable downward ratcheting effect'' for the MACT floors. *See NRDC and LEAN* v. *EPA,* 529 F.3d 1077, 1083–84 (DC Cir. 2008). One of the commenters also claimed that EPA's approach sets a precedent for all other sources subject to Section 129 or Section 112 MACT standards that could have dire implications on the future viability of rules covering other sources (*e.g.,* MWCs or waste-to-energy facilities).

*Response:* Regarding the comment from the first commenter, as noted in the preamble to the December 2008 re-proposal (73 FR 72971), we do not interpret Section 129(a)(5), together with Section 111, as generally requiring EPA to recalculate MACT floors in connection with this periodic review when such review is not conducted together with any other action requiring EPA to reassess the MACT floor. *See, e.g.,* 71 FR 27324, 27327–28 (May 10, 2006) (''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors; Final Rule''); *see also, NRDC and LEAN* v. *EPA,* 529 F.3d 1077, 1083–84 (DC Cir. 2008) (upholding EPA's interpretation that the periodic review requirement in CAA Section 112(d)(6) by itself does not impose an obligation to recalculate MACT floors). However, in the unique case of HMIWI, MACT floor recalculations for the 2008 re-proposal were conducted in order to respond to the Court's concerns stated in its remand of the 1997 regulations, the public comments received on the February 2007 proposal, and recent court decisions, specifically *Sierra Club* v. *EPA,* 479 F.3d (DC Cir. 2007) (Brick MACT). This recalculation would have been necessary even if the periodic review requirement of Section 129(a)(5) did not exist. However, Section 129(a)(5) does exist, and EPA must, in addition to responding to the Court's remand, satisfy its requirements. As we previously explained and continue to believe, in this case, our obligation to conduct a 5-year review based on implementation of the 1997 emissions standards is fulfilled through our current remand response. This is supported by the fact that the revised MACT floor determinations and emissions limits associated with the current remand response are based on performance data for the 57 currently operating HMIWI that are subject to the 1997 standards, and by our accounting for non-technology factors that affect HMIWI emissions performance, which the 2007 proposed remand response and 5-year review did not fully consider. Thus, our current remand response more than adequately addresses the technology review's goals of assessing the performance efficiency of the installed equipment and ensuring that the emissions limits reflect the performance of the technologies required by the MACT standards. In addition, the current remand response addresses whether new technologies and processes and improvements in practices have been demonstrated at sources subject to the emissions limits. Accordingly, our current remand response fulfills EPA's obligations regarding the first 5-year review of the HMIWI standards and, therefore,

replaces the 2007 proposal's 5-year review proposed revisions.

2. Pollutant-by-Pollutant Approach

*Comment:* Numerous commenters objected to our continued use of the EPA's longstanding pollutant-by-pollutant approach to choosing the best performing HMIWI. The commenters argued that this approach essentially created a hypothetical ''super unit'' and resulted in the selection of a set of new and existing MACT floors (and standards) that no one existing source has completely achieved and that cannot be simultaneously achieved by any of the best performing sources. The commenters stated that the ''best performing'' sources must be real sources, not theoretical or hypothetical, based on the statute and legislative history. S. Rep. No. 228, 101st Cong., 1st Sess. 169 (1989). According to the commenters, the proposed standards do not reflect the performance of actual sources, and as such, these proposed standards are not legal under Section 129.

One commenter argued that Section 129(a)(2) (and the similar Section 112(d)(3)) does not speak in terms of the best performing source for each listed pollutant but the best existing source for all pollutants and what these sources can achieve on an overall basis. The commenter claimed that Congress abandoned Section 112's previous focus on individual pollutant standards in the 1990 CAA Amendments and also adopted the technology-based multi-pollutant approach to regulating toxics in use under the Clean Water Act (CWA). *See* S. Rep. No. 228, 101st Cong., 1st Sess. 133–34 (1989). The commenter concluded that if one source can achieve a tight degree of control for one pollutant but not for another, there may be no justification for including it in the set of sources from which the floor is calculated. *See, e.g., Tanners' Council of America* v. *Train,* 540 F.2d 1188, 1193 (4th Cir. 1976) (CWA effluent limitations guidelines were deemed not achievable where plants in EPA's data base were ''capable of meeting the limitations for some, but not all, of the pollutant parameters'').

Two commenters stated that under CAA Sections 129(a)(2) and 112(d)(2) consideration of a higher level of control than the average aggregate levels achieved by the best sources (*i.e.,* using the pollutant-by-pollutant approach instead of basing floors on levels of the full set of pollutants achieved by particular units) must be done only as a ''beyond-the-floor'' assessment, required to weigh economics and other factors, and not be ''hidden'' in the floor evaluation, in which costs may not be considered.

Multiple commenters also questioned the technical feasibility of EPA's pollutant-by-pollutant approach. According to the commenters, establishing MACT standards based on the best achievable emissions limits for each type of pollution control equipment assumes that the equipment can be combined in the same system and that the emissions limits of each system are additive. The commenters stated that, in practice, this outcome is likely not achievable due to the challenge of finding pollution control equipment (*e.g.,* fabric filters for PM removal and wet scrubbers for HCl removal) that can work in concert with each other. The commenters said that EPA should consider how the different emissions controls may interfere with each other if employed simultaneously. As an example, one commenter noted that employing a wet scrubber to control HCl would saturate the gas stream, which would bind the bags in the fabric filter used to control PM, thereby compromising the filter's effectiveness. Some of the commenters also noted that the interrelationships between pollutants must be considered in order to ensure that the emissions control is operating effectively for control of all of the related pollutants, and not just a single pollutant. For example, commenters noted that improving combustion to control CO may affect $NO_X$.

Multiple commenters suggested EPA should revisit the MACT floors for HMIWI and choose the best performing sources on an overall basis, so that at least one source can meet all of the new source standards and a certain portion of the existing sources can meet the existing source standards. One commenter suggested that EPA combine the individual pollutants into a single analysis to determine which control provides the best overall control or otherwise determine that the MACT floor resulting from the analysis is actually achieved by those sources identified as the ''best controlled.'' According to various commenters, one possible way for doing this would be to establish rankings for how a HMIWI performs for each of the regulated pollutants and then sum the individual pollutant rankings to determine the overall ranking for the HMIWI.

*Response:* We disagree with the commenters who object to setting MACT floors on a pollutant-by-pollutant basis. We continue to interpret Section 129 as supporting the pollutant-by-pollutant approach. Section 129(a)(4) says that the standards promulgated under Section 129 shall specify numerical emissions limitations for each pollutant enumerated in that provision. Section 129(a)(2) requires EPA to establish standards requiring ''maximum degree of reduction of emissions.'' ''Maximum degree of reduction of emissions,'' in turn is defined in Section 129(a)(2) as including a minimum level of control (the so-called MACT floor). EPA, therefore, believes—and has long believed—that the combination of Section 129(a)(4), requiring numerical standards for each enumerated pollutant, and Section 129(a)(2), requiring that each such standard be at least as stringent as the MACT floor, supports, if not requires, that floors be derived for each pollutant based on the emissions levels achieved for each pollutant.

We also disagree with the commenters who complain that there may not be any operating unit that currently employs the complete suite of MACT technologies and meets the revised limits. The suite of MACT floor controls identified by the final rule approach (specifically, the combination of dry and wet control systems) is already used by four existing HMIWI that meet most of the MACT floor standards. For example, one HMIWI, equipped with a high-efficiency particulate air (HEPA) filtering system, carbon bed adsorber, and rotary atomizing wet scrubber, is estimated to meet all nine revised emissions limits in the final rule; another HMIWI, equipped with a lime injection system, powdered activated carbon injection system, baghouse, and vertical upflow two-stage multi-microventuri scrubber system, is estimated to meet eight of the nine revised limits. Also, an estimated 42 of the 57 HMIWI are estimated to meet both the CO and $NO_X$ revised limits simultaneously with existing combustion controls. (*See* 2009 memorandum entitled ''Revised Compliance Costs and Economic Inputs for Existing HMIWI,'' which is included in the docket for today's rulemaking.) The MACT control techniques for the various pollutants are fully integratable and compatible. There do not appear to be any conflicts where meeting the standard for one pollutant may jeopardize the achievability of meeting another pollutant's limit. This conclusion is supported in part by a review of available data and information. As discussed above, there are currently four units that are achieving most, if not all, of the floor standards (based on actual data for each pollutant) using the complete suite of

MACT floor controls. Thus, we conclude that our approach results in compatible MACT controls. Further, an evaluation of the emissions data from units that have measured data for all pollutants supports our conclusion. Our analysis shows that 12 percent (7 of 57 units) simultaneously meet all of the MACT floor emissions levels. (For further information, *see* 2009 memorandum entitled ''Revised Compliance Costs and Economic Inputs for Existing HMIWI,'' which is included in the docket for today's rulemaking.)

We also disagree with commenters claiming that it is inappropriate to consider a suite of floor control techniques that may not be currently in use by the source category. There is no reason not to consider emissions data and controls in use at sources that may be the best performers from some pollutants but not for other pollutants. The MACT floor controls applicable for one pollutant do not preclude the use of MACT floor controls for another pollutant. Therefore, it is appropriate to consider controls at sources employing MACT controls for some pollutants, but not all. For example, floor controls for existing large HMIWI include wet scrubbers for HCl control, dry scrubbers or combination dry/wet systems for PM and metals control, activated carbon injection for CDD/CDF control, and wet scrubbers or dry scrubbers for $SO_2$ control. As noted previously, wet and dry systems are demonstrated to be compatible, and it would be inappropriate to exclude from the MACT floor pool those units equipped with wet or dry systems because some of the control systems do better with some pollutants (*e.g.,* wet scrubbers with HCl) than others (*see* previous memorandum).

EPA disagrees strongly with commenters arguing that Congress has directly addressed the issue of whether the MACT floor can be established on a pollutant-by-pollutant basis. With respect to the MACT floor mandate of Section 112, there appears, rather, to be a substantial ambiguity in the statutory language about whether the MACT floor is to be based on the performance of an entire source or on the performance achieved in controlling particular hazardous air pollutants. The language regarding best performing ''sources'' (or, for new sources, ''source'') could apply either to the sources' (or source's) performance as a whole, or performance as to a particular pollutant or pollutants. The same is true of the definition of ''emission limitation'' in Section 302(k), which refers to ''air pollutants,'' but does not address whether the limitation must apply to every pollutant emitted by a source, or just some of them. (The same is true of the reference to ''air pollutants'' (in the plural) in Section 112(d)(2).) In this regard, we note that commenters in other MACT rulemakings have assumed that Section 129, which governs today's rule and which uses language essentially identical to Section 112 in mandating MACT, requires a pollutant-by-pollutant approach to establishing floors, because EPA is commanded to establish standards for enumerated pollutants under Section 129(a)(4). We further note that the DC Circuit, when reviewing the floor determinations we made in 1997 for HMIWI under Section 129 in *Sierra Club* v. *EPA,* noted that they were set pollutant-by-pollutant and found no error in this approach (*see* 167 F.3d at 660) (although this aspect of the rule was not challenged specifically). Indeed, the commenters who object so vehemently to the pollutant-by-pollutant approach in this rule raised no such objection when the opportunity to litigate the same approach in establishing the 1997 HMIWI standards was first presented.

EPA also believes that the commenters' reference to basing MACT floors on the performance of a hypothetical or theoretical unit, so that the limits are not based on those achieved in practice, is not only wrong factually (*see* above), but just re-begs the question of what the language in Sections 112(d)(3) and 129(a)(2) is referring to. We did not base the controls or emissions levels on theoretical sources, but on the performance of actual units in the HMIWI source category. All of the MACT floors are achieved in practice (since they are based on actual performance data). Moreover, the DC Circuit has emphasized that EPA may use any reasonable means to determine what levels of performance are achieved in practice. *Sierra Club* v. *EPA,* 167 F.3d at 663, 665. The commenters' reliance on cases that they claim preclude EPA's use of a pollutant-by-pollutant approach does not compel a unit-based approach, and the issue is not critical to EPA's position in any event, since the record shows that some units are meeting all of the floor limits and many are meeting several of them. At the very least, the *CMA* v. *EPA* decision under the CWA supports the proposition that a technology-based standard can be considered achievable even if all limits are not yet met by a single unit. Since the floor standards are demonstrably being achieved in practice by some sources, this issue is largely academic.

In short, EPA is not persuaded that the floors must be established on the basis of a unit's performance for all pollutants overall. We continue to believe, as we explained in the 1997 final rule, that such a reading would lead to results that are at odds with evident congressional intent (and with the Court's rulings in NLA II, CKRC and Brick MACT). To argue that Congress compelled this type of result is at odds with both the language of Sections 112 and 129 and common sense. Indeed, it would necessarily suggest that EPA could continue to adopt floors that reflect ''no emissions reduction,'' even after the DC Circuit so emphatically forbade that approach in the Brick MACT ruling (*Sierra Club* v. *EPA,* 479 F.3d 875 (DC Cir. 2007).

As we stated in the preamble to the 1997 regulation (62 FR 48363), we recognize that the pollutant-by-pollutant approach for determining the MACT floor can, as it does in this case, cause the overall cost of the regulation to increase compared to what would result under a unit-based methodology. For example, the pollutant-by-pollutant approach for the HMIWI regulation results in a stringent MACT floor for HCl based on control using a wet scrubber, and stringent MACT floors for PM and metals based on control using a dry scrubber. We interpret Section 129 of the CAA to require that the MACT floor be determined in this manner, and we believe that Congress did in fact intend that sources subject to regulations developed under Section 129 meet emissions limits that are achieved by the best controlled unit for each pollutant, as long as the control systems are compatible with each other. To our knowledge, there is no technical reason why these two air pollution control systems cannot be combined. (62 FR 48363–4) Combined dry/wet scrubber systems are currently in operation on several HMIWI. In response to commenters' concerns regarding the technical feasibility of combined dry/wet systems, available data on the performance of combined dry/wet scrubber systems indicate that the MACT floor emissions levels are achievable and technically feasible. The performance of dry scrubbers with activated carbon injection and the performance of wet scrubbers are well-documented. The available data for combination dry/wet systems provide no indication of operational or emissions problems that occur as a result of combining dry and wet control systems. Regarding the inverse relationship between CO and $NO_X$ with regard to combustion control, it is incumbent upon the HMIWI facility to determine whether combustion

conditions can be adjusted to meet both standards and, if not, install add-on $NO_X$ controls as necessary, *e.g.,* SNCR systems.

The MACT floor reflects the least stringent emissions standards that EPA may adopt in accordance with Section 129(a)(2) regardless of costs. Other statutory provisions are relevant, although they also do not decisively address this issue. Section 129(a)(4) requires MACT standards for, at a minimum, PM, opacity, $SO_2$, HCl, $NO_X$, CO, Pb, Cd, Hg, and CDD/CDF emitted by HMIWI. This provision certainly appears to direct maximum reduction of each specified pollutant. Moreover, although the provisions do not state whether there is to be a separate floor for each pollutant, the fact that Congress singled out these pollutants suggests that the floor level of control need not be limited by the performance of devices that only control some of these pollutants well. (62 FR 48364)

Regarding the commenter's suggestion that EPA choose the best performing sources on an overall basis, so that at least one source can meet all of the new source standards and a certain portion of the existing sources can meet the existing source standards, we reviewed this approach and found that the suggested approach does not consistently result in emissions limits that are at least as stringent as would have resulted in 1997 if we had actual emissions data and used the correct methodology. We estimate that four emissions limits for large and small non-rural HMIWI and five emissions limits for medium and small rural HMIWI calculated using the suggested overall unit-based approach would be higher than the 1997 emissions limits. Further, because not all pollutants are required to be tested (*e.g.,* $NO_X$ and $SO_2$), a substantial fraction of available emissions data would have to be discarded in order to rank only those HMIWI with a complete set of data for all nine pollutants (PM, $SO_2$, HCl, $NO_X$, CO, Pb, Cd, Hg, and CDD/CDF). Specifically, we would have to discard emissions data for 30 percent of large, 40 percent of medium, 100 percent of small non-rural, and 50 percent of small rural HMIWI in order to calculate MACT floors using the suggested approach. (*See* 2009 memorandum entitled ''Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI,'' which is included in the docket for today's rulemaking.)

A unit-based approach would tend to result in least common denominator floors where, as here, multiple pollutants are emitted, whereby floors would no longer be reflecting performance by the best performing sources for those pollutants. For example, if the best performing 12 percent of units for HAP metals did not control acid gases as well as a different 12 percent of units, the floors for acid gases and metals would not reflect best performance. Having separate floors for metals and acid gases in this example certainly promotes the stated purpose of the floor to provide a minimum level of control reflecting what best performing units have demonstrated the ability to do.

Similarly, a unit-based approach that employs ranking of a weighted average of pollutants would require EPA to assume priority for certain pollutants (one unit may have lower $NO_X$ emissions but higher CDD/CDF, for example). This approach would similarly tend to require EPA to disregard the factual levels reflecting the best performers for individual performers, but based on value judgments regarding the risks presented by various pollutants. Such considerations are antithetical to strictly performance-based analyses such as MACT floor determinations. Indeed, reviewing EPA's primary copper smelters MACT standard, the DC Circuit rejected the argument that risk-based considerations have any place in the MACT context (*see Sierra Club* v. *EPA,* 353 F.3d 976 (DC Cir. 2004).

3. Adequacy of Emissions Test Data

*Comment:* Multiple commenters argued that the proposed standards are flawed because EPA has not demonstrated that the actual emissions data on which the proposed rule is based adequately represent the full range of performance of tested facilities. According to various commenters, the emissions data were derived from performance tests conducted under ''representative operating conditions,'' rather than the ''worst reasonably foreseeable circumstances'' contemplated by the case law. *See Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999). Commenters stated that the proposed emissions limits did not adequately account for variability, and said EPA should have sought out more test data and specifically requested continuous monitoring data to properly characterize variability.

Another commenter specifically recommended that EPA gather additional data on emissions of medium HMIWI such as theirs before finalizing the rule to ensure each medium HMIWI has data sufficiently accurate and representative to properly set a MACT standard in accordance with the CAA Amendments. According to the commenter, rigorous quality assurance/quality control (QA/QC) procedures should also be applied to the test data.

One commenter stated that, because the new regulations are solely based on previous stack testing, the actual emissions tests need to be reviewed by EPA for technical accuracy, as well as consistency. Although there may have been insufficient time under the court-ordered schedule, the commenter argued that proposed standards cannot be defended technically in the absence of such an analysis.

The same commenter also stated that revisions to EPA's incinerator test protocol are needed to ensure that the unit is being tested at proper design conditions. At a minimum, the commenter said that incinerator temperature, waste input rate and constituents, auxiliary fuel consumption, quench rates (air and water), and chemical feed rates need to be recorded during an incinerator test to determine whether the operating and testing conditions were representative of the higher emissions rates that can be experienced during normal operations. Given that emissions are determined by waste characteristics, the commenter recommended that a standardized realistic worst-case test waste be used, which includes specific criteria components, as well as moisture content and heating value. Incinerators would be tested with the standard waste and the top 12 percent identified.

*Response:* First, in response to industry commenters who claim we should have gathered more data, we note that nothing precluded them from giving us more data to consider in responding to the Court's remand, if they felt that the data submitted to us for purposes of showing compliance with the 1997 standards was not representative of their normal operations. We have reasonably used the data available to us at the time we conducted this rulemaking, in the absence of being provided with any other data. We agree with the commenters that emissions tests might provide information on representative operations only where owners and operators conducting the tests have endeavored to reflect such representative operations at the time of the tests. However, when conducting tests to establish various parameters to be monitored, owners and operators may also endeavor to produce data for a wide range of operating conditions. Moreover, we have taken several steps to try and account for the emissions and operational variability, including (1) obtaining additional emissions test data

from States and EPA Regions representing all available annual test results for each unit, (2) using individual test run data for the best-performing 12 percent of sources to calculate UCL values, (3) using a substantial confidence interval (specifically, a 99 percent UCL value), and (4) closely reviewing how the data are distributed (*e.g.,* normally, lognormally). Also, EPA's own review of emissions factors shows that the variability of emissions between facilities is greater than the variability within facilities.

We believe that the data quality concerns expressed by the commenters have been addressed in a number of ways. First, EPA test methods incorporate data quality assurance and quality control steps and acceptance criteria at several levels. These provisions assure that the data produced are of quality sufficient for decision making, including compliance, when the methods are followed and the acceptance criteria are met. Second, States further assure that testers adhere to the test methods by providing third party oversight and review of compliance tests conducted by industry, such as that being discussed here. The States also implement the source testing audit program when available, further assuring the high quality of emissions testing data. Third, through internal and contractor support efforts for this regulatory project, EPA conducted additional review of the initial emissions test data to check for completeness and appropriate characterization of process operations. Finally, EPA reviewed and accounted for variability inherent in the emissions data used in establishing the applicable emissions limit including applying statistical confidence intervals.

Regarding the comment about revisions to EPA's incinerator test protocol, the factors cited by the commenter could be considered in setting site-specific compliance conditions. Such an approach may be useful at the next technology review. The commenter's suggestion that EPA use a standardized waste for testing is questionable, unless EPA wanted to establish a certification testing program like the residential wood combustion rule. However, such a program would be cumbersome and could potentially eliminate a majority of the industry.

*Comment:* Three commenters stated that EPA did not consider the accuracy and precision of the EPA test methods in proposing the emissions limits for new and existing HMIWI. To support their argument, the commenters referenced the findings of the Reference Method Accuracy and Precision (ReMAP) program co-sponsored by the American Society of Mechanical Engineers (ASME). According to the commenters, one of the main objectives of the ReMAP project was to ensure emissions limits would properly consider the inherent accuracy and precision limits of the test methods used to demonstrate compliance, such that a facility would not be in violation of a limit as a result of this inherent variability. The commenters noted that the ReMAP program established Precision Metrics for various reference methods and corresponding pollutants (*e.g.,* ±42 percent for CDD/CDF Method 23), and they compared these Precision Metrics to actual stack concentrations and proposed emissions limits for several pollutants. Based on this comparison, the commenters concluded that EPA did not adequately address these Precision Metrics in establishing the proposed limits.

*Response:* As noted above, we already took into account variability inherent in the data representing emissions and process operations in establishing the emissions limit. By using UCLs to set our emissions limits, we have inherently accounted for measurement precision. In fact, the adjustments we made to the average stack concentrations for the best-performing 12 percent of units to calculate the final emissions limits more than account for the Precision Metrics cited by the commenters. Thus, any additional adjustments of measurement to account for method precision are unnecessary.

*Comment:* One commenter stated that there are significant deficiencies in the emissions data used to establish the standards. Some of the standards are based on data from a limited number of stack tests. According to the commenter, there needs to be a standard for the minimum number of stack tests that must be performed before its data can be used as the basis for determining the top 12 percent performing incinerators. Because of the waste characteristics and variability, the commenter recommended a minimum of four tests. The commenter noted that some of the units included in the top 12 percent are specialty incinerators, which the commenter said are not representative of the subcategory as a whole. The commenter also noted that another unit incinerates municipal waste, which the commenter argued should cause its data to be invalid for the proposed HMIWI standards. According to the commenter, municipal waste would be expected to have a makeup that produces significantly lower emissions for some pollutants (*e.g.,* CDD/CDF, Cd). The commenter recommended developing a testing metric (*e.g.,* heating value, flue gas per pound of feed) and applying it to the data used to indicate possible flaws (*e.g.,* variations and/or abnormalities) which would spur further investigation into the validity of the data. Of the 45 emissions tests used to develop emissions limits for the large subcategory, the commenter concluded that 38 of those tests could be considered invalid because of too little testing or the unrepresentative content of the incinerated waste stream.

*Response:* Regarding the commenter's argument about claimed deficiencies in the emissions data used to establish the standards, we do not believe that data from high quality tests should be dismissed simply because there are only a few tests. As noted above, we have reasonably relied upon the data we had available to us, and we have already taken steps to alleviate concerns about the representativeness of the measured data used to establish the emissions limit, including calculating UCL estimates using standard statistical conventions.

Regarding the commenter's concerns about the specialty incinerators and the facility that also incinerates municipal waste, we evaluated creating separate subcategories for captive units (which would include the specialty incinerators) and a separate subcategory for mixed waste units, but as noted above, we ultimately rejected both options because we did not provide an opportunity to comment on the issue of subcategorization in the December 2008 re-proposal or a record that would justify such a significant change in categorization. Another option to address the facility incinerating municipal waste would be to use only the emissions data from those tests conducted with 100 percent medical waste, but that would limit the number of tests for that facility. Also, we have found a significant amount of overlap in emissions (including CDD/CDF and Cd) between the different test conditions at the facility (*e.g.,* 100 percent medical waste, 50 percent medical waste, 20 percent medical waste, *etc.*), suggesting that such a distinction in waste type is not very meaningful in this case. (*See* 2008 memorandum entitled ''Documentation of HMIWI Test Data Database,'' which is included in the docket.)

*Comment:* Three commenters stated that some emissions test data were improperly excluded from the dataset, including data deemed ''non-compliant,'' data collected at HMIWI subsequently shut down, and data collected under specific ''test

conditions.'' The commenters argued that emissions test data from compliance tests that were conducted in accordance with the applicable reference test methods for affected HMIWI should not be arbitrarily excluded from the re-stated MACT dataset, because that undermines the entire data evaluation process. The commenters stated that EPA provides no rationale for arbitrarily including data in some instances, and excluding them in others. Thus, according to the commenters, EPA's proposed standards are arbitrary and capricious. The commenters said that inclusion of all valid test data provides a better representation of the inherent variability of the various test methods and source operation. According to the commenters, EPA's MACT floor dataset was inconsistent, leading EPA to rely on an unrepresentative set of data. The commenters recommended that EPA provide a clear description of ''representative HMIWI operation'' so that consistent criteria are applied to evaluate whether valid emissions test data were properly included or excluded from the MACT floor dataset.

*Response:* Non-compliant emissions data from the initial tests of HMIWI were not included in the emissions database used to establish the emissions limits. At the time of the initial test, operators were still in the process of establishing their operating parameters and tuning their emissions control devices and operating conditions to comply with the regulation. Any non-compliant emissions data from the initial test would be expected to trigger a change in HMIWI operation in order to come back into compliance with the 1997 standards. Consequently, the non-compliant emissions data from these tests would not be representative of the typical operation of these HMIWI.

If non-compliant emissions data from an annual test were substantially higher than the emissions typically seen from the facility or were substantially higher than the emissions limit, this strongly suggested that there was a problem during the test and indicated that the test results would not be representative of the typical operation of the HMIWI. Such data were excluded from the pollutant averages for the particular facility. (It should be noted that the data that were excluded amount to less than 1 percent of the total set of emissions data for the industry.) For example, the emissions data from tests on one unit did not meet the PM or Cd emissions limit during an August 2006 annual test. A subsequent retest of this unit for those same pollutants in November 2006 showed PM emissions results less than 10 percent of those measured earlier, and Cd emissions results about 0.1 percent of the previously measured results. Consequently, we believe that the August 2006 PM and Cd test results were not representative of the typical operation of the HMIWI, and they were not included in the test data database. The PM and Cd retest data from the November 2006 retest were included instead. (*See* previous memorandum.)

We also excluded test data if we found errors in the calculations or the test methods, or some important elements of the data needed to calculate emissions in the form of the standard were missing. For example, we excluded the TEQ emissions estimates provided for a 2005 annual test at a second HMIWI because the reported TEQ estimates were greater than the total CDD/CDF estimates provided, a clearly incorrect result. The total CDD/CDF estimates were believed to be the correct values because they were well within the applicable emissions limit, while the TEQ estimates were a few times higher than the applicable limit. The 2001 annual test results for HCl at a third HMIWI were deemed invalid because the HCl sample train did not meet the method's ±95 percent sample collection efficiency requirement. There was believed to be some contamination in the sample collection and/or recovery during the 2005 Pb test at a fourth HMIWI, so a retest in February 2006 was conducted. The Pb results from the February 2006 retest were included with the results of the 2005 annual test in the test data database, replacing the 2005 Pb results. The first HCl test run during a 2006 test at a fifth HMIWI was below the detection limit, and the laboratory that analyzed the samples did not provide a detection limit for this test run. In this case, we decided to delete the results for this particular test run and calculated the HCl average for the 2006 test using the results from the other two test runs. Similarly, the second Hg test run during the 2003 test at a sixth HMIWI was reported to be below the detection limit, but the data summary did not include the measured Hg detection limit. Attempts to obtain the detection limit for this test run from the facility were unsuccessful. Consequently, we decided to delete the results for this test run and calculated the Hg average for the 2003 test using the results from the other two test runs. (*See* previous memorandum.)

A couple of annual compliance tests were excluded from the unit averages because they were conducted under test conditions (*e.g.,* reduced emissions control) that were not considered representative of the typical operation of the HMIWI. The exclusion of these tests had little impact on most of the pollutant averages for these HMIWI, and it should be noted that these HMIWI are not in the MACT floors of the pollutants of interest. One HMIWI was unable to meet the CDD/CDF emissions limit during the 2003 and 2004 annual compliance tests conducted without activated carbon. Only when activated carbon injection was included as a second test condition during the 2004 annual compliance test was the facility able to meet the CDD/CDF emissions limit. Consequently, we determined that the second test condition was more representative of the typical, current operation of the HMIWI. During a Hg annual compliance test, another HMIWI was unable to meet the Hg percent reduction limit under the test condition with a lower activated carbon injection rate, but was able to meet the limit under the test condition with a higher activated carbon injection rate. The Hg data meeting the limit were considered representative of the typical operation of the HMIWI, and the other Hg data were rejected. (*See* previous memorandum.)

Regarding the argument that EPA improperly excluded data available from HMIWI that subsequently shut down, we believe that it is appropriate in this particular rulemaking to base the MACT floor on emissions data from facilities that are currently operating, since those are the facilities that would be complying with the rule.

*Comment:* Three commenters stated that the treatment of individual ''non-detect'' data points within the MACT floor dataset should be consistent and should represent the actual detection level of the pollutant of concern. The commenters noted that non-detect or zero data provided as part of the latest data request were considered equal to the method detection limit, while CDD/CDF test data already in EPA's project files were calculated at one-half the detection limit. While this approach may be valid for total CDD/CDF, the commenters argued that it could have a profound effect on TEQ.

*Response:* In response to the commenters, it should be noted that section 9 of EPA Method 23 specifies that ''[a]ny PCDD's or PCDF's that are reported as below the measurement detection level (MDL) shall be counted as zero for the purpose of calculating the total concentration of PCDD's and PCDF's in the sample.'' The CDD/CDF results reported in the facilities' initial test reports and provided by States and EPA Regions in the annual test summaries reflect this computation approach. Consequently, by using one-half the detection limit in our review of

CDD/CDF data in full test reports, we were being conservative in our estimation of CDD/CDF emissions. Nonetheless, we looked at those HMIWI in the MACT floor for total CDD/CDF and TEQ to determine whether using the full detection limit would make a substantial difference. When we averaged in the results with all other CDD/CDF results for each facility, we found on average essentially no difference in total CDD/CDF emissions estimates (less than 1 percent) and only a small difference in TEQ emissions estimates (0.1 to 20 percent) for the four HMIWI size categories. (*See* 2009 memorandum entitled ''Comparison of CDD/CDF Non-Detect Data—Full Detection Limit vs. ½ Detection Limit,'' which is included in the docket for today's rulemaking.)

4. Non-Technology Factors

*Comment:* Numerous commenters stated that the variability in non-technology factors, such as the materials and composition fed to combustion devices, must be adequately addressed in the rulemaking process in order to promulgate a feasible rule, *Sierra Club,* 479 F.3d at 883 and *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 865 (DC Cir. 2001). According to various commenters, EPA did not identify the non-technology factors in the proposed rule or quantify their effect on actual emissions performance, but instead claimed, without supporting evidence, that using actual emissions levels accurately reflects emissions performance resulting from the use of add-on controls and other emissions reduction measures. Commenters argued that the failure to make these findings renders the proposed standards arbitrary. Another commenter disagreed, stating that EPA's proposed floor approach for new and existing HMIWI is generally correct and that EPA correctly observed that the use of actual emissions levels accounts for all emissions reduction strategies.

*Response:* With regard to the commenters' argument, the CAA does not require EPA to quantify the emissions reductions resulting from all non-technology factors, but instead focuses on identifying the emissions levels achieved by best performing sources no matter what means they use to achieve them. This approach is supported by the DC Circuit's decision in the Brick MACT case, which stressed the importance of identifying emissions ''levels'' achieved by sources. There can be no dispute that both the composition and level of emissions exiting the incinerator reflect both the add-on control technologies used by a unit (*e.g.,* dry scrubber, wet scrubber, activated carbon) that control the emissions and the non-technology factors (*e.g.,* waste material quantity and composition, combustion conditions) that influence the level and composition of emissions. As the *Sierra Club* Court noted in 1999, the less mercury fed into the waste stream, the less mercury emissions will be coming out of the stack. Whatever combination of add-on controls and non-technology measures a unit is employing will, therefore, necessarily affect the resulting emissions levels that are reflected in the actual emissions data upon which the revised floors are set. It would be impossible for those data to not reflect all those measures. This situation is quite the opposite of what was presented in the 1997 rulemaking, in which the floors were primarily derived from permit and regulatory levels that were not necessarily reflective of actual emissions performance but were assumed to reflect levels achievable by add-on control only. At that time, to adjust floors downward to account for non-technology factors, it might indeed have been necessary to be able to quantify additional emissions reductions attributable to such measures. Similarly, as the 2007 proposed remand response still in large part relied upon the permit and regulatory levels, not knowing the quantified reductions achieved by non-technology measures frustrated estimating the emissions levels achieved in practice by HMIWI. But this is simply not an issue under a methodology that depends upon the measured emissions levels that result from whatever mix of add-on or non-technology controls is being used, as under the 2008 re-proposal and today's final rule. The non-technology factors cannot help but affect the actual emissions data, and they are, therefore, necessarily accounted for in the actual emissions data-based floors.

EPA's data gathering effort for this rulemaking included not just initial and annual emissions test data obtained from EPA Regions, State/local governments, and HMIWI facilities, but also a waste segregation practices questionnaire sent to nine representative entities in the HMIWI category (six hospitals, one pharmaceutical facility, one university, and one company that owns 8 of the 14 commercial HMIWI). (*See* 2008 memoranda entitled ''Documentation of HMIWI Test Data Database'' and ''Summary of Industry Responses to HMIWI Waste Segregation Information Collection Request,'' which are included in the docket.) While our analysis of the emissions test data indicates a strong relationship between add-on control and emissions (*e.g.,* wet scrubbers achieve superior HCl control, while dry scrubbers achieve superior PM and metals control), our review of the questionnaire responses indicates that non-technology factors also play a role in emissions reduction. All of the survey respondents, except for the commercial company, practice onsite waste segregation to reduce the volume of waste being incinerated. Most of the respondents started the practice of waste segregation in the 1980s and 1990s. Five respondents also accept offsite waste and require the offsite waste generators to employ waste segregation practices. The commercial company encourages waste segregation from its waste generator clients through a number of efforts, including a waste management plan, contract requirements and waste acceptance protocols, a dental waste management program, and educational programs and supporting posters. All of the respondents that practice onsite waste segregation separate batteries and fluorescent bulbs (*i.e.,* mercury waste) from the HMI waste stream. Eight respondents separate paper and/or cardboard, four separate glass, and three separate plastics from the HMI waste stream. Other materials that are separated from the HMI waste stream include hazardous waste, waste oil, wood, construction debris, refrigerants, and various metals and metals-containing materials (*e.g.,* aluminum, copper, lead, mercury, steel, and electronics). (For further information, *see* 2008 memorandum ''Summary of Industry Responses to HMIWI Waste Segregation Information Collection Request,'' which is included in the docket.) These waste segregation efforts would certainly have an impact on the emissions of CDD/CDF, mercury, and other pollutants from these HMIWI and would be reflected in the emissions levels measured during their initial and annual emissions tests and used in our test data analysis. As noted previously, the nine entities surveyed were believed to be representative of the HMIWI industry as a whole, so the conclusions reached for the nine entities are also expected to apply to the entire industry as well.

5. Straight Emissions Approach

*Comment:* Two commenters argued that the parenthetical language in the Brick MACT decision equating the best performers with ''those with the lowest emissions levels'' (straight emissions approach) was only a legal dictum to

which EPA is not bound, and which is not cited in either the CKRC decision or the CAA. The commenters cited *Sierra Club* v. *EPA,* 479 F.3d 875, 880 (DC Cir. 2007) (Brick MACT), and *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 861 (DC Cir. 2001). In citing EPA's justification for the MACT floor approach used in the hazardous waste combustor rulemaking, the commenters stated EPA's position that the CAA does not require the Agency to equate the best performers with the lowest emitters. The commenters specifically cited EPA's statement that, ''as a legal matter, CAA Section 112(d)(3) does not specifically address the question of whether 'best performing' sources are those with the lowest net emissions, or those which control HAP emissions most efficiently.''

The commenters also noted that, since the Brick MACT decision, EPA has determined that there are other ways to rank the best performing sources and set the MACT floors than a straight emissions approach, such as the approach used in the hazardous waste combustor rulemaking, which combined the hazardous waste fed to the source and the source's system removal efficiency (SRE). According to the commenters, the ''SRE Feed'' methodology better identifies who the lowest emitters will be over time, better assesses their performance (*i.e.,* how much they will emit as they operate), and better accounts for variability (*e.g.,* non-technology factors).

*Response:* It is not necessary to adopt a position regarding whether the Brick MACT Court's references to ''emissions levels'' is dictum or binding for purposes of this rulemaking. In the 1999 HMIWI case, the Court very clearly stated that EPA's duty here was to use data that allowed the Agency to reasonably estimate the emissions performance of the best performing units. We have discovered that the permit and regulatory data upon which the 1997 rule was based do not reliably serve this purpose. Conversely, the actual emissions data from HMIWI do enable us to estimate the performance of the best performers. We believe that the use of actual emissions data, appropriately adjusted for variability using statistical methods, sufficiently accounts for the performance and variability of HMIWI operation. Regarding the commenters' reference to CAA Section 112(d)(3) to support their argument regarding the definition of ''best performing'' sources, we assume the commenters also meant Section 129, which governs this rule.

We do not think the SRE Feed methodology can be successfully adapted to determine MACT floors for HMIWI. This is because the SRE Feed approach requires knowledge of the amount of hazardous materials fed into the system and knowledge of the system's removal efficiency for those specific materials, neither of which is known or measured in the HMIWI industry. Such materials are mixed in with other waste and cannot reasonably be measured separately, especially given the occupational safety regulations to which HMIWI operators are subject.

6. Statistical Approach

*Comment:* Multiple commenters stated that the statistical methodology EPA used to establish MACT floors did not properly account for underlying non-technology factors such as feed material quantity or composition or for normal operational variability within and across unit operations, which led to unattainable emissions limits.

Three of those commenters supported the conditional use of the 99.9 percent UCL to quantify ''emissions limitation achieved'' as it applies to variability above average emissions. However, the three commenters had concerns about EPA's methods used to calculate statistical parameters. The commenters stated that EPA should characterize emissions data distributions before calculating statistics, instead of assuming all data are normally distributed. Otherwise, according to the commenters, it is difficult to determine if the statistics are valid. When data are not normally distributed, the commenters recommended that EPA transform the data prior to conducting its statistical calculations. The commenters noted that EPA used the NORMSINV function in Microsoft Excel to calculate the 99.9 percent UCL, which assumes that the actual mean and variance of a data set is known. According to the commenters, when the mean and variance are estimated from random samples or a small subset of the total population, such as stack test runs, the 99.9 percent UCL should be calculated with the Student t-statistic using the TINV function in Excel, not normal statistics.

Two other commenters objected to the use of the 99.9 percent UCL to account for variability in determining emissions limits. One of the commenters argued that EPA provides insufficient explanation or justification of its use of the 99.9 percent UCL. According to the commenter, if the performance of the best performing HMIWI, on average, is estimated to meet the emissions limit 99.9 percent of the time, then it would be expected to exceed the emissions limit 8.76 hours per year, which does not comply with the requirement that each source must meet the specified floor every day and under all operating conditions. Therefore, the commenter argued that the 99.9 percent UCL procedure used by EPA is deficient and must be revised.

The other commenter stated that EPA's use of a 99.9 percent UCL to estimate individual units' variability marks a sharp departure from EPA's approach in other rulemakings (*e.g.,* 90 percent and 95 percent UCL), and said that EPA offers no real explanation for this departure from past practice or why a 99.9 percent UCL would account for variability but a lower UCL, such as 99 percent or 95 percent or 90 percent, would not. The commenter recommended that EPA correct its floor approach to avoid the overcompensation for variability seen with some of the floors for new units.

Two commenters stated that a more realistic assessment of an individual unit's ability to meet an emissions limit during a compliance test would use the 99.9 percent UCL for that unit/pollutant instead of the average value.

Four commenters disagreed with EPA's decision to use individual test run results to account for variability in setting MACT floors for new and existing sources. The commenters urged EPA to use complete performance test results instead. One of the commenters argued that EPA is arbitrarily using different measures of performance for establishing emissions standards on the one hand (using test runs) and measuring compliance with these standards on the other (using whole tests), without explaining why different measurement approaches are appropriate. According to the commenter, it appears likely that disaggregating test results leads to less protective floors by creating false variability in individual units' performance. The commenter recommended that EPA calculate the floors with and without disaggregating individual test runs to ensure that its floors are not less stringent as a result of that approach. The other commenters noted that data limitations may not leave EPA an alternative to using test run results in some cases, but they recommended that EPA use complete test results where enough data exist to characterize emissions variability.

*Response:* Based on the responses to our waste segregation practices questionnaire, we believe that most HMIWI are practicing (or encouraging the practice of) waste segregation of materials such as batteries, fluorescent bulbs, paper, glass, plastics, and metals-containing materials, which we expect

to impact the emissions of CDD/CDF, mercury, and other pollutants and be reflected in the actual emissions data we use in our analysis. (*See* 2008 memorandum ''Summary of Industry Responses to HMIWI Waste Segregation Information Collection Request,'' which is included in the docket.) Consequently, we believe that using actual emissions data sufficiently and inherently accounts for non-technology factors such as feed material quantity or composition which influence the level and composition of emissions. We also believe that our use of multiple emissions tests and individual test runs for each HMIWI, where possible, and our estimation of 99 percent confidence intervals for MACT floor data sufficiently accounts for variability. The use of multiple emissions tests allows us to evaluate ''between-test variability,'' which can occur even where conditions appear to be the same when two or more tests are conducted. As we noted in the preamble to the December 1, 2008 re-proposal (73 FR 72976, 72980), variations in emissions may be caused by different settings for emissions testing equipment, different field teams conducting the testing, differences in sample handling, or different laboratories analyzing the results. Identifying an achieved emissions level needs to account for these differences between tests, in order for ''a uniform standard [to] be capable of being met under most adverse conditions which can reasonably be expected to recur[.]'' (*See NLA I,* 627 F.2d at 431, n. 46.) (*See* also *Portland Cement Ass'n,* 486 F.2d at 396 (noting industry point that ''a single test offered a weak basis'' for inferring that plants could meet the standards).) The use of individual test runs (as opposed to test averages or unit averages) allows us to evaluate ''within-test variability.'' A single test at a unit usually includes at least three separate test runs. (*See* § 63.7(e)(3) (for MACT standards under Section 112 of the CAA), and § 60.8(f) (for NSPS under CAA Section 111).) Each data point should be viewed as a snapshot of actual performance. Along with an understanding of the factors that may affect performance, each of these snapshots gives information about the normal, and unavoidable, variation in emissions that would be expected to recur over time. To account for pollutant-specific variability at the best-performing unit (for new source MACT) or best-performing 12 percent of units (for existing source MACT), we used emissions data for each test run conducted by those units. The amount of pollutant-specific test data for those HMIWI varies widely for each size category. Given the limited amount of test data and the uncertainty regarding that short-term emissions test data, we have decided that using the 99 percent UCL is an appropriate method of estimating variability. The UCL represents the statistical likelihood that a value, in this case an emissions value from the best performing source, will fall at or below the UCL value. (Further discussion regarding the 99 percent UCL is provided later in this section.)

After reviewing the commenters' suggestion that we characterize emissions data distributions before calculating statistics, we took a closer look at our statistical approach. In statistics, skewness is a measure of the degree of asymmetry of a distribution. Normal distributions typically have a skewness of zero. Consequently, to determine whether the emissions test data used in our UCL calculations had a normal or lognormal distribution, we estimated the skewness of the data using the SKEW function in Excel. Except as specified below, those datasets with a skewness value greater than zero (when rounded to a whole number) were categorized as lognormal, and all other datasets were categorized as normal. Those data categorized as lognormal were transformed (by taking the natural log of the data) prior to the calculation of UCL values. When there were only a few data points (*e.g.,* one emissions test with three test runs), which is the case for most datasets for small HMIWI, it was not possible to make a definitive determination that the data were distributed normally or lognormally. (In fact, assuming a lognormal distribution for those data often resulted in UCL values that were substantially higher than the 1997 promulgated limits.) In those cases, we decided to use the normal distribution in calculating UCL values, a conservative assumption which provided a more protective emissions limit. When we had more data and could make a more definitive determination about a dataset's distribution, we treated the data as noted previously. In most cases, we found that the larger datasets are lognormally distributed, although there are some cases where they appear to be distributed normally, and we treated the data as such when doing our UCL calculations. We believe this approach is more accurate and obtained more representative results than those at re-proposal.

Regarding the commenters' suggestion about using Student's t-statistics in calculating the UCL values, we also decided to revisit our statistical approach. We agree that we have only a relatively small, random sample of emissions data available for our analysis, which calls for the use of the Student's t-test, in accordance with standard statistical practice. Consequently, we have decided to use the TINV function in Excel (specifically the one-tailed t-value), rather than the NORMSINV function, to calculate the UCL values. This approach (using the Student's t-test) is consistent with approaches being taken in other EPA rulemakings, such as Portland Cement.

In response to public comments on the size of the confidence limits used at re-proposal and in light of the aforementioned changes in our statistical approach, we also decided to reevaluate the percentiles used in the UCL values. We evaluated four different percentiles (90, 95, 99, and 99.9 percent). The 99.9 percent UCL values estimated for the 2009 final rule are substantially higher than the highest test runs for the MACT floor units and are frequently higher than the emissions limits in the September 15, 1997 promulgated standards, indicating the 99.9th percentile overcompensates for variability. Lower percentiles (*e.g.,* 90, 95, and 99 percent) are inherently more stable than the 99.9th percentile, with less uncertainty (less variability) than the 99.9th percentile from a statistical standpoint. However, the 90 and 95 percent UCL values are frequently lower than the highest test runs for the MACT floor units and the stringent emissions limits in the December 1, 2008 re-proposal, indicating that those percentiles provide insufficient compensation for variability.

The 99 percent UCL values are somewhat higher than the emissions limits in the December 1, 2008 re-proposal but are well below the emissions limits in the September 15, 1997 promulgated standards. The 99 percent UCL values are more in line with the highest test runs for the MACT floor units than the other percentiles, indicating that the 99 percent UCL provides a more reasonable compensation for variability. This approach results in standards more representative of the level of emissions reduction that the best performing sources are actually achieving. Accordingly, we have decided to use the 99 percent UCL to estimate emissions limits for the 2009 final rule.

We disagree with one commenter's argument that the 99.9 percent UCL must provide for the floor to be met every day and under all operating conditions. The UCL is not about time, but about the population of data. Accounting for variability using the 99.9 percent UCL goes beyond the absolute

average but does not produce expectations of 0.1 percent noncompliance. Setting the emissions limit at the UCL accounts for the possibility of variability and the possibility that the average is outside the range. These statistical procedures are used to help us identify the average emissions limitation achieved by the best performing units, as Section 129(a)(2) of the CAA requires. Also, there is no practical upper limit as to what a facility can emit, so the argument that that EPA must set a floor at a level that equates to what a facility can meet at all times is not consistent with the CAA's requirement that EPA estimate the emissions levels achieved by best performing units.

Regarding the comment about our decision to use individual test run results to account for variability, we felt it was necessary to use test run results when we had data limitations (*e.g.,* for small HMIWI) and for consistency decided to take the same approach where data were more plentiful. As noted previously, we believe that each data point should be viewed as a snapshot of actual performance, which gives information about the variation in emissions that would be expected to recur over time.

*D. Emissions Limits*

1. HCl, CDD/CDF, and Metals Emissions Limits

*Comment:* One commenter argued that EPA's proposed HCl standards of 2.4 parts per million by volume (ppmv) for existing sources and 0.75 ppmv for new sources are based on biased data of indeterminate quality and are unachievable. The commenter also claimed that setting the HCl standards at such low levels will negatively impact the development and application of CEMS, due to the lack of correlation between Method 26A and CEMS at concentrations comparable to the proposed standards. According to the commenter, the test results (Methods 26 and 26A and RCRA SW 846 Method 0050) that EPA used to set the HCl standards contain a known bias at low levels of HCl, varying widely with temperature and moisture at HCl levels below 20 ppmv (all three methods), and having a negative bias at HCl levels below 5 ppmv (Method 26A). The commenter noted that all of the top performers in the large, medium, and small non-rural categories use wet scrubbers to control HCl emissions, and will have considerable moisture in the stack gas. Thus, the data from every one of these sources has the potential to be biased. The commenter argued that HCl data below 20 ppmv are not usable and/or representative and are technically indefensible. The commenter recommended that EPA follow the example of Office of Solid Waste (OSW), which corrected all HCl values below 20 ppmv to 20 ppmv, used a statistical method to impute a standard deviation for these test runs, and calculated a floor standard based on those values.

*Response:* We are basing the HCl standards in this rulemaking on the data we have available to us from the HMIWI source category, and can base them only on that data. The sensitivity of Method 26A for HCl is 0.04 ppmv. Moisture is only an issue with Method 26A if the testing contractor does not perform the method correctly. Unless we are given data to the contrary, we assume that the HCl data in our dataset are correct. These data, for this particular rulemaking, support the HCl standards being adopted today.

Nonetheless, we acknowledge that the HCl standards in our re-proposal were very close to the method detection limit for HCl. The changes in statistical approach for the final rule have resulted in increases to the HCl standards above 5 ppmv, which should address some of the concerns listed above. Furthermore, based on reported HCl emissions data for all HMIWI, we estimate that 64 percent of large, 82 percent of medium, and 100 percent of small/small rural HMIWI will be capable of meeting the revised HCl standards, on average, based on their currently used control measures. It should also be noted that HMIWI subject to the 1997 NSPS have been meeting the 15 ppmv HCl standard in that rule, which is below the 20 ppmv threshold level that the commenter cited.

*Comment:* One commenter recommended that EPA set beyond-the-floor standards for both HCl and chlorinated organic pollutants (including CDD/CDF) based on removing chlorinated plastics from the waste stream. According to the commenter, it is well established that the combustion of chlorinated plastics increases emissions of HCl as well as CDD/CDF and other chlorinated pollutants. The commenter stated that it is achievable for HMIWI to remove chlorinated plastics from the waste stream that they burn. The commenter said that EPA can gather data that will quantify the total amount of HCl that is attributable to the combustion of chlorinated plastics and set a standard reflecting the maximum degree of reduction that is achievable through the removal of chlorinated plastics from the waste stream.

The same commenter also recommended that EPA set beyond-the-floor standards for metals based on removing all metals from the waste stream before combustion, consistent with the requirements under Section 129(a)(2) and (3), which obligate EPA to require the maximum degree of reduction in emissions that is achievable through the use of methods and technologies before, during, and after combustion. The commenter stated that metals do not belong in an incinerator because they cannot be destroyed by incineration and are especially dangerous to public health and deleterious to the environment. As far as the commenter knew, EPA has never disagreed that removing metals from the HMIWI waste stream is achievable technically and economically, and the commenter noted that EPA has data from the MWC rulemaking that show materials separation requirements are effective and cost-effective. (*See* Docket A–89–08, various items.)

Given the language of Section 129 that requires the maximum degree of reduction in emissions that is achievable through the use of pre-combustion measures, the commenter argued that EPA has a duty to gather information on these measures and evaluate such measures in its beyond-the-floor analysis. According to the commenter, EPA's failure to gather information about the precise reduction of emissions that will result from such measures and failure to provide any explanation for rejecting such a standard is unlawful and arbitrary. The commenter noted that EPA has committed to set final standards by September 2009, and stated that EPA should not delay issuance of final standards to conduct this data gathering, but should commence data gathering now and revise the HMIWI regulations to include beyond-the-floor standards in the future.

*Response:* As we explained in the 2008 re-proposal, the identified beyond-the-floor add-on control measures we analyzed were not reasonable on a cost-effectiveness basis, especially in light of the significantly more stringent floor levels as compared to the 1997 rule's standards. We read the commenter's suggestion that we examine additional beyond-floor measures but without delaying final action on the re-proposal as recommending that we conduct the requested data gathering and analysis for those measures in a subsequent rulemaking action. A possible opportunity for that would be the next review of the rule under Sections 129(a)(5) and (h)(3). In the interim,

however, we have decided to revise the waste management plan provisions in §§ 60.35e and 60.55c to promote the segregation of chlorinated plastics and metals to the extent possible.

2. CO Emissions Limits

*Comment:* One commenter argued that the proposed CO emissions limits will be unattainable by many applicable units, based on the emissions data provided in the docket. The commenter stated that the add-on controls evaluated by EPA do not reduce CO emissions, and that CO emissions can be a function of the feed material composition (which the commenter stated EPA did not evaluate). As a result, the commenter stated, HMIWI operators will have very little latitude or options to meet the proposed CO limits. Three other commenters stated that historical CO CEMS data from well-performing commercial HMIWI demonstrate that the proposed CO emissions limit is not achievable on a continuous basis and argued that the existing 40 ppmv emissions limit must be retained. The commenters further stated that the proposed CO standards must include a reasonable, extended averaging period (*e.g.,* 24 hours) that accounts for the variability of the waste stream and waste characteristics. The commenters noted that the proposed standards are currently based on discrete 3-hour average data developed during performance test conditions, which they said do not account for the typical operational variability. According to the commenters, such snapshot data are also not representative of long-term continuous monitoring, placing facilities with CO CEMS at a competitive disadvantage with any revisions to the CO standard.

The same three commenters also stated that the proposed CO standard in combination with the 7 percent oxygen ($O_2$) diluent correction factor will pose technological monitoring challenges to HMIWI that either choose or will be required to use CO CEMS, especially given the variability of HMIWI operations and waste feed streams. According to the commenters, costly monitoring systems (*e.g.,* dual range or ambient level monitors) will be needed, resulting in additional QA activities. The commenters further stated that the application of an $O_2$ correction factor to the measured CO concentration CEMS data may cause artificial exceedances of the CO emissions standard at higher $O_2$ operating scenarios.

*Response:* Based on our review of CO emissions data for all HMIWI, we have found many HMIWI outperforming the existing 40 ppmv CO limit. We believe that the CO limits developed using the revised statistical approach are more representative of actual operation, and we estimate that a substantial percentage of HMIWI with their current controls will still be capable of meeting the revised limits (89 percent of large, 76 percent of medium, and 100 percent of small/small rural HMIWI, on average). Therefore, we disagree that the 40 ppmv CO limit must be retained.

Regarding the comment about the 3-hour average basis for the CO limit, it should be noted that the 2008 re-proposal included an amendment to § 60.56c allowing sources using CEMS to demonstrate compliance with the applicable emissions limit on a 24-hour block average, instead of a 12-hour rolling average (as specified in the 1997 final rule). This amended provision should address concerns about the ability of sources equipped with CEMS to demonstrate compliance with emissions limits on a continuous basis (as opposed to a 3-hour annual test) and would be consistent with past rulemakings for incineration units (*e.g.,* large and small MWCs).

Regarding the comment about the application of an $O_2$ correction factor to the CO CEMS data, it should be noted that correction to consistent standards (*e.g.,* percent $O_2$) is necessary in order to compare to other units and to an emissions limit. Applying an $O_2$ correction factor to CO CEMS should only be a problem at $O_2$ levels greater than 15 percent. For comparison purposes, we reviewed the $O_2$ levels recorded in initial test reports, and found only about 7 of 57 HMIWI reported $O_2$ levels above 15 percent during at least one pollutant test run, and we estimate that 6 of those 7 with their current equipment will still meet the revised CO emissions limits, based on a comparison of the revised limits to the average CO concentrations for those HMIWI.

3. Opacity Limits

*Comment:* Three commenters noted that EPA requested facility test data from 2003 through 2006 for all pollutants except opacity, even though annual opacity testing is required for all units. According to the commenters, if EPA wanted to review and revise the opacity limit pursuant to Section 129(a)(5), it should have requested opacity data and should have used those data in the re-establishment of the MACT standards. Instead, the commenters said, the proposed opacity limit was inappropriately established from a single continuous opacity monitoring system (COMS) located at a single HMIWI. The commenters argued that data from a single unit are insufficient to set an emissions limit that must be continuously achieved, and they said that EPA must seek additional monitoring data. The commenters also noted that compliance with the proposed opacity limit established by COMS is demonstrated using a different measurement methodology (Method 9).

The same three commenters, plus a fourth commenter, stated that the methodology that EPA used to establish the 2 percent opacity limit fails to account for actual opacity monitoring capabilities and normal operational variability, such as that included in PS–1 (40 CFR part 60, appendix B). According to the commenters, the inherent potential error of a COMS meeting PS–1 could greatly exceed the proposed opacity limit value. The fourth commenter argued that opacity under the worst foreseeable circumstances for the best-performing units would thus easily violate the MACT floor, which the commenter said would violate *Sierra Club.* 167 F.3d at 665.

All four commenters noted that, similar to COMS accuracy, Method 9 calls for recording visual observations to the nearest 5 percent at 15-second intervals. The commenters stated that using a compliance method with inherent potential accuracy levels exceeding the proposed 2 percent opacity limit appears problematic.

Given the limitations of Method 9 and the variability of all the HMIWI subject to the revised opacity standard, the first three commenters recommended that EPA establish an opacity standard based on Method 9 data instead of COMS data from a single unit. All four commenters argued that the current 10 percent opacity limit is reasonable, and would allow conventional compliance determination methods to be used, accounting for their limitations.

*Response:* The commenters' argument about how we established the proposed opacity limit is somewhat misleading. While we acknowledge that opacity data were inadvertently not included in the 2007–08 test data request, we already had opacity data for nearly 90 percent of all HMIWI from their initial compliance tests, and our initial opacity MACT floor analysis was based on the best-performing 12 percent of sources for opacity. As we stated in the preamble to the December 1, 2008 re-proposal (73 FR 72983), based on the opacity averages alone, without any accounting for variability, the MACT floor for opacity for existing and new units would have been 0 percent. We tried to account for variability by looking at the single highest opacity reading for HMIWI in the MACT floor

for PM, based on opacity being an appropriate surrogate for PM. We based our MACT floor opacity limit on the single highest COMS reading (1.1 percent) for one of the HMIWI in the MACT floor for PM. Because we commonly set opacity standards based on whole numbers and could not round down without risking having the MACT floor unit not meet the standard, we rounded up and proposed an opacity limit of 2 percent for both new and existing HMIWI. However, we now believe this analysis was incomplete. The analysis did not account for two other HMIWI in the MACT floor for PM that could more effectively account for variability for opacity. The maximum opacity averages for these two HMIWI are 5.87 and 4.17 percent. (*See* 2008 memorandum entitled ''Documentation of HMIWI Test Data Database,'' which is included in the docket.) The opacity data for these two HMIWI were measured using Method 9. Using the same approach that we used at re-proposal, we are establishing an opacity limit of 6 percent, by rounding up the highest opacity average of 5.87 percent to the nearest whole number.

Regarding the commenters' arguments that the inherent potential error of a COMS meeting PS–1 could exceed the proposed opacity limits, the potential error (about 4 percent opacity at the highest) is not the same as expected error (more on the order of 0.5 percent). Nonetheless, the increase in the opacity limit to 6 percent should address the commenters' concerns on this issue.

We disagree with the commenters' argument that a 10 percent opacity limit be used to allow conventional compliance determination methods. While opacity is read in 5 percent increments, average opacity can be any number above 0. Method 9 values are averages of 24 readings, which can include readings of 0 and an occasional 5 or 10 percent.

Regarding the commenters' argument that only Method 9 data should be used to establish the opacity standard because that is the measurement method that would be used to demonstrate compliance, the commenters' argument is moot, since the revised opacity standard is now based on Method 9 results.

4. Percent Reduction Limits

*Comment:* One commenter agreed with EPA's proposed elimination of percent reduction alternatives. According to the commenter, EPA correctly noted that standards based only on control technology performance do not reflect the effects of non-technology factors and, therefore, do not reflect the best units' actual performance. Therefore, the commenter said, allowing units the option to meet these percent reduction limits instead of emissions standards contravenes Section 129, and EPA appropriately proposed to delete the percent reduction limits.

Three other commenters argued that the percent reduction compliance option that was available in the 1997 rule and in the 2007 proposed rule should be re-evaluated and retained for commercial HMIWI, since the ability for such units to reduce emissions is due almost exclusively to the effectiveness of the control equipment (and not waste segregation). According to the commenters, commercial HMIWI facilities, unlike captive units, cannot practically control the waste that is put in the containers they process, and applicable regulations from the U.S. Occupational Safety and Health Administration (OSHA) preclude them from practicing waste segregation at the time of treatment. Thus, the commenters noted, they experience extreme variability during stack tests (especially for volatile metals Cd, Pb, and Hg) and will experience higher inlet concentrations than captive units; since they operate at the same control efficiency, they will exhibit higher stack emissions. The commenters stated that the percent reduction option is a better assessment of the performance of the control system for commercial units.

*Response:* We have decided not to include percent reduction limits in the final rule. In addition to the reasons we provided in the re-proposal, while commercial HMIWI facilities face greater challenges in controlling the waste they receive, compared to ''captive'' units, they are nonetheless capable of taking steps to educate their customers (*i.e.,* waste generators) regarding waste segregation and should also have some control based on the waste management plans, contract requirements, and waste acceptance protocols they negotiate with their customers. Consequently, non-technology factors are under their control to a limited extent, which does not support their rationale for a percent reduction limit. The effect of raw material inputs on emissions from HMIWI could instead be downplayed by a percent reduction limit that allows more emissions provided a given level of removal efficiency.

5. PCB and POM Emissions Limits

*Comment:* One commenter noted that EPA has interpreted the CAA as allowing the Agency to meet the requirements of Section 112(c)(6) by setting standards for incinerator emissions of 112(c)(6) pollutants under Section 129. According to the commenter, EPA has acknowledged that HMIWI account for a large portion of the aggregate emissions of both PCBs and POM. Thus, to satisfy Section 112(c)(6), the commenter argued that EPA must use its authority under Section 129(a)(4) to set emissions standards for both of these pollutants. Noting EPA's argument that its standards for CDD/CDF and Hg ''effectively reduce'' emissions of PCBs and POM and thus satisfy Section 112(c)(6), the commenter said that Section 112(c)(6) requires that these HAP be subject to MACT standards. Because the best performing units used to set these standards may be achieving reductions in PCBs and POM by means other than just controlling CDD/CDF and Hg emissions—*e.g.,* by ensuring that no PCB-containing wastes are put in the incinerator or by not incinerating chlorinated plastics—the commenter argued that EPA's standards for CDD/CDF and Hg do not constitute lawful MACT standards for PCBs and POM and, therefore, do not satisfy Section 112(c)(6).

*Response:* For the reasons we set forth in the 2008 re-proposal (*see* 73 FR at 72991–92) and in the preamble for today's rule (*see* section VII), we continue to take the view that while the rule does not identify specific limits for POM and PCB, emissions of those pollutants are nonetheless ''subject to regulation'' for purposes of Section 112(c)(6). While we have not identified specific numerical limits for POM and PCB, we believe CO serves as an effective surrogate for those pollutants, because CO, like POM and PCBs, is formed as a byproduct of combustion. We believe that dioxins/furans also serve as an effective surrogate for PCBs, because the compounds act similarly and, thus, are expected to be controlled similarly using HMIWI emissions control technology—*e.g.,* wet scrubbers or fabric filters (with or without activated carbon). Furthermore, recent HMIWI emissions test data for PCBs and dioxins/furans show that HMIWI well-controlled for dioxins/furans also achieve low PCB emissions. (*See* 2008 memorandum entitled ''Documentation of HMIWI Test Data Database,'' which is included in the docket.) It should also be noted that PCBs are generally found in higher concentrations than dioxins/furans (also the case for HMIWI), so HMIWI equipped with the aforementioned emissions controls would be even more effective at reducing PCB emissions. Consequently, we have concluded that the emissions

limits for CO function as a surrogate for control of both POM and PCBs, and the limits for dioxins/furans function as a surrogate for PCBs, such that it is not necessary to promulgate numerical emissions limits for POM and PCBs with respect to HMIWI to satisfy CAA Section 112(c)(6).

To further address POM and PCB emissions, the final rule also includes revised waste management plan provisions in §§ 60.35e and 60.55c that encourage segregation of the types of wastes that lead to these emissions, such as chlorinated plastics and PCB-containing wastes.

*E. Monitoring*

*Comment:* One commenter argued that the monitoring requirements in the HMIWI regulations are inadequate because they do not provide for emissions monitoring as required by Section 129. According to the commenter, EPA's exclusive reliance on parameter monitoring for most pollutants and units is unlawful. The commenter stated that EPA must require all HMIWI to use the available CEMS (*e.g.,* HCl, Hg, metals, CDD/CDF) to monitor their emissions. The commenter indicated that CEMS are the only requirements that can possibly provide data adequate to ensure compliance with emissions standards and protection of public health and the environment, consistent with Section 129(c)(1).

Two other commenters argued that continuous monitoring of CO with a 24-hour block average should be required of all existing incinerators to assure efficient combustion. However, the two commenters stated that continuous air monitoring of metals and other toxics should not be adopted as an alternative to stack testing until CEMS accuracy and reliability has been fully verified by EPA.

*Response:* The CAA provides us with broad discretion to establish monitoring requirements as necessary to assure compliance with applicable requirements. As we noted in the preamble to the 1997 final rule (62 FR 48360), the most direct means of ensuring compliance with emissions limits is the use of CEMS. As a matter of policy, the first and foremost option considered by EPA is to require the use of CEMS to demonstrate continuous compliance with specific emissions limits. Other options are considered only when CEMS are not technically available or when the impacts of including such requirements are considered unreasonable (due to high costs, for example). When monitoring options other than CEMS are considered, there is always a tradeoff between the cost of the monitoring requirement and the quality of the information collected with respect to determining actual emissions. While monitoring of operations (operating parameters) cannot provide a direct measurement of emissions, it is usually much less expensive than CEMS, and the information provided can be used to ensure that the incinerator and associated air pollution control equipment are operating properly. This information provides EPA and the public with assurance that the reductions envisioned by the regulations are being achieved. (62 FR 48360–1)

For the 1997 final rule, we developed testing and monitoring costs for a range of options. (*See* Legacy Docket ID No. A–91–61, item IV–B–66.) At that time, we concluded that the cost of CEMS were unreasonably high relative to the cost of the incinerators and emissions controls needed for compliance. (62 FR 48360–1.) For today's final rule, we also compared the costs of CEMS for various pollutants to the costs of the incinerators, emissions controls, and parameter monitors, and reached the same conclusion as we reached before. (For further information, *see* 2009 memoranda entitled ''Revised Baseline Operating Costs for Existing HMIWI'' and ''Revised Compliance Costs and Economic Inputs for Existing HMIWI,'' which are included in the docket for today's rulemaking.) Table 3 of this preamble presents the annual costs for CEMS, parameter monitoring systems, emissions controls, and incinerators, based on model unit cost calculations for all four HMIWI size categories.

TABLE 3—COMPARISON OF ANNUAL COSTS FOR CEMS, PARAMETER MONITORING SYSTEMS, AND EMISSIONS CONTROLS

| Pollutant | CEMS | Parameter monitoring systems | Emissions controls | Incinerators |
|---|---|---|---|---|
| CO | CO CEMS: $149,300 per year (yr). | Combustion control (charge rate, secondary chamber temperature): $6,000–$9,900/yr. | Secondary chamber retrofit: $15,100–$80,800/yr. | Incinerator: $54,800–$366,000/yr. |
| HCl | HCl CEMS: $171,400/yr. | Packed-bed scrubber (flue gas temperature, scrubber liquor flow rate and pH): $5,200/yr. | Packed-bed scrubber: $51,600–$104,000/yr. | |
| PM | PM CEMS: $195,200/yr. | Fabric filter (fabric filter inlet temperature): $4,200/yr. | Fabric filter: $130,000–$268,000/yr. | |
| Metals | Multi-metals CEMS: $57,800/yr. | | | |
| Hg | Hg CEMS: $313,900/yr. | Activated carbon injection system (activated carbon injection rate): $4,800/yr. | Activated carbon injection system: $5,400–$56,300/yr. | |
| CDD/CDF | Sorbent trap biweekly monitoring: $37,900/yr. | | | |

Regarding the comment that CEMS for metals and other toxics should not be adopted until their accuracy and reliability has been fully verified, the re-proposal specified that the CEMS options would be available to a facility only when a final performance specification has been published in the **Federal Register** or when a site-specific monitoring plan has been approved. This should address the commenters' concerns.

*F. Emissions Testing*

*Comment:* One commenter appreciated EPA's efforts to improve performance testing requirements and supported the proposed changes. A second commenter objected to the provisions of § 60.37e(f) allowing

submission of previous stack tests to show compliance with proposed emissions standards for existing HMIWI, arguing that most of the stack tests were conducted over 7 years ago, and are also not statistically reliable because so few tests were conducted. The commenter stated that the provisions disregard the attention that Section 129 expected EPA to place on solid waste incinerators.

The second commenter also objected to the proposed one-time test requirement for Pb, Cd, Hg, and CDD/CDF, arguing that a single test result does not provide adequate assurance that the emissions standards have been met or are continuously being achieved by operations combusting a non-homogeneous waste stream. According to the commenter, allowing a one-time test also provides a strong disincentive to installing CEMS on HMIWI. The commenter noted that if EPA still wants to reduce testing requirements, it could provide skip testing provisions for these pollutants similar to existing provisions in § 60.56c(c)(2), especially in future rulemaking, once the industry has demonstrated sustained compliance.

*Response:* Regarding the comment objecting to the submission of previous stack tests to show compliance with new emissions standards for existing HMIWI, we attempted to address such concerns in § 60.37e(f)(2) and (3), specifying that the HMIWI had to be operated in a manner expected to result in the same or lower emissions, that it could not have been modified such that emissions would be expected to exceed the previous test results, and that emissions test results prior to the year of the 1996 proposal could not be accepted. We believe that these provisions are adequate to ensure an accurate and reliable result. Furthermore, based on the language in the re-proposal, it is unlikely that any commenter could have anticipated a change in the base year (1996) for emissions tests that would be accepted to demonstrate compliance with the revised emissions limits in the final rule, such that the commenter would have had a meaningful opportunity to comment on the issue.

Regarding the comment objecting to the one-time test requirement for metals and CDD/CDF, the annual tests are intended to be surrogates for combustion, particulate, and acid gas control, supplementing existing continuous monitoring requirements. We believe that the annual tests for combustion and particulate control and the continuous emissions monitoring of activated carbon injection are sufficient to ensure compliance with the metals and CDD/CDF emissions limits. However, if the State implementing the HMIWI regulations for existing units in its jurisdiction believes that more frequent metals and CDD/CDF testing is a necessary requirement for those units, they have the option to prepare State plans for EPA review that include those requirements, or to simply require a particular source to conduct such testing. Section 116 of the CAA preserves a State's authority to regulate more stringently under Section 111. Given the more stringent requirements in the HMIWI rule (relative to the 1997 rule) being promulgated today, we do not want to impose additional testing requirements that are not necessary to assure compliance with the requirements of this final rule. Also, we did not provide an opportunity to comment on such additional emissions testing in the December 2008 re-proposal, and we would want to develop a fuller record on any such requirements and provide an opportunity to comment on those requirements before imposing them in a final rule. However, we would be willing to consider such a change at the next technology review, if such a change is necessary to reliably demonstrate compliance.

*G. Alternatives to On-Site Incineration*

*Comment:* Five commenters supported alternatives to on-site incineration, such as autoclaving. One of the commenters stated that 90 percent or more of medical waste could be safely diverted from incineration. The commenter further noted that alternative treatment technologies like autoclaves and microwaves work, are available, and are approved by regulatory agencies. The commenter argued that these technologies provide a much healthier alternative to incineration. Another of the commenters suggested EPA supplement its proposed rule to specify a phase-in requirement that diverts all medical waste not required by law or regulation to be incinerated to go to approved alternative non-incineration disposal methods; the commenter also recommended that EPA prohibit autoclave residues from being incinerated. Three of the commenters stated that EPA should initiate a ban on incineration of medical waste, and in the interim give incentives to industries using safer, cleaner alternatives to incinerating medical waste, such as autoclaving and microwaving.

Five other commenters noted the disadvantages associated with incineration alternatives such as autoclaving. One of the commenters noted that EPA's supporting documents for the proposed rule seem to endorse such alternatives but fail to recognize that some facilities generate waste types for which autoclaving and landfilling is not adequate treatment. As examples, another of the commenters noted that numerous research facilities insist that all of their waste be incinerated, and three of the commenters noted that most States and many local governments have imposed requirements on the disposal of these types of wastes and identified incineration as an authorized means of disposal; further, some States expressly require incineration of pathological wastes and/or prohibit autoclaving or landfilling of such wastes. With the proposed emissions limits, the same three commenters expected that HMI waste incineration capacity will disappear, and captive units will be limited by permit from accepting wastes from off-site; as a result, the commenters concluded, some waste generators will be left with a State requirement to incinerate waste, with little or no available HMIWI treatment options and capacity. One commenter noted that that sterilized waste is often transferred to regional MWC facilities for incineration, especially in their metropolitan area, and noted that MWC emissions limits are less stringent than the current and proposed limits for HMIWI. Thus, the commenter concluded, if the HMIWI regulation increases autoclaving and reduces use of their facility, it will have a significant adverse effect on air quality.

One of the commenters stated that EPA's studies for the proposed rule also fail to recognize the environmental impacts of transporting autoclaved medical wastes to regional landfills, such as depletion of landfill space, landfill gas emissions, landfill leachate issues, and impacts of waste transportation traffic. Another commenter noted that autoclaving does not achieve the 90 percent volume reduction that can be achieved with incineration and, with many landfills at or approaching capacity, volume reduction prior to landfilling is a much preferred option.

One commenter also noted that steam sterilization can result in the release of uncontrolled Hg vapors from the autoclaving process, so any medical waste displaced from their facility to autoclaves would result in an increase in Hg emissions from the autoclaves or the MWC. The commenter said that these potential impacts need to be assessed before any standard is adopted.

*Response:* Section 129 of the CAA provides EPA with the authority to establish emissions limits for the nine specified pollutants (HCl, CO, Pb, Cd,

Hg, PM, CDD/CDF, $NO_X$, and $SO_2$). Today's action satisfies EPA's obligation to respond to the Court's remand of the 1997 MACT floor determinations, as well as EPA's duty to conduct its first periodic review of the standards and requirements of the HMIWI rule. While a record that supported complete elimination of emissions of the enumerated pollutants is theoretically possible, the record for today's rule does not show that such an outright ''ban'' of incineration is required to meet EPA's obligations.

We agree with the commenters that it is appropriate to address the disadvantages and environmental impacts associated with incineration alternatives such as autoclaving in background documentation for the HMIWI rule, even though the revised standards in today's rule are floor-based (for which we cannot consider costs) rather than beyond-the-floor-based (where costs are to be considered). We also agree that incineration is sometimes insisted upon or even required by some research facilities and State and local governments, and we have incorporated those comments into the revised background documentation for the final rule.

Regarding the comment that some metropolitan areas require autoclaved waste to be sent to MWC units, while the commenter is correct that MWC limits are currently higher than the 1997 promulgated HMIWI limits and the 2008 re-proposed HMIWI limits, the MWC standards are on remand to the Agency, and EPA will be reviewing those standards. At this juncture, we cannot predict the outcome of that remand response.

*Comment:* One commenter stated that EPA's studies for the proposed rule fail to recognize and consider all the risks to the public associated with closing captive HMIWI and transporting medical/infectious wastes to large commercial incinerators, especially in regions such as the western U.S., where such commercial incinerators are not well distributed.

*Response:* We believe that the revised emissions limits are more representative of actual operation at HMIWI and will impact fewer HMIWI than the December 2008 re-proposal, which should address the commenter's concerns. Moreover, in this technology- and MACT floor-based rulemaking, we do not believe that we could permissibly adopt standards that are less stringent than the floor based on considerations of risk. *See Sierra Club* v. *EPA,* 353 F.3d 976 (DC Cir. 2009).

*H. Medical Waste Segregation*

*Comment:* Contrary to what EPA stated in its summary of waste segregation survey responses, two commenters argued that there is ample evidence that the extent to which waste segregation is conducted by our healthcare facilities is far from optimal, and that further waste segregation could easily occur. Multiple commenters recommended that EPA supplement the proposed rule to minimize or eliminate the inclusion of plastic wastes (a chief contributor to dioxin formation), Hg (*e.g.,* Hg-containing dental waste, Hg-containing devices), and other hazardous wastes in the waste sent to incineration; end the burning of confidential documents (*e.g.,* medical records) and other paper products that could be shredded and recycled; and require waste management plans from all generators of medical waste that use incineration as a disposal option. As examples, one of the commenters said captive HMIWI could be required to train staff to minimize inclusion of Hg-containing devices and other heavy metals from the waste stream; and commercial HMIWI could be required to provide educational materials to encourage customers to prevent inappropriate disposal of metals-containing devices and other items into wastes supplied to the commercial HMIWI. Another commenter supported the idea of enhancing waste management practices at the point of generation and noted that their commercial facility offers training sessions with hospitals and institutions on the importance of separating items containing Hg and other hazardous substances from the rest of their medical waste and has implemented and manages recycling programs for paper, bottles, glass, cardboard, metals, construction material, and sharps containers.

To ensure effective waste segregation by commercial facilities, one of the commenters further recommended that EPA revise the regulation to state that incinerator operators are responsible for all of the waste in their possession and the emissions that result, and should clarify for all incinerator operators that the term ''affected source'' in § 60.55c refers to them.

Four commenters noted that the proposed new rule for emissions from HMIWI does not address pharmaceutical drugs, nor does it address how hazardous pharmaceuticals are segregated from non-hazardous. The commenters stated that not all incinerators, such as those in North Carolina, are licensed to burn pharmaceuticals classified as hazardous. The commenters recommended that EPA require each State to develop and implement programs to ensure that hazardous and non-hazardous pharmaceuticals are being segregated.

*Response:* While EPA's authority to set emissions standards under Section 129(a)(2) reaches only incinerators of solid waste and does not directly extend to generators of waste who are not owners and operators of solid waste incineration units, we are amending the waste management plan provisions in the final rule to promote greater waste segregation (*e.g.,* plastics, metals, PCB-containing wastes, pharmaceuticals). Given the OSHA requirements to which commercial HMIWI operators are subject, those operators cannot be expected to remove certain materials from the waste they receive, but they can be expected to train and educate their clients to conduct their own waste segregation, especially with regard to the materials listed above. We are including language to that effect in the waste management provisions of the final rule.

*I. Startup, Shutdown, and Malfunction*

*Comment:* Three commenters argued that EPA should apply to the HMIWI rule the decision issued by the U.S. Court of Appeals for the DC Circuit (*Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008)), which vacated the SSM exemptions in EPA's General Provisions implementing Section 112 on the grounds that the exemptions violate the CAA's requirement that some Section 112 standards apply continuously. The commenters stated that the reasoning provided by the court in its decision also applies to the HMIWI rule.

According to one of the three commenters, the CAA makes clear that EPA may not exempt sources from compliance with Section 129 emissions standards during SSM events and that the current exemptions (found in §§ 60.56c(a) and 60.37e(a)) are unlawful. The commenter noted that EPA restricted the current SSM exemption to periods when no hospital or medical/infectious waste is being charged to HMIWI. However, the commenter said this does not bring EPA's regulations into compliance with the CAA or suffice to protect the public from toxic emissions during periods of SSM, because HMIWI could stop charging HMI waste during an SSM event but still emit toxic pollution through a bypass valve directly to the environment. To the extent EPA is not soliciting comment on the SSM exemption as part of its response to the remand in *Sierra Club* v. *EPA,* 167 F.3d

658 (DC Cir. 1999) or its review of regulations under Section 129(a)(5), the commenter petitioned it to do so under the authorities in *Kennecott Utah Copper Corp.* v. *Department of Interior,* 88 F.3d 1191 (DC Cir. 1996).

A fourth commenter argued that if the SSM court decision is upheld, this would substantially impact the approach for establishing ''worst reasonable foreseeable circumstances'' and the approach for establishing emissions limits based on available data. According to the commenter, emissions and controllability during periods of SSM are different than ''normal operation,'' and the commenter noted that EPA currently sets limits by reviewing data taken during ''normal operation,'' since no one generally conducts stack tests during SSM.

One commenter requested that emissions from SSM events be included in the calculations of a facility's potential to emit, which in turn determines the applicability of some Federal requirements. The commenter also recommended that emissions from SSM events should be included in modeling to ensure that new or expanded sources do not cause ambient air quality to exceed health-based levels. In lieu of modeling, the commenter said there should be actual monitoring of SSM events to accurately determine the individual types of toxic air pollutants and amounts of toxic air pollutant releases. The commenter recommended that there be mandatory penalties for SSM events based on the amounts and toxicity of the emissions. To illustrate the point, the commenter included documentation about bypass events at a local HMIWI. Two additional commenters also requested that EPA conduct modeling to assess the types and amounts of pollutants released during bypass events and take appropriate steps to regulate these ''fugitive'' emissions. All three commenters recommended that pollution control equipment be required for bypass events, whether the event is operator error or violation.

Another commenter recommended that EPA revise the General Provisions or the specific standards to subject SSM periods to appropriate work practice standards, including procedures to minimize emissions during those periods, rather than establish MACT emissions limits that are impossible to meet during SSM. According to the commenter, CAA Section 112(h) allows the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in lieu of an emissions standard where it is not feasible to prescribe or enforce an emissions standard. The commenter said that emissions measurement is not practicable during SSM periods.

*Response:* While the Court's ruling in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), directly affects only the subset of CAA Section 112(d) rules that incorporate § 63.6(f)(1) and (h)(1) by reference and that contain no other regulatory text exempting or excusing compliance during SSM events, the legality of source category-specific SSM provisions such as those adopted in the 1997 HMIWI rule is questionable.

To our knowledge, no HMIWI facilities have ever done any testing during an SSM event, except perhaps the few that have CO CEMS (although under the definition of ''malfunction'' in § 60.51c, operators are directed to monitor all applicable operating parameters during malfunctions until all waste had been combusted or until the malfunction ceases, whichever comes first). It would be very difficult to do any meaningful testing during such an event because the exhaust flow rates, temperatures, and other stack conditions would be highly variable and could foul up the isokinetic emissions test methods (thus invalidating the testing).

The 1997 rule excused exceedance of emissions standards during SSM events only in instances where ''no hospital waste or medical/infectious waste is charged to the affected facility.'' 40 CFR 60.56c(a). This means that in any SSM periods where such waste is being charged and an exceedance of the standards occurs, the source is in violation of the requirements of the standards. Based on the 1997 HMIWI rule's definitions of the terms ''startup'' and ''shutdown,'' no waste should be combusted during these periods, so emissions should be low during them—essentially the emissions from burning natural gas. Under § 60.51c, startup is defined as the period of time between the activation of the system and the first charge to the unit. For batch HMIWI, startup means the period of time between activation of the system and ignition of the waste. Shutdown is defined as the period of time after all waste has been combusted in the primary chamber. Shutdown must start no less than 2 hours after the last charge to the incinerator for continuous HMIWI, and no less than 4 hours for intermittent HMIWI. For batch HMIWI, shutdown must commence no less than 5 hours after the high-air phase of combustion has been completed. Consequently, it should not be possible for HMIWI to exceed the applicable emissions limits during startup and shutdown periods. This suggests that the exemption from standards during startup and shutdown is of virtually no utility to HMIWI, such that there is any need for EPA to retain the exemption in today's final rule.

Malfunctions present a similar situation in terms of how the 1997 rule functioned, if a slightly different situation factually. Again, the SSM exemption of § 60.56c(a) applied only where no hospital waste and no medical/infectious waste was being charged. Under §§ 60.56c(a) and 60.37e(a) of the HMIWI rules, facilities are required to stop charging waste as soon as a malfunction is identified and not charge any additional waste. ''Malfunction'' is defined in § 60.51c as any sudden, infrequent and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but does not include failures caused, in part, by poor maintenance or careless operation. During malfunction periods, operators must operate within established parameters as much as possible and continue to monitor all applicable operating parameters. So, there should be low emissions during such periods, but how low is not known. In any case, the rule as promulgated in 1997 did not excuse exceedances of emissions standards during malfunctions if hospital waste or medical/infectious waste was being charged during the malfunction. Moreover, our final standards established today are based on the best data available to the Agency, and we have no data to support modifying the floors for malfunction periods.

While EPA is still in the relatively early process of formulating its strategy for addressing the SSM court decision and the numerous Section 112 and 129 rules that contain varying provisions regarding SSM events, we are revising the HMIWI rules in today's final rulemaking to delete the 1997 rule's narrow exemption from emissions limits during periods of SSM. As explained above, the exemption and definitions as promulgated in 1997 provided virtually no utility, and we, therefore, expect that today's deletion of the SSM exemption will have very little, if any, impact on HMIWI units' compliance status. In the event that sources, despite their best efforts, fail to comply with applicable standards during SSM events (as defined by the rule), EPA will determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during SSM periods, including preventative and corrective

actions, as well as root cause analyses to ascertain and rectify excess emissions. This approach is consistent with that discussed in a recent letter by Adam M. Kushner, Director, Office of Civil Enforcement, to counsel representing various industry associations, entitled ''Re: Vacatur of Startup, Shutdown, and Malfunction (SSM) Exemption (40 CFR sections 63.6(f)(1) and 63.6(h)(1))'' (July 22, 2009) (included in the docket for today's rulemaking).

For the reasons discussed above, we disagree with the commenter who claimed that, in the context of this rulemaking, removal of the SSM exemption would substantially impact the MACT floor approach. Deletion of the exemption should have no impact on the use and analysis of the MACT compliance data upon which the revised standards are based in this rule. This is because the 1997 rule's exemption provisions already had a very limited focus, in excusing compliance with standards only when HMI waste was not being charged to the incinerator; even under the 1997 rules, if HMI waste was being charged during an SSM event, the standards continued to apply. Moreover, the commenter provided no information to support its position. Therefore, it is similarly unnecessary to accept other commenters' recommendations to specify mandatory penalties during SSM events or impose unique pollution controls for bypass events—these concerns should be adequately addressed by today's removal of the SSM exemption, which includes removal of the 1997 rule's exemption during SSM periods to the prohibition of using a bypass stack.

We also disagree that it is necessary to revise the CAA Section 112 General Provisions of 40 CFR part 63 to impose work practice requirements that apply in lieu of numeric emissions standards during SSM periods, in the context of this CAA Section 129 rulemaking. The commenter who suggested this approach cited CAA Section 112(h) as the basis of authority for such a change, but neither that section of the Act nor the part 63 General Provisions apply to standards promulgated under Section 129, which by its terms requires numeric emissions standards for the pollutants specified in Section 129(a)(4).

*J. Economic Impacts*

*Comment:* Two commenters argued that the proposed limits are unattainable without significant financial investment, which they said will ultimately be passed on to an already overburdened healthcare system. The commenters urged EPA to reconsider the proposed rule. One of the commenters suggested EPA keep emissions limits for existing HMIWI at current levels.

A third commenter argued that this sort of rule could also have severe adverse consequences on other industries, as well as the economy, energy and natural resources, and environment. A fourth commenter stated that the level of source shutdowns that has occurred in the HMIWI industry should not be allowed to occur in other Section 112 or 129 source categories, as it would severely cripple the manufacturing base of this country. The commenter urged EPA to consider costs and other impacts when developing rules, as required under Section 129. According to the commenter, the current financial crisis demonstrates the tremendous impact on jobs and the broader economy due to increased operational costs and facility shutdowns.

*Response:* We estimate that the revised limits for the final rule will be viewed as more attainable than were the 2008 re-proposed standards, and will result in less burdensome economic impacts for the industry. (*See* 2009 memorandum ''Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI'' and 2009 report ''Economic Impacts of Revised MACT Standards for Hospital/Medical/Infectious Waste Incinerators,'' which are included in the docket for today's rulemaking.) It should be noted that other rules do not necessarily have to take the same MACT floor approach as that taken in this rule (every industry, every situation is different), so the argument that promulgation of this rule as proposed would adversely affect other regulated industries is not a given. It should also be noted that under Section 129 we cannot consider costs and other impacts when we are establishing MACT floor requirements.

*Comment:* One commenter disagreed with EPA's estimation of economic impacts, especially as it affects their facility. The commenter specifically questioned EPA description of HMIWI demand as being extremely price insensitive (*i.e.,* that the price charged has little effect on the quantity of medical waste incinerated and can be passed on to customers in full). Based on their years of experience in selling services, the commenter indicated that the demand for medical waste incineration at their facility is a curve reflecting the interplay of different customer groups, rather than a steep curve as presented in EPA's analysis (details provided in public comment). Based on a graphical depiction of their facility's fixed costs, variable costs, and total costs overlaid with the demand structure, the commenter stated that their facility makes only a modest profit and could not operate at any level of volume profitably if the costs of complying with the new regulations are added to the current cost structure (graphical depiction provided in public comment).

The commenter recommended that the economic analysis be revised to reflect the realistic economic impacts on their company. The commenter noted that EPA's estimate of their gross sales ($12 million) is greater than they have averaged in recent years, qualifying them as a small business. The commenter also noted that there are no data or analysis to justify EPA's estimate of their company's profits (greater than $30 million) after adoption of the proposed regulations. According to the commenter, they will in fact be forced out of business.

Three other commenters noted that the economic analysis does not mention the restrictions imposed by State and local governments in resorting to alternative waste treatment methods.

*Response:* The demand curve we used in our economic analysis was meant to apply to the industry as a whole, and, as such, some assumptions and simplifications were necessary. Nonetheless, we have reviewed the commenter's concerns in revising our economic analysis for the final rule. We acknowledge the mistakes in our previous economic analysis regarding the commenter's profits and sales and have addressed them in our revised economic analysis. We have also addressed the restrictions noted by the other three commenters in the revised analysis. Finally, it should be noted that the revisions to the emissions limits for the final rule should mitigate the economic impacts described here.

*Comment:* One commenter stated that, although their company is a small entity, they were not given the opportunity to participate in the development of the proposed HMIWI rule, as provided under the Small Business Regulatory Enforcement Fairness Act (SBREFA). According to the commenter, EPA did not conduct the appropriate analysis and incorrectly assumed that their business had annual revenue exceeding the Small Business Size Standards. The commenter provided tax returns documenting their status as a small entity.

*Response:* We properly accounted for the impacts of the re-proposed rule in 2008 based on our analysis of the data we then had. The base year data we

were using in our economic analysis (2007) showed sales numbers that indicated they were not a small business. After receiving public comments and additional information, we have accounted for any recent changes in small entity status and re-analyzed the economic impacts of the rule on small entities. (*See* 2009 report ''Economic Impacts of Revised MACT Standards for Hospital/Medical/Infectious Waste Incinerators,'' which is included in the docket for today's rulemaking.) Because we are beyond proposal, we cannot convene a pre-proposal SBREFA panel. After considering the economic impacts of this final rule on small entities, we can certify that today's final rule will not have a significant economic impact on a substantial number of small entities. The one small entity directly regulated by today's final rule is a small business that owns two HMIWI. We have determined that this one small entity may experience an impact of approximately $3.15 million per year to comply with the final rule, resulting in a cost-to-sales ratio of approximately 45 percent. The small entity is a company in Maryland, which owns and operates a commercial facility at that location. There are only nine other commercial facilities, which are owned and operated by other companies, and the closest are in North Carolina and Ohio. Therefore, the entity is a regional monopolist and is able to raise the price by more than the per unit cost increase. We expect there to be a reduction in the amount of its services demanded due to the price change. Because of closures of captive HMIWI, there may also be an increase in the demand for its services that may reduce the decrease in revenues associated with the price increase.

*Two other entities are defined as borderline small:* Their parent company sales or employment in 2008 are above the SBA size-cutoff for small entities in their North American Industry Classification System (NAICS) codes, but are near enough to the size cut-off that variations in sales or employment over time might move them below the small business criterion. Based on 2008 sales data for these two entities, the cost-to-sales ratio is less than 1 percent for one entity and 1.4 percent for the other. It should be noted that the entity with the higher cost-to-sales ratio (1.4 percent) is a commercial unit and would have the ability to pass the cost along to their customers and would be expected to be able to afford compliance. Therefore, neither entity is likely to incur significant impacts. (*See* 2009 memorandum entitled ''Updated Sales Information for Companies Considered Borderline Small Entities,'' which is included in the docket for today's rulemaking.)

Although today's final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of this rule on small entities, to the extent allowed under this CAA MACT floor rulemaking. For each subcategory of HMIWI, we are promulgating emissions limits that are based on the MACT floor level of control, which is the minimum level of stringency that can be considered in establishing MACT standards. Under the CAA and the case law, EPA can set standards no less stringent than the MACT floor and, therefore, we were unable to eliminate the impact of the emissions limits on the small entity that would be regulated by the final rule. We nevertheless worked to minimize the costs of testing and monitoring requirements to the extent possible under the statute, in light of our final impacts analysis.

## V. Impacts of the Final Action for Existing Units

Over the last three years, about 25 percent (19 of 76 units) of the existing HMIWI have ceased operation. This trend is not surprising, and supports EPA's analysis, which shows that even in the absence of increased regulatory requirements, less expensive alternative waste disposal options are available for almost all facilities that operate HMIWI. Therefore, EPA expects this trend of unit closures to continue even in the absence of the regulatory changes. The additional costs imposed by this action are likely to accelerate the trend towards alternative waste disposal options. Our analysis suggests that sources are likely to respond to the increased regulatory requirements by choosing to minimize the current cost of on-site incineration (*e.g.,* improve waste segregation), use alternative waste disposal options, or send the waste to an off-site commercial incinerator.

The EPA's objective is not to discourage continued use of HMIWI; EPA's objective is to adopt EG for existing HMIWI that fulfill the requirements of CAA Section 129. In doing so, the primary outcome associated with adoption of these EG may be an increase in the use of alternative waste disposal and a decrease in the use of HMIWI. Consequently, EPA's impact analyses of the final rule include complete analyses of two potential scenarios. The first scenario, which will be referred to as the ''MACT compliance'' option for the remainder of this preamble, assumes that all units continue operation and take the necessary steps to achieve compliance. The second scenario, which will be referred to as the ''alternative disposal'' option for the remainder of this preamble, assumes that all facilities choose to discontinue operation of their HMIWI in favor of an alternative waste disposal option. While several different disposal options, such as sending waste to a municipal waste combustor or commercial HMIWI or using chemical treatment (*e.g.,* ozone, electropyrolysis, chlorine compounds, alkali agents), thermal treatment (*e.g.,* plasma arc, microwave technologies), or mechanical systems (*e.g.,* shredding, compacting) may be available to some facilities, EPA assessed the impacts of another alternative waste disposal option. This option involves on-site sterilization of the waste using an autoclave followed by landfilling of the sterilized waste. EPA selected the autoclave/landfilling option because it is a widely available and highly used alternative. The results of both the MACT compliance and autoclave/landfilling options are provided in the discussion of impacts. While the likely outcome of the rule revisions is somewhere in between the two options that EPA selected for analysis (some units will comply with the standards and some will discontinue operations), EPA's analyses provide a broad picture of potential impacts.

As explained in section IV.A.2 of this preamble, the revised emissions limits for existing HMIWI are based on the average of the best performing 12 percent of sources for each pollutant in each subcategory. This final action requires varying degrees of improvements in performance by most HMIWI. Depending on the current configuration of each unit and air pollution controls, the improvements could be achieved either through the addition of add-on APCD, improvement of existing add-on APCD, increase in sorbent usage rates, and various combustion improvements. More specifically, the improvements anticipated include: Most wet scrubber-controlled units adding a fabric filter-based system for improved control of PM and metals; most units with fabric filter-based systems adding a packed-bed wet scrubber for improved control of HCl; adding activated carbon injection or increasing activated carbon usage rate for improved Hg and dioxin control; upgrading fabric filter performance for improved control of PM and metals; increasing lime or caustic

use for improved control of HCl and, in a few instances, $SO_2$; and combustion improvements primarily associated with decreasing CO emissions. We also project that a few units may require add-on controls (SNCR) to meet the revised $NO_X$ emissions levels. Facilities may resubmit their most recent compliance test data for each pollutant if the data show that their HMIWI meets the revised emissions limits. In these instances, facilities must certify that the test results are representative of current operations. Those facilities would then not be required to test for those pollutants to prove initial compliance with the revised emissions limits.

*A. What Are the Primary Air Impacts?*

EPA estimates that reductions of approximately 393,000 pounds per year (lb/yr) of the regulated pollutants would be achieved if all existing HMIWI improved performance to meet the revised emissions limits. If all HMIWI selected an alternative disposal method, reductions of approximately 1.52 million lb/yr would be achieved. Table 4 shows the estimated reductions by pollutant for the two scenarios for the 57 HMIWI currently operating.

TABLE 4—PROJECTED EMISSIONS REDUCTIONS FOR MACT COMPLIANCE AND ALTERNATIVE DISPOSAL OPTIONS FOR EXISTING HMIWI

| Pollutant | Reductions achieved through meeting MACT (lb/yr) | Reductions achieved through alternative disposal (lb/yr) |
|---|---|---|
| HCl | 168,000 | 198,000 |
| CO | 1,140 | 20,200 |
| Pb | 313 | 420 |
| Cd | 15.6 | 35.1 |
| Hg | 605 | 682 |
| PM | 3,170 | 89,900 |
| CDD/CDF, total | 0.0678 | 0.0985 |
| CDD/CDF, TEQ | 0.00145 | 0.00183 |
| $NO_X$ | 146,000 | 1,080,000 |
| $SO_2$ | 73,700 | 126,000 |
| Total | 393,000 | 1,520,000 |

*B. What Are the Water and Solid Waste Impacts?*

EPA estimates that, based on the MACT compliance option, approximately 3,840 tons per year (tpy) of additional solid waste and 86,000 gallons per year (gpy) of additional wastewater would be generated as a result of operating additional controls or using increased amounts of various sorbents.

EPA estimates that, based on the alternative disposal option, approximately 15,100 tpy of additional solid waste would be sent to landfills. This option would result in an estimated 5.40 million gpy in wastewater impacts.

*C. What Are the Energy Impacts?*

EPA estimates that approximately 9,530 megawatt-hours per year (MWh/yr) of additional electricity would be required to support the increased control requirements associated with the MACT compliance option.

For the alternative disposal option, EPA estimates that approximately 12,400 MWh/yr of additional electricity would be required to operate the autoclaves.

*D. What Are the Secondary Air Impacts?*

Secondary air impacts associated with the MACT compliance option are direct impacts that result from the increase in natural gas and/or electricity use that we estimate may be required to enable facilities to achieve the revised emissions limits. We estimate that the adjustments could result in emissions of 279 lb/yr of PM; 3,260 lb/yr of CO; 2,650 lb/yr of $NO_X$; and 1,780 lb/yr of $SO_2$ from the increased electricity and natural gas usage.

For the alternative disposal option, EPA estimates secondary air impacts of 692 lb/yr of PM; 5,040 lb/yr of CO; 2,550 lb/yr of $NO_X$; and 4,980 lb/yr of $SO_2$ from the additional electricity that would be required to operate the autoclaves. In addition, EPA estimates that landfilling would result in an additional 626 tpy of methane and 0.0330 lb/yr of mercury emissions.

*E. What Are the Cost and Economic Impacts?*

EPA estimates that for the MACT compliance option, the national total costs for the 57 existing HMIWI to comply with this final action would be approximately $15.5 million in each of the first 3 years of compliance. This estimate includes the costs that would be incurred based on the anticipated performance improvements (*i.e.,* costs of new APCD and improvements in performance of existing APCD), and the additional monitoring (*i.e.,* annual control device inspections), testing (*i.e.,* initial EPA Method 22 of appendix A–7 test and initial compliance testing), and recordkeeping and reporting costs that would be incurred by all 57 HMIWI as a result of this final action. Approximately 95 percent of the estimated total cost in the first year is for emissions control, and the remaining 5 percent is for monitoring, testing, recordkeeping and reporting.

EPA estimates that for the alternative disposal option, the national total costs for the 57 existing HMIWI to dispose of their solid waste by autoclaving and landfilling would be approximately $10.6 million per year. This estimate includes the costs that would be incurred based on the purchase and operation of autoclaves and the projected landfill tipping fees that would be incurred based on the volume of waste to be landfilled.

*Currently, there are 57 existing HMIWI at 51 facilities. They may be divided into two broad categories:* (1) Captive HMIWI, which are co-owned and co-located with generating facilities and provide on-site incineration services for waste generated by the hospital, research facility, university, or pharmaceutical operations; and (2) commercial HMIWI, which provide commercial incineration services for waste generated off-site by firms unrelated to the firm that owns the HMIWI. EPA analyzed the impacts on

captive HMIWI and commercial HMIWI using different methods. Of the 57 HMIWI, 14 are commercial and 43 are captive.

Owners of captive HMIWI may choose to incur the costs of complying with the revised HMIWI standards or close the HMIWI and switch to another disposal technology like autoclaving and landfilling or have their waste handled by a commercial disposal service. EPA's estimate of autoclaving and landfilling costs indicate that even without additional regulatory costs, the costs of autoclaving and landfilling may be lower than the costs of incinerating. However, even if all owners of captive HMIWI choose to continue to operate with the additional regulatory cost, the cost-to-sales ratios for firms owning captive HMIWI are low. This reflects the relatively small share of overall costs that are associated with hospital/medical/infectious waste management at these firms. Of the 35 firms owning captive HMIWI, 22 have costs of compliance that are less than 0.1 percent of firm sales. Of the 13 with costs exceeding 0.1 percent of sales, the largest cost-to-sales ratio is at a captive hospital HMIWI, and is equal to 0.995 percent. Therefore, EPA expects no significant impact on the prices and quantities of the underlying services of the owners of the captive HMIWI, whether the costs are passed on or absorbed.

Impacts on commercial HMIWI are analyzed using the simplifying assumption that they operate as regional monopolists (in general, only one HMIWI is considered as a treatment option by generators located nearby). The approach to modeling the impact for commercial HMIWI seems very appropriate for all of the facilities except for one. The other commercial HMIWI facilities have costs of compliance that are no more than 2.0 percent of revenues. That one facility has a ratio of approximately 45 percent. As noted previously, this facility is a regional monopolist and is able to raise the price by more than the per unit cost increase. We expect there to be a reduction in the amount of its services demanded due to the price change. Because of closures of captive HMIWI, there may also be an increase in the demand for its services that may reduce the decrease in revenues associated with the price increase. For more details regarding EPA's analysis of the economic impacts, *see* the July 2009 docket entry entitled ''Economic Impacts of Revised MACT Standards for Hospital/Medical/Infectious Waste Incinerators.''

## VI. Impacts of the Final Action for New Units

Information provided to EPA indicates that negative growth has been the trend for HMIWI for the past several years. While existing units continue to shut down, since promulgation of the HMIWI NSPS in 1997, four new units have been constructed and one unit has been reconstructed. This information indicates that in the absence of further regulation, new HMIWI may be built. However, based on the stringency of revisions being promulgated for the NSPS, sources would likely respond to the final rule by choosing not to construct new HMIWI and would utilize alternative waste disposal options rather than incur the costs of compliance.

Considering this information, EPA does not anticipate any new HMIWI, and therefore, no impacts of the revised NSPS for new units. For purposes of demonstrating that emissions reductions would result from the NSPS in the unlikely event that a new unit is constructed, EPA estimated emissions reductions and other impacts expected for each of three HMIWI model plants.

### *A. What Are the Primary Air Impacts?*

EPA estimated emissions reductions for each of the model plants to demonstrate that the NSPS would, if a new unit were built, reduce emissions compared to a HMIWI meeting the current NSPS. Table 5 of this preamble presents the emissions reductions for the HMIWI model plants. The three model plants (with capacities of 100 lb/hr, 400 lb/hr, and 4,000 lb/hr) represent typical HMIWI. For pollutants where a ''zero'' value is shown, the model plant performance estimate meets the revised new source limit, which is not surprising since the models are based on the performance of the newest sources, which are among the best performers in the industry.

TABLE 5—EMISSIONS REDUCTIONS ON A MODEL PLANT BASIS

| Pollutant | Emissions reduction for HMIWI model plants (lb/yr) | | |
|---|---|---|---|
| | 100 lb/hr capacity | 400 lb/hr capacity | 4,000 lb/hr capacity |
| HCl | 0 | 45.8 | 968 |
| CO | 0 | 7.97 | 0 |
| Pb | 0 | 0 | 3.76 |
| Cd | 0 | 0 | 0.293 |
| Hg | 0 | 0.194 | 2.40 |
| PM | 0 | 0 | 170 |
| Dioxins/furans, total | 0 | $5.34 \times 10^{-4}$ | 0 |
| Dioxins/furans, TEQ | 0 | $6.02 \times 10^{-6}$ | 0 |
| $NO_X$ | 491 | 1,780 | 0 |
| $SO_2$ | 37.8 | 31.9 | 0 |
| Total | 529 | 1,860 | 1,140 |

### *B. What Are the Water and Solid Waste Impacts?*

While EPA believes it is unlikely that any new HMIWI will be constructed, we estimated the following water or solid waste impacts associated with the revised NSPS for three different HMIWI model sizes: For large units, we estimate 7,120 gpy of additional wastewater and 50.8 tpy of additional solid waste; for medium units, we estimate no additional wastewater and 23.6 tpy of additional solid waste; and, for small units, we estimate 29.7 gallons per year of additional wastewater and 2.68 tpy of additional solid waste.

### *C. What Are the Energy Impacts?*

While EPA believes it is unlikely that any new HMIWI will be constructed, we estimated the following energy impacts associated with the revised NSPS for three different HMIWI model sizes: for large units, we estimate that 280 MWh/yr of additional electricity would be

required to support the increased control requirements; for medium units, we estimate 416 MWh/yr; and, for small units, we estimate 9.90 MWh/yr.

*D. What Are the Secondary Air Impacts?*

Secondary air impacts for new HMIWI are direct impacts that would result from the increase in natural gas and/or electricity use that we estimate may be required to enable facilities to achieve the revised emissions limits. While EPA believes it is unlikely that any new HMIWI will be constructed, we estimated the secondary air impacts associated with the revisions to the NSPS for three different HMIWI model sizes. For large units, we estimate that the adjustments could result in emissions of 15.6 lb/yr of PM; 114 lb/yr of CO; 57.4 lb/yr of $NO_X$; and 112 lb/yr of $SO_2$. For medium units, we estimate that the adjustments could result in emissions of 2.71 lb/yr of PM; 119 lb/yr of CO; 142 lb/yr of $NO_X$; and 0.938 lb/yr of $SO_2$. For small units, we estimate that the adjustments could result in emissions of 0.551 lb/yr of PM; 4.02 lb/yr of CO; 2.03 lb/yr of $NO_X$; and 3.97 lb/yr of $SO_2$.

For the alternative disposal option, EPA estimated secondary air impacts from the additional electricity that would be required to operate autoclaves in lieu of each size of HMIWI. For large units, we estimate secondary emissions of 65.5 lb/yr of PM; 478 lb/yr of CO; 241 lb/yr of $NO_X$; and 471 lb/yr of $SO_2$. For medium units, we estimate secondary emissions of 4.98 lb/yr of PM; 36.3 lb/yr of CO; 18.4 lb/yr of $NO_X$; and 35.8 lb/yr of $SO_2$. For small units, we estimate secondary emissions of 1.25 lb/yr of PM; 9.09 lb/yr of CO; 4.60 lb/yr of $NO_X$; and 8.98 lb/yr of $SO_2$. In addition, EPA estimates that an additional 58.5 tpy of methane and 0.00308 lb/yr of mercury emissions would result from landfilling waste that would have been processed in a large HMIWI, 3.29 tpy of methane and 0.000173 lb/yr of mercury emissions would result from landfilling waste that would have been processed in a medium HMIWI, and 0.549 tpy of methane and 0.0000289 lb/yr of mercury emissions would result from landfilling waste that would have been processed in a small HMIWI.

*E. What Are the Cost and Economic Impacts?*

While EPA projects that three new HMIWI would be constructed in the absence of the promulgated revisions, we believe that, in response to the promulgated revisions, sources may decide against constructing new HMIWI. Nevertheless, we estimated the following costs associated with installation and operation of air pollution controls needed to meet the revisions to the NSPS: for new large units, $1.08 million per year; for new medium units, $116,000 per year; and, for new small units, $118,000 per year.

EPA's analysis of impacts of the revisions to the HMIWI standards on potential new HMIWI compares the with-regulation estimated prices that would be charged by new large, medium, and small HMIWI to the range of with-regulation prices estimated to be charged by existing commercial HMIWI in various regional markets. This comparison indicates that new large and medium commercial HMIWI may be viable, but new small commercial HMIWI probably would not be viable. On the other hand, generators of hospital/medical/infectious waste could have overarching reasons to purchase and install a new small HMIWI. Comparison of autoclave treatment coupled with off-site landfill disposal shows that, for new facilities as for existing ones, autoclave/landfill treatment and disposal is generally less costly than incineration. Thus, the motivation to improve waste segregation to minimize the waste that must be incinerated is likely to continue, although HMIWI treatment of some wastes will continue to be required by regulation.

**VII. Relationship of the Final Action to Section 112(c)(6) of the CAA**

Section 112(c)(6) of the CAA requires EPA to identify categories of sources of seven specified pollutants to assure that sources accounting for not less than 90 percent of the aggregate emissions of each such pollutant are subject to standards under CAA Section 112(d)(2) or 112(d)(4). EPA has identified HMIWI as a source category that emits five of the seven CAA Section 112(c)(6) pollutants: POM, dioxins, furans, Hg, and PCBs. (The POM emitted by HMIWI is composed of 16 polyaromatic hydrocarbons (PAH) and extractable organic matter (EOM).) In the **Federal Register** notice *Source Category Listing for Section 112(d)(2) Rulemaking Pursuant to Section 112(c)(6) Requirements,* 63 FR 17838, 17849, Table 2 (1998), EPA identified medical waste incinerators (now referred to as HMIWI) as a source category ''subject to regulation'' for purposes of CAA Section 112(c)(6) with respect to the CAA Section 112(c)(6) pollutants that HMIWI emit. HMIWI are solid waste incineration units currently regulated under CAA Section 129. For purposes of CAA Section 112(c)(6), EPA has determined that standards promulgated under CAA Section 129 are substantively equivalent to those promulgated under CAA Section 112(d). (*See id.* at 17845; *see* also 62 FR 33625, 33632 (1997).) As discussed in more detail below, the CAA Section 129 standards effectively control emissions of the five identified CAA Section 112(c)(6) pollutants. Further, since CAA Section 129(h)(2) precludes EPA from regulating these substantial sources of the five identified CAA Section 112(c)(6) pollutants under CAA Section 112(d), EPA cannot further regulate these emissions under that CAA section. As a result, EPA considers emissions of these five pollutants from HMIWI ''subject to standards'' for purposes of CAA Section 112(c)(6).

As required by the statute, the CAA Section 129 HMIWI standards include numeric emissions limits for the nine pollutants specified in Section 129(a)(4). The combination of waste segregation, good combustion practices, and add-on air pollution control equipment (dry sorbent injection fabric filters, wet scrubbers, or combined fabric filter and wet scrubber systems) effectively reduces emissions of the pollutants for which emissions limits are required under CAA Section 129: Hg, CDD/CDF, Cd, Pb, PM, $SO_2$, HCl, CO, and $NO_x$. Thus, the NSPS and EG specifically require reduction in emissions of three of the CAA Section 112(c)(6) pollutants: dioxins, furans, and Hg. As explained below, the air pollution controls necessary to comply with the requirements of the HMIWI NSPS and EG also effectively reduce emissions of the following CAA Section 112(c)(6) pollutants that are emitted from HMIWI: POM and PCBs. Although the CAA Section 129 HMIWI standards as promulgated in 1997 and as revised for the 2009 final rule do not have separate, specific numerical emissions limits for PCBs and POM, emissions of these two CAA Section 112(c)(6) pollutants are effectively controlled by the same control measures used to comply with the numerical emissions limits for the pollutants enumerated in Section 129(a)(4). Specifically, as byproducts of combustion, the formation of PCBs and POM is effectively reduced by the combustion and post-combustion practices required to comply with the CAA Section 129 standards. Any PCBs and POM that do form during combustion are further controlled by the various post-combustion HMIWI controls. The add-on PM control systems (either fabric filter or wet scrubber) and activated carbon injection in the fabric filter-based systems further reduce emissions of these organic pollutants, and also reduce Hg

emissions, as is evidenced by HMIWI performance data. Specifically, the post-MACT compliance tests at currently operating HMIWI that were also operational at the time of promulgation of the 1997 standards show that, for those units, the 1997 HMIWI MACT regulations reduced Hg emissions by about 60 percent and CDD/CDF emissions by about 80 percent from pre-MACT levels. (Note that these reductions do not reflect unit shutdowns, units for which exemptions were granted, or new units.) Moreover, similar controls have been demonstrated to effectively reduce emissions of POM and PCBs from another incineration source category (municipal solid waste combustors). It is, therefore, reasonable to conclude that POM and PCB emissions are substantially controlled at all 57 HMIWI. Thus, while the final rule does not identify specific numerical emissions limits for POM and PCB, emissions of those pollutants are, for the reasons noted above, nonetheless ''subject to regulation'' for purposes of Section 112(c)(6) of the CAA.

In lieu of establishing numerical emissions limits for pollutants such as PCBs and POM, CAA Section 129(a)(4) allows EPA to regulate surrogate substances. While we have not identified specific numerical limits for POM and PCB, we believe CO serves as an effective surrogate for those pollutants, because CO, like POM and PCBs, is formed as a byproduct of combustion. We believe that dioxins/furans also serve as an effective surrogate for PCBs, because the compounds act similarly and, thus, are expected to be controlled similarly using HMIWI emissions control technology—*e.g.,* wet scrubbers or fabric filters (with or without activated carbon). Furthermore, recent HMIWI emissions test data for PCBs and dioxins/furans show that HMIWI well-controlled for dioxins/furans also achieve low PCB emissions. (*See* 2008 memorandum entitled ''Documentation of HMIWI Test Data Database,'' which is included in the docket.) It should also be noted that PCBs are generally found in higher concentrations than dioxins/furans (also the case for HMIWI), so HMIWI equipped with the aforementioned emissions controls would be even more effective at reducing PCB emissions. Consequently, we have concluded, in response to the public comments submitted on this issue, that the emissions limits for CO function as a surrogate for control of both POM and PCBs, and the limits for dioxins/furans function as a surrogate for PCBs, such that it is not necessary to promulgate numerical emissions limits for POM and PCBs with respect to HMIWI to satisfy CAA Section 112(c)(6).

To further address POM and PCB emissions, the final rule also includes revised waste management plan provisions that encourage segregation of the types of wastes that lead to these emissions, such as chlorinated plastics and PCB-containing wastes.

## VIII. 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'' because it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) documents prepared by EPA have been assigned EPA ICR number 2335.02 for subpart Ce, 40 CFR part 60, and 1730.08 for subpart Ec, 40 CFR part 60.

The requirements in this final action result in industry recordkeeping and reporting burden associated with review of the amendments for all HMIWI, EPA Method 22 of appendix A–7 testing for all HMIWI, and inspections of scrubbers, fabric filters, and other air pollution control devices that may be used to meet the emissions limits for all HMIWI. Stack testing and development of new parameter limits would be necessary for HMIWI that need to make performance improvements in order to meet the emissions limits and for HMIWI that, prior to this final action, have not been required to demonstrate compliance with certain pollutants. Any new HMIWI would also be required to continuously monitor CO emissions. New HMIWI equipped with fabric filters would also be required to purchase bag leak detectors.

The annual average burden associated with the EG over the first 3 years following promulgation of this final action is estimated to be 44,229 hours at a total annual labor cost of $1,871,571. The total annualized capital/startup costs and operation and maintenance (O&M) costs associated with the monitoring requirements, EPA Method 22 of appendix A–7 testing, storage of data and reports, and photocopying and postage over the three year period of the ICR are estimated at $1,410,168 and $641,591 per year, respectively. (The annual inspection costs are included under the recordkeeping and reporting labor costs.) The annual average burden associated with the NSPS over the first three years following promulgation of this final action is estimated to be 2,705 hours at a total annual labor cost of $102,553. The total annualized capital/startup costs are estimated at $137,658, with total operation and maintenance costs of $116,192 per year. Burden is defined at 5 CFR 1320.3(b).

EPA may not conduct or sponsor, and a person is not required to, a collection of information unless it displays a valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in this final rule.

### *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 Procedures Act or any other statute unless the EPA certifies that the final action will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

*For purposes of assessing the impacts of this final action on small entities, small entity is defined as follows:* (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not

have a significant economic impact on a substantial number of small entities. The one small entity directly regulated by this final action is a small business that owns two HMIWI. We have determined that this one small entity may experience an impact of approximately $3.15 million per year to comply with the final rule, resulting in a cost-to-sales ratio of approximately 45 percent. (*See* 2009 report ''Economic Impacts of Revised MACT Standards for Hospital/Medical/Infectious Waste Incinerators,'' which is included in the docket for today's rulemaking.) The one small entity is a company in Maryland, which owns and operates a commercial facility at that location. There are only nine other commercial facilities, which are owned and operated by other companies, and the closest are in North Carolina and Ohio. Therefore, the entity is a regional monopolist and is able to raise the price by more than the per unit cost increase. We expect there to be a reduction in the amount of its services demanded due to the price change. Because of closures of captive HMIWI there may also be an increase in the demand for its services that may reduce the decrease in revenues associated with the price increase.

*Two other entities are defined as borderline small:* Their parent company sales or employment in 2008 are above the SBA size-cutoff for small entities in their NAICS codes, but are near enough to the size cut-off that variations in sales or employment over time might move them below the small business criterion. Based on 2008 sales data for these two entities, the cost-to-sales ratio is less than 1 percent for one entity and 1.4 percent for the other. It should be noted that the entity with the higher cost-to-sales ratio (1.4 percent) is a commercial unit and would have the ability to pass the cost along to their customers and would be expected to be able to afford compliance. Therefore, neither entity is likely to incur significant impacts. (*See* 2009 memorandum entitled ''Updated Sales Information for Companies Considered Borderline Small Entities,'' which is included in the docket for today's rulemaking.)

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless conducted an analysis of the impacts of the final rule on the directly regulated small entity and has tried to reduce the impact of this rule on small entities, to the extent allowed under the CAA MACT floor rulemaking. Our impacts analysis is contained in the docket for today's final rulemaking. For each subcategory of HMIWI, we are promulgating emissions limits that are based on the MACT floor level of control, which is the minimum level of stringency that can be considered in establishing MACT standards. Under the CAA and the case law EPA can set standards no less stringent than the MACT floor. Therefore, we were unable to reduce the impact of the emissions limits on the small entity that would be regulated by the final rule. However, we worked to minimize the costs of testing and monitoring requirements in light of our final impacts analysis, to the extent possible under the statute.

### *D. Unfunded Mandates Reform Act*

This final action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This final action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this final action is not subject to the requirements of Section 202 or 205 of the UMRA.

This final action is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final action contains no requirements that apply to such governments, imposes no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

### *E. Executive Order 13132: Federalism*

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this action.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249; November 9, 2000). EPA is not aware of any HMIWI owned or operated by Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885; April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA estimates that the requirements in this final action would cause most HMIWI to modify existing air pollution control devices (*e.g.,* increase the horsepower of their wet scrubbers) or install and operate new control devices, resulting in approximately 9,530 MWh/yr of additional electricity being used.

Given the negligible change in energy consumption resulting from this final action, EPA does not expect any significant price increase for any energy type. The cost of energy distribution should not be affected by this final action at all since the action would not affect energy distribution facilities. We also expect that any impacts on the import of foreign energy supplies, or any other adverse outcomes that may occur with regards to energy supplies would not be significant. We, therefore, conclude that if there were to be any adverse energy effects associated with this final action, they would be minimal.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable VCS.

This final rulemaking involves technical standards. EPA has decided to use two VCS in this final rule. One VCS, ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in this final rule for its manual method of measuring the content of the exhaust gas as an acceptable alternative to EPA Method 3B of appendix A–2. This standard is available from the American Society of Mechanical Engineers (ASME), P.O. Box 2900, Fairfield, NJ 07007–2900; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

Another VCS, ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' is cited in this final rule as an acceptable alternative to EPA Method 29 of appendix A–8 (portion for mercury only) for measuring mercury. This standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

While the EPA has identified 16 VCS as being potentially applicable to this final rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would be impractical because they do not meet the objectives of the standards cited in this rule. *See* the docket for this rule for the reasons for these determinations.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and any amendments.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income populations.

This action would establish national standards that would result in reductions in emissions of HCl, CO, Cd, Pb, Hg, PM, CDD/CDF, $NO_x$ and $SO_2$ from all HMIWI and thus decrease the amount of such emissions to which all affected populations are exposed.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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 this final 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 final rule will be effective on December 7, 2009.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 15, 2009.

**Lisa P. Jackson,**

*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

### Subpart A—[Amended]

■ 2. Section 60.17 is amended by revising paragraphs (a)(90) and (h)(4) to read as follows:

**§ 60.17 Incorporations by reference.**

* * * * *

(a) * * *

(90) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for Appendix B to part 60, Performance Specification 12A, Section 8.6.2 and § 60.56c(b)(13) of subpart Ec of this part.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.56c(b)(4) of subpart Ec, § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2) of subpart Ja, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

### Subpart Ce—[Amended]

* * * * *

■ 3. Section 60.32e is amended by revising paragraph (a) and adding paragraph (j) to read as follows:

**§ 60.32e Designated facilities.**

(a) Except as provided in paragraphs (b) through (h) of this section, the designated facility to which the guidelines apply is each individual HMIWI:

(1) For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998.

(2) For which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

* * * * *

(j) The requirements of this subpart as promulgated on September 15, 1997, shall apply to the designated facilities defined in paragraph (a)(1) of this section until the applicable compliance

date of the requirements of this subpart, as amended on October 6, 2009. Upon the compliance date of the requirements of this subpart, designated facilities as defined in paragraph (a)(1) of this section are no longer subject to the requirements of this subpart, as promulgated on September 15, 1997, but are subject to the requirements of this subpart, as amended on October 6, 2009.

■ 4. Section 60.33e is revised to read as follows:

**§ 60.33e Emissions guidelines.**

(a) For approval, a State plan shall include the requirements for emissions limits at least as protective as the following requirements, as applicable:

(1) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as promulgated on September 15, 1997, the requirements listed in Table 1A of this subpart, except as provided in paragraph (b) of this section.

(2) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as amended on October 6, 2009, the requirements listed in Table 1B of this subpart, except as provided in paragraph (b) of this section.

(3) For a designated facility as defined in § 60.32e(a)(2), the more stringent of the requirements listed in Table 1B of this subpart and Table 1A of subpart Ec of this part.

(b) For approval, a State plan shall include the requirements for emissions limits for any small HMIWI constructed on or before June 20, 1996, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (defined in § 60.31e) and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste that are at least as protective as the requirements in paragraphs (b)(1) and (b)(2) of this section, as applicable. The 2,000 lb/week limitation does not apply during performance tests.

(1) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as promulgated on September 15, 1997, the requirements listed in Table 2A of this subpart.

(2) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as amended on October 6, 2009, the requirements listed in Table 2B of this subpart.

(c) For approval, a State plan shall include the requirements for stack opacity at least as protective as the following, as applicable:

(1) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as promulgated on September 15, 1997, the requirements in § 60.52c(b)(1) of subpart Ec of this part.

(2) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions guidelines as amended on October 6, 2009 and a designated facility as defined in § 60.32e(a)(2), the requirements in § 60.52c(b)(2) of subpart Ec of this part.

■ 5. Section 60.36e is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. By revising paragraph (b); and

■ c. By adding paragraphs (c) and (d).

**§ 60.36e Inspection guidelines.**

(a) For approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b) and each HMIWI subject to the emissions limits under § 60.33e(a)(2) and (a)(3) to undergo an initial equipment inspection that is at least as protective as the following within 1 year following approval of the State plan:

* * * * *

(b) For approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b) and each HMIWI subject to the emissions limits under § 60.33e(a)(2) and (a)(3) to undergo an equipment inspection annually (no more than 12 months following the previous annual equipment inspection), as outlined in paragraph (a) of this section.

(c) For approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b)(2) and each HMIWI subject to the emissions limits under § 60.33e(a)(2) and (a)(3) to undergo an initial air pollution control device inspection, as applicable, that is at least as protective as the following within 1 year following approval of the State plan:

(1) At a minimum, an inspection shall include the following:

(i) Inspect air pollution control device(s) for proper operation, if applicable;

(ii) Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

(iii) Generally observe that the equipment is maintained in good operating condition.

(2) Within 10 operating days following an air pollution control device inspection, all necessary repairs shall be completed unless the owner or operator obtains written approval from the State agency establishing a date whereby all necessary repairs of the designated facility shall be completed.

(d) For approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b)(2) and each HMIWI subject to the emissions limits under § 60.33e(a)(2) and (a)(3) to undergo an air pollution control device inspection, as applicable, annually (no more than 12 months following the previous annual air pollution control device inspection), as outlined in paragraph (c) of this section.

■ 6. Section 60.37e is amended as follows:

■ a. By revising paragraphs (a), (b) introductory text, and (b)(1);

■ b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e);

■ c. By redesignating paragraphs (b)(2) through (b)(5) as paragraphs (c)(1) through (c)(4);

■ d. By adding a new paragraph (b)(2);

■ e. By adding paragraph (c) introductory text;

■ f. By revising newly redesignated paragraphs (c)(2) through (c)(4), (d), (e) introductory text, and (e)(3); and

■ g. By adding paragraph (f).

**§ 60.37e Compliance, performance testing, and monitoring guidelines.**

(a) Except as provided in paragraph (b) of this section, for approval, a State plan shall include the requirements for compliance and performance testing listed in § 60.56c of subpart Ec of this part, with the following exclusions:

(1) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions limits in § 60.33e(a)(1), the test methods listed in § 60.56c(b)(7) and (8), the fugitive emissions testing requirements under § 60.56c(b)(14) and (c)(3), the CO CEMS requirements under § 60.56c(c)(4), and the compliance requirements for monitoring listed in § 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), (g)(6) through (10), and (h).

(2) For a designated facility as defined in § 60.32e(a)(1) and (a)(2) subject to the emissions limits in § 60.33e(a)(2) and (a)(3), the annual fugitive emissions testing requirements under § 60.56c(c)(3), the CO CEMS requirements under § 60.56c(c)(4), and the compliance requirements for monitoring listed in § 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). Sources subject to the emissions limits under § 60.33e(a)(2) and (a)(3) may, however, elect to use CO CEMS as specified under § 60.56c(c)(4) or bag leak detection systems as specified under § 60.57c(h).

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, for approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b) to meet the performance testing requirements listed

in § 60.56c of subpart Ec of this part. The 2,000 lb/week limitation under § 60.33e(b) does not apply during performance tests.

(1) For a designated facility as defined in § 60.32e(a)(1) subject to the emissions limits under § 60.33e(b)(1), the test methods listed in § 60.56c(b)(7), (8), (12), (13) (Pb and Cd), and (14), the annual PM, CO, and HCl emissions testing requirements under § 60.56c(c)(2), the annual fugitive emissions testing requirements under § 60.56c(c)(3), the CO CEMS requirements under § 60.56c(c)(4), and the compliance requirements for monitoring listed in § 60.56c(c)(5) through (7), and (d) through (k) do not apply.

(2) For a designated facility as defined in § 60.32e(a)(2) subject to the emissions limits under § 60.33e(b)(2), the annual fugitive emissions testing requirements under § 60.56c(c)(3), the CO CEMS requirements under § 60.56c(c)(4), and the compliance requirements for monitoring listed in § 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10) do not apply. Sources subject to the emissions limits under § 60.33e(b)(2) may, however, elect to use CO CEMS as specified under § 60.56c(c)(4) or bag leak detection systems as specified under § 60.57c(h).

(c) For approval, a State plan shall require each small HMIWI subject to the emissions limits under § 60.33e(b) that is not equipped with an air pollution control device to meet the following compliance and performance testing requirements:

* * * * *

(2) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, ensure that the designated facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s).

(3) Except as provided in paragraph (c)(4) of this section, operation of the designated facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emissions limits.

(4) The owner or operator of a designated facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted pursuant to this paragraph must be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated a violation under paragraph (c)(3) of this section.

(d) For approval, a State plan shall include the requirements for monitoring listed in § 60.57c of subpart Ec of this part for HMIWI subject to the emissions limits under § 60.33e(a) and (b), except as provided for under paragraph (e) of this section.

(e) For approval, a State plan shall require small HMIWI subject to the emissions limits under § 60.33e(b) that are not equipped with an air pollution control device to meet the following monitoring requirements:

* * * * *

(3) The owner or operator of a designated facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital waste and/or medical/infectious waste.

(f) The owner or operator of a designated facility as defined in § 60.32e(a)(1) or (a)(2) subject to emissions limits under § 60.33e(a)(2), (a)(3), or (b)(2) may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that the conditions in paragraphs (f)(1) through (f)(3) of this section are met:

(1) The designated facility's previous emissions tests must have been conducted using the applicable procedures and test methods listed in § 60.56c(b) of subpart Ec of this part. Previous emissions test results obtained using EPA-accepted voluntary consensus standards are also acceptable.

(2) The HMIWI at the designated facility shall currently be operated in a manner (*e.g.,* with charge rate, secondary chamber temperature, *etc.*) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s), and the HMIWI may not have been modified such that emissions would be expected to exceed (notwithstanding normal test-to-test variability) the results from previous emissions test(s).

(3) The previous emissions test(s) must have been conducted in 1996 or later.

■ 7. Section 60.38e is amended as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b) introductory text; and

■ c. By revising paragraph (b)(1).

**§ 60.38e Reporting and recordkeeping guidelines.**

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, for approval, a State plan shall include the reporting and recordkeeping requirements listed in § 60.58c(b) through (g) of subpart Ec of this part.

(1) For a designated facility as defined in § 60.32e(a)(1) subject to emissions limits under § 60.33e(a)(1) or (b)(1), excluding § 60.58c(b)(2)(ii) (fugitive emissions), (b)(2)(viii) ($NO_X$ reagent), (b)(2)(xvii) (air pollution control device inspections), (b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

(2) For a designated facility as defined in § 60.32e(a)(1) or (a)(2) subject to emissions limits under § 60.33e(a)(2), (a)(3), or (b)(2), excluding § 60.58c(b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

(b) For approval, a State plan shall require the owner or operator of each HMIWI subject to the emissions limits under § 60.33e to:

(1) As specified in § 60.36e, maintain records of the annual equipment inspections that are required for each HMIWI subject to the emissions limits under § 60.33e(a)(2), (a)(3), and (b), and the annual air pollution control device inspections that are required for each HMIWI subject to the emissions limits under § 60.33e(a)(2), (a)(3), and (b)(2), any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the State regulatory agency; and

* * * * *

■ 8. Section 60.39e is amended as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (c) introductory text;

■ c. By revising paragraph (c)(1);

■ d. By revising paragraph (d)(3); and

■ e. By revising paragraph (f).

**§ 60.39e Compliance times.**

(a) Each State in which a designated facility is operating shall submit to the Administrator a plan to implement and enforce the emissions guidelines as specified in paragraphs (a)(1) and (a)(2) of this section:

(1) Not later than September 15, 1998, for the emissions guidelines as promulgated on September 15, 1997.

(2) Not later than October 6, 2010, for the emissions guidelines as amended on October 6, 2009.

* * * * *

(c) State plans that specify measurable and enforceable incremental steps of progress towards compliance for designated facilities planning to install the necessary air pollution control equipment may allow compliance on or before the date 3 years after EPA approval of the State plan (but not later than September 16, 2002), for the emissions guidelines as promulgated on September 15, 1997, and on or before the date 3 years after approval of an amended State plan (but not later than October 6, 2014), for the emissions guidelines as amended on October 6, 2009). Suggested measurable and enforceable activities to be included in State plans are:

(1) Date for submitting a petition for site-specific operating parameters under § 60.56c(j) of subpart Ec of this part.

* * * * *

(d) * * *

(3) If an extension is granted, require compliance with the emissions guidelines on or before the date 3 years after EPA approval of the State plan (but not later than September 16, 2002), for the emissions guidelines as promulgated on September 15, 1997, and on or before the date 3 years after EPA approval of an amended State plan (but not later than October 6, 2014), for the emissions guidelines as amended on October 6, 2009.

* * * * *

(f) The Administrator shall develop, implement, and enforce a plan for existing HMIWI located in any State that has not submitted an approvable plan within 2 years after September 15, 1997, for the emissions guidelines as promulgated on September 15, 1997, and within 2 years after October 6, 2009 for the emissions guidelines as amended on October 6, 2009. Such plans shall ensure that each designated facility is in compliance with the provisions of this subpart no later than 5 years after September 15, 1997, for the emissions guidelines as promulgated on September 15, 1997, and no later than 5 years after October 6, 2009 for the emissions guidelines as amended on October 6, 2009.

■ 9. Table 1 to subpart Ce is redesignated as Table 1A and revised to read as follows:

TABLE 1A TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1)

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Particulate matter. | Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf)). | 115 (0.05) .... | 69 (0.03) ..... | 34 (0.015) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide. | Parts per million by volume (ppmv). | 40 ..... | 40 ..... | 40 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |
| Dioxins/furans | Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet (gr/$10^9$ dscf)) or ng/dscm TEQ (gr/$10^9$ dscf). | 125 (55) or 2.3 (1.0). | 125 (55) or 2.3 (1.0). | 125 (55) or 2.3 (1.0). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride. | ppmv ..... | 100 or 93% | 100 or 93% | 100 or 93% .... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide | ppmv ..... | 55 ..... | 55 ..... | 55 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides. | ppmv ..... | 250 ..... | 250 ..... | 250 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead ..... | mg/dscm (grains per thousand dry standard cubic feet (gr/$10^3$ dscf)). | 1.2 (0.52) or 70%. | 1.2 (0.52) or 70%. | 1.2 (0.52) or 70%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

TABLE 1A TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1)—Continued

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Cadmium ..... | mg/dscm (gr/$10^3$ dscf) ..... | 0.16 (0.07) or 65%. | 0.16 (0.07) or 65%. | 0.16 (0.07) or 65%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Mercury ..... | mg/dscm (gr/$10^3$ dscf) ..... | 0.55 (0.24) or 85%. | 0.55 (0.24) or 85%. | 0.55 (0.24) or 85%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

■ 10. Add Table 1B to subpart Ce to read as follows:

TABLE 1B TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1) AND (a)(2)

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Particulate matter. | Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf)). | 66 (0.029) .... | 46 (0.020) .... | 25 (0.011) .... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide. | Parts per million by volume (ppmv). | 20 ..... | 5.5 ..... | 11 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |
| Dioxins/furans | Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet (gr/$10^9$ dscf)) or ng/dscm TEQ (gr/$10^9$ dscf). | 16 (7.0) or 0.013 (0.0057). | 0.85 (0.37) or 0.020 (0.0087). | 9.3 (4.1) or 0.054 (0.024). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride. | ppmv ..... | 44 ..... | 7.7 ..... | 6.6 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide | ppmv ..... | 4.2 ..... | 4.2 ..... | 9.0 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides. | ppmv ..... | 190 ..... | 190 ..... | 140 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead ..... | mg/dscm (grains per thousand dry standard cubic feet (gr/$10^3$ dscf)). | 0.31 (0.14) ... | 0.018 (0.0079). | 0.036 (0.016) | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Cadmium ..... | mg/dscm (gr/$10^3$ dscf) ..... | 0.017 (0.0074). | 0.013 (0.0057). | 0.0092 (0.0040). | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

TABLE 1B TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT DESIGNATED FACILITIES AS DEFINED IN § 60.32e(a)(1) AND (a)(2)—Continued

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Mercury ..... | mg/dscm (gr/$10^3$ dscf) ..... | 0.014 (0.0061). | 0.025 (0.011) | 0.018 (0.0079). | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

■ 11. Table 2 to subpart Ce is redesignated as Table 2A and revised to read as follows:

TABLE 2A TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL HMIWI WHICH MEET THE CRITERIA UNDER § 60.33e(b)(1)

| Pollutant | Units (7 percent oxygen, dry basis) | HMIWI emissions limits | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|
| Particulate matter ... | mg/dscm (gr/dscf) | 197 (0.086) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide .. | ppmv ..... | 40 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |
| Dioxins/furans ..... | ng/dscm total dioxins/furans (gr/$10^9$ dscf) or ng/dscm TEQ (gr/$10^9$ dscf). | 800 (350) or 15 (6.6). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride .. | ppmv ..... | 3,100 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide ..... | ppmv ..... | 55 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides ..... | ppmv ..... | 250 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead ..... | mg/dscm (gr/$10^3$ dscf). | 10 (4.4) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Cadmium ..... | mg/dscm (gr/$10^3$ dscf). | 4 (1.7) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Mercury ..... | mg/dscm (gr/$10^3$ dscf). | 7.5 (3.3) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

■ 12. Add Table 2B to subpart Ce to read as follows:

TABLE 2B TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL HMIWI WHICH MEET THE CRITERIA UNDER § 60.33e(b)(2)

| Pollutant | Units (7 percent oxygen, dry basis) | HMIWI Emissions limits | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|
| Particulate matter ... | mg/dscm (gr/dscf) | 87 (0.038) ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide .. | ppmv ..... | 20 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |

TABLE 2B TO SUBPART Ce OF PART 60—EMISSIONS LIMITS FOR SMALL HMIWI WHICH MEET THE CRITERIA UNDER § 60.33e(b)(2)—Continued

| Pollutant | Units (7 percent oxygen, dry basis) | HMIWI Emissions limits | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|
| Dioxins/furans | ng/dscm total dioxins/furans (gr/$10^9$ dscf) or ng/dscm TEQ (gr/$10^9$ dscf). | 240 (100) or 5.1 (2.2). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride | ppmv | 810 | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide | ppmv | 55 | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides | ppmv | 130 | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead | mg/dscm (gr/$10^3$ dscf). | 0.50 (0.22) | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Cadmium | mg/dscm (gr/$10^3$ dscf). | 0.11 (0.048) | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Mercury | mg/dscm (gr/$10^3$ dscf). | 0.0051 (0.0022) | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

## Subpart Ec—[Amended]

■ 13. Section 60.50c is amended as follows:
■ a. By revising paragraph (a);
■ b. By revising paragraph (i)(2);
■ c. By adding paragraphs (i)(3) through (i)(5); and
■ d. By adding paragraphs (m) and (n).

### § 60.50c Applicability and delegation of authority.

(a) Except as provided in paragraphs (b) through (h) of this section, the affected facility to which this subpart applies is each individual hospital/medical/infectious waste incinerator (HMIWI):

(1) For which construction is commenced after June 20, 1996 but no later than December 1, 2008; or

(2) For which modification is commenced after March 16, 1998 but no later than April 6, 2010.

(3) For which construction is commenced after December 1, 2008; or

(4) For which modification is commenced after April 6, 2010.

* * * * *

(i) * * *

(1) * * *

(2) Approval of alternative methods of demonstrating compliance under § 60.8 including:

(i) Approval of CEMS for PM, HCl, multi-metals, and Hg where used for purposes of demonstrating compliance,

(ii) Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance, and

(iii) Approval of major alternatives to test methods;

(3) Approval of major alternatives to monitoring;

(4) Waiver of recordkeeping requirements; and

(5) Performance test and data reduction waivers under § 60.8(b).

* * * * *

(m) The requirements of this subpart as promulgated on September 15, 1997, shall apply to the affected facilities defined in paragraph (a)(1) and (2) of this section until the applicable compliance date of the requirements of subpart Ce of this part, as amended on October 6, 2009. Upon the compliance date of the requirements of the amended subpart Ce of this part, affected facilities as defined in paragraph (a) of this section are no longer subject to the requirements of this subpart, but are subject to the requirements of subpart Ce of this part, as amended on October 6, 2009, except where the emissions limits of this subpart as promulgated on September 15, 1997 are more stringent than the emissions limits of the amended subpart Ce of this part. Compliance with subpart Ce of this part, as amended on October 6, 2009 is required on or before the date 3 years after EPA approval of the State plan for States in which an affected facility as defined in paragraph (a) of this section is located (but not later than the date 5 years after promulgation of the amended subpart).

(n) The requirements of this subpart, as amended on October 6, 2009, shall become effective April 6, 2010.

■ 14. Section 60.51c is amended as follows:
■ a. By adding a definition for ''Bag leak detection system'';
■ b. By adding a definition for ''Commercial HMIWI''; and
■ c. By adding a definition for ''Minimum reagent flow rate''; and
■ d. By revising the definition for ''Minimum secondary chamber temperature.''

### § 60.51c Definitions.

*Bag leak detection system* means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

* * * * *

*Commercial HMIWI* means a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.

* * * * *

*Minimum reagent flow rate* means 90 percent of the highest 3-hour average reagent flow rate at the inlet to the selective noncatalytic reduction technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the $NO_x$ emissions limit.

* * * * *

*Minimum secondary chamber temperature* means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured

during the most recent performance test demonstrating compliance with the PM, CO, dioxin/furan, and $NO_X$ emissions limits.

* * * * *

■ 15. Section 60.52c is amended by revising paragraphs (a) through (c) to read as follows:

**§ 60.52c Emissions limits.**

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility shall cause to be discharged into the atmosphere:

(1) From an affected facility as defined in § 60.50c(a)(1) and (2), any gases that contain stack emissions in excess of the limits presented in Table 1A to this subpart.

(2) From an affected facility as defined in § 60.50c(a)(3) and (4), any gases that contain stack emissions in excess of the limits presented in Table 1B to this subpart.

(b) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility shall cause to be discharged into the atmosphere:

(1) From an affected facility as defined in § 60.50c(a)(1) and (2), any gases that exhibit greater than 10 percent opacity (6-minute block average).

(2) From an affected facility as defined in § 60.50c(a)(3) and (4), any gases that exhibit greater than 6 percent opacity (6-minute block average).

(c) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility as defined in § 60.50c(a)(1) and (2) and utilizing a large HMIWI, and in § 60.50c(a)(3) and (4), shall cause to be discharged into the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (*i.e.,* 9 minutes per 3-hour period), as determined by EPA Reference Method 22 of appendix A–1 of this part, except as provided in paragraphs (d) and (e) of this section.

* * * * *

■ 16. Section 60.55c is revised to read as follows:

**§ 60.55c Waste management plan.**

The owner or operator of an affected facility shall prepare a waste management plan. The waste management plan shall identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. A waste management plan may include, but is not limited to, elements such as segregation and recycling of paper, cardboard, plastics, glass, batteries, food waste, and metals (*e.g.,* aluminum cans, metals-containing devices); segregation of non-recyclable wastes (*e.g.,* polychlorinated biphenyl-containing waste, pharmaceutical waste, and mercury-containing waste, such as dental waste); and purchasing recycled or recyclable products. A waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have. The American Hospital Association publication entitled ''An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities'' (incorporated by reference, *see* § 60.17) shall be considered in the development of the waste management plan. The owner or operator of each commercial HMIWI company shall conduct training and education programs in waste segregation for each of the company's waste generator clients and ensure that each client prepares its own waste management plan that includes, but is not limited to, the provisions listed previously in this section.

■ 17. Section 60.56c is amended as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b) introductory text and paragraphs (b)(4) and (b)(6);

■ c. By redesignating paragraphs (b)(7) through (b)(12) as paragraphs (b)(9) through (b)(14);

■ d. By adding new paragraphs (b)(7) and (b)(8);

■ e. By revising newly redesignated paragraphs (b)(9), (b)(10), (b)(11) introductory text, and (b)(12) through (b)(14);

■ f. By revising paragraphs (c)(2) and (c)(3);

■ g. By redesignating paragraph (c)(4) as paragraph (c)(5);

■ h. By revising newly redesignated paragraph (c)(5);

■ i. By adding paragraphs (c)(4), (c)(6), and (c)(7);

■ j. By revising paragraph (d) introductory text;

■ k. By revising paragraph (e) introductory text and paragraph (e)(5);

■ l. By adding paragraphs (e)(6) through (e)(10);

■ m. By revising paragraph (f) introductory text and paragraph (f)(6);

■ n. By adding paragraphs (f)(7) through (f)(10);

■ o. By revising paragraph (g) introductory text and paragraph (g)(5);

■ p. By adding paragraphs (g)(6) through (g)(10);

■ q. By redesignating paragraphs (h) through (j) as paragraphs (i) through (k);

■ r. By adding paragraph (h); and

■ s. By revising newly redesignated paragraphs (i) and (j).

**§ 60.56c Compliance and performance testing.**

(a) The emissions limits apply at all times.

(b) The owner or operator of an affected facility as defined in § 60.50c(a)(1) and (2), shall conduct an initial performance test as required under § 60.8 to determine compliance with the emissions limits using the procedures and test methods listed in paragraphs (b)(1) through (b)(6) and (b)(9) through (b)(14) of this section. The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4), shall conduct an initial performance test as required under § 60.8 to determine compliance with the emissions limits using the procedures and test methods listed in paragraphs (b)(1) through (b)(14). The use of the bypass stack during a performance test shall invalidate the performance test.

* * * * *

(4) EPA Reference Method 3, 3A, or 3B of appendix A–2 of this part shall be used for gas composition analysis, including measurement of oxygen concentration. EPA Reference Method 3, 3A, or 3B of appendix A–2 of this part shall be used simultaneously with each of the other EPA reference methods. As an alternative to EPA Reference Method 3B, ASME PTC–19–10–1981–Part 10 may be used (incorporated by reference, *see* § 60.17).

* * * * *

(6) EPA Reference Method 5 of appendix A–3 or Method 26A or Method 29 of appendix A–8 of this part shall be used to measure the particulate matter emissions. As an alternative, PM CEMS may be used as specified in paragraph (c)(5) of this section.

(7) EPA Reference Method 7 or 7E of appendix A–4 of this part shall be used to measure $NO_X$ emissions.

(8) EPA Reference Method 6 or 6C of appendix A–4 of this part shall be used to measure $SO_2$ emissions.

(9) EPA Reference Method 9 of appendix A–4 of this part shall be used to measure stack opacity. As an alternative, demonstration of compliance with the PM standards using bag leak detection systems as specified in § 60.57c(h) or PM CEMS as specified in paragraph (c)(5) of this section is considered demonstrative of compliance with the opacity requirements.

(10) EPA Reference Method 10 or 10B of appendix A–4 of this part shall be used to measure the CO emissions. As specified in paragraph (c)(4) of this section, use of CO CEMS are required for affected facilities under § 60.50c(a)(3) and (4).

(11) EPA Reference Method 23 of appendix A–7 of this part shall be used to measure total dioxin/furan emissions. As an alternative, an owner or operator may elect to sample dioxins/furans by installing, calibrating, maintaining, and operating a continuous automated sampling system for monitoring dioxin/furan emissions as specified in paragraph (c)(6) of this section. For Method 23 of appendix A–7 sampling, the minimum sample time shall be 4 hours per test run. If the affected facility has selected the toxic equivalency standards for dioxins/furans, under § 60.52c, the following procedures shall be used to determine compliance:

* * * * *

(12) EPA Reference Method 26 or 26A of appendix A–8 of this part shall be used to measure HCl emissions. As an alternative, HCl CEMS may be used as specified in paragraph (c)(5) of this section.

(13) EPA Reference Method 29 of appendix A–8 of this part shall be used to measure Pb, Cd, and Hg emissions. As an alternative, Hg emissions may be measured using ASTM D6784–02 (incorporated by reference, *see* § 60.17). As an alternative for Pb, Cd, and Hg, multi-metals CEMS or Hg CEMS, may be used as specified in paragraph (c)(5) of this section. As an alternative, an owner or operator may elect to sample Hg by installing, calibrating, maintaining, and operating a continuous automated sampling system for monitoring Hg emissions as specified in paragraph (c)(7) of this section.

(14) The EPA Reference Method 22 of appendix A–7 of this part shall be used to determine compliance with the fugitive ash emissions limit under § 60.52c(c). The minimum observation time shall be a series of three 1-hour observations.

* * * * *

(c) * * *

(2) Except as provided in paragraphs (c)(4) and (c)(5) of this section, determine compliance with the PM, CO, and HCl emissions limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in paragraph (b) of this section. If all three performance tests over a 3-year period indicate compliance with the emissions limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for the subsequent 2 years. At a minimum, a performance test for PM, CO, and HCl shall be conducted every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emissions limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for an additional 2 years. If any performance test indicates noncompliance with the respective emissions limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the emissions limit. The use of the bypass stack during a performance test shall invalidate the performance test.

(3) For an affected facility as defined in § 60.50c(a)(1) and (2) and utilizing a large HMIWI, and in § 60.50c(a)(3) and (4), determine compliance with the visible emissions limits for fugitive emissions from flyash/bottom ash storage and handling by conducting a performance test using EPA Reference Method 22 of appendix A–7 on an annual basis (no more than 12 months following the previous performance test).

(4) For an affected facility as defined in § 60.50c(a)(3) and (4), determine compliance with the CO emissions limit using a CO CEMS according to paragraphs (c)(4)(i) through (c)(4)(iii) of this section:

(i) Determine compliance with the CO emissions limit using a 24-hour block average, calculated as specified in section 12.4.1 of EPA Reference Method 19 of appendix A–7 of this part.

(ii) Operate the CO CEMS in accordance with the applicable procedures under appendices B and F of this part.

(iii) Use of a CO CEMS may be substituted for the CO annual performance test and minimum secondary chamber temperature to demonstrate compliance with the CO emissions limit.

(5) Facilities using CEMS to demonstrate compliance with any of the emissions limits under § 60.52c shall:

(i) For an affected facility as defined in § 60.50c(a)(1) and (2), determine compliance with the appropriate emissions limit(s) using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours.

(ii) For an affected facility as defined in § 60.50c(a)(3) and (4), determine compliance with the appropriate emissions limit(s) using a 24-hour block average, calculated as specified in section 12.4.1 of EPA Reference Method 19 of appendix A–7 of this part.

(iii) Operate all CEMS in accordance with the applicable procedures under appendices B and F of this part. For those CEMS for which performance specifications have not yet been promulgated (HCl, multi-metals), this option for an affected facility as defined in § 60.50c(a)(3) and (4) takes effect on the date a final performance specification is published in the **Federal Register** or the date of approval of a site-specific monitoring plan.

(iv) For an affected facility as defined in § 60.50c(a)(3) and (4), be allowed to substitute use of an HCl CEMS for the HCl annual performance test, minimum HCl sorbent flow rate, and minimum scrubber liquor pH to demonstrate compliance with the HCl emissions limit.

(v) For an affected facility as defined in § 60.50c(a)(3) and (4), be allowed to substitute use of a PM CEMS for the PM annual performance test and minimum pressure drop across the wet scrubber, if applicable, to demonstrate compliance with the PM emissions limit.

(6) An affected facility as defined in § 60.50c(a)(3) and (4) using a continuous automated sampling system to demonstrate compliance with the dioxin/furan emissions limits under § 60.52c shall record the output of the system and analyze the sample according to EPA Reference Method 23 of appendix A–7 of this part. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4) who elects to continuously sample dioxin/furan emissions instead of sampling and

testing using EPA Reference Method 23 of appendix A–7 shall install, calibrate, maintain, and operate a continuous automated sampling system and shall comply with the requirements specified in § 60.58b(p) and (q) of subpart Eb of this part.

(7) An affected facility as defined in § 60.50c(a)(3) and (4) using a continuous automated sampling system to demonstrate compliance with the Hg emissions limits under § 60.52c shall record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet appropriate performance criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to Hg from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4) who elects to continuously sample Hg emissions instead of sampling and testing using EPA Reference Method 29 of appendix A–8 of this part, or an approved alternative method for measuring Hg emissions, shall install, calibrate, maintain, and operate a continuous automated sampling system and shall comply with the requirements specified in § 60.58b(p) and (q) of subpart Eb of this part.

(d) Except as provided in paragraphs (c)(4) through (c)(7) of this section, the owner or operator of an affected facility equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber shall:

* * * * *

(e) Except as provided in paragraph (i) of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter:

* * * * *

(5) Use of the bypass stack shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.

(6) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the CO emissions limit as measured by the CO CEMS specified in paragraph (c)(4) of this section shall constitute a violation of the CO emissions limit.

(7) For an affected facility as defined in § 60.50c(a)(3) and (4), failure to initiate corrective action within 1 hour of a bag leak detection system alarm; or failure to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period shall constitute a violation of the PM emissions limit. If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action. If the bag leak detection system is used to demonstrate compliance with the opacity limit, this would also constitute a violation of the opacity emissions limit.

(8) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the PM, HCl, Pb, Cd, and/or Hg emissions limit as measured by the CEMS specified in paragraph (c)(5) of this section shall constitute a violation of the applicable emissions limit.

(9) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the dioxin/furan emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(6) of this section shall constitute a violation of the dioxin/furan emissions limit.

(10) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the Hg emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(7) of this section shall constitute a violation of the Hg emissions limit.

(f) Except as provided in paragraph (i) of this section, for affected facilities equipped with a wet scrubber:

* * * * *

(6) Use of the bypass stack shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.

(7) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the CO emissions limit as measured by the CO CEMS specified in paragraph (c)(4) of this section shall constitute a violation of the CO emissions limit.

(8) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the PM, HCl, Pb, Cd, and/or Hg emissions limit as measured by the CEMS specified in paragraph (c)(5) of this section shall constitute a violation of the applicable emissions limit.

(9) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the dioxin/furan emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(6) of this section shall constitute a violation of the dioxin/furan emissions limit.

(10) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the Hg emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(7) of this section shall constitute a violation of the Hg emissions limit.

(g) Except as provided in paragraph (i) of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter and a wet scrubber:

* * * * *

(5) Use of the bypass stack shall constitute a violation of the PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.

(6) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the CO emissions limit as measured by the CO CEMS specified in paragraph (c)(4) of this section shall constitute a violation of the CO emissions limit.

(7) For an affected facility as defined in § 60.50c(a)(3) and (4), failure to initiate corrective action within 1 hour of a bag leak detection system alarm; or failure to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period shall constitute a violation of the PM emissions limit. If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action. If the bag leak detection system is used to demonstrate compliance with the opacity limit, this would also constitute a violation of the opacity emissions limit.

(8) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the PM, HCl, Pb, Cd, and/or Hg emissions limit as measured by the CEMS specified in paragraph (c)(5) of this section shall constitute a violation of the applicable emissions limit.

(9) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the dioxin/furan emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(6) of this section shall constitute a violation of the dioxin/furan emissions limit.

(10) Operation of the affected facility as defined in § 60.50c(a)(3) and (4) above the Hg emissions limit as measured by the continuous automated sampling system specified in paragraph (c)(7) of this section shall constitute a violation of the Hg emissions limit.

(h) The owner or operator of an affected facility as defined in

§ 60.50c(a)(3) and (4) equipped with selective noncatalytic reduction technology shall:

(1) Establish the maximum charge rate, the minimum secondary chamber temperature, and the minimum reagent flow rate as site specific operating parameters during the initial performance test to determine compliance with the emissions limits;

(2) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature or the minimum reagent flow rate measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times. Operating parameter limits do not apply during performance tests.

(3) Except as provided in paragraph (i) of this section, operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum reagent flow rate simultaneously shall constitute a violation of the $NO_X$ emissions limit.

(i) The owner or operator of an affected facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted using the identical operating parameters that indicated a violation under paragraph (e), (f), (g), or (h) of this section.

(j) The owner or operator of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, a dry scrubber followed by a fabric filter and a wet scrubber, or selective noncatalytic reduction technology to comply with the emissions limits under § 60.52c shall petition the Administrator for other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall not conduct the initial performance test until after the petition has been approved by the Administrator.

* * * * *

■ 18. Section 60.57c is amended as follows:

■ a. By revising paragraph (a);

■ b. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e);

■ c. By adding paragraph (b);

■ d. By revising newly redesignated paragraphs (d) and (e); and

■ e. By adding paragraphs (f) through (h).

**§ 60.57c Monitoring requirements.**

(a) Except as provided in § 60.56c(c)(4) through (c)(7), the owner or operator of an affected facility shall install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 3 to this subpart (unless CEMS are used as a substitute for certain parameters as specified) such that these devices (or methods) measure and record values for these operating parameters at the frequencies indicated in Table 3 of this subpart at all times.

(b) The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4) that uses selective noncatalytic reduction technology shall install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the operating parameters listed in § 60.56c(h) such that the devices (or methods) measure and record values for the operating parameters at all times. Operating parameter values shall be measured and recorded at the following minimum frequencies:

(1) Maximum charge rate shall be measured continuously and recorded once each hour;

(2) Minimum secondary chamber temperature shall be measured continuously and recorded once each minute; and

(3) Minimum reagent flow rate shall be measured hourly and recorded once each hour.

* * * * *

(d) The owner or operator of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, a dry scrubber followed by a fabric filter and a wet scrubber, or selective noncatalytic reduction technology to comply with the emissions limits under § 60.52c shall install, calibrate (to manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to § 60.56c(j).

(e) The owner or operator of an affected facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting hospital waste and/or medical/infectious waste.

(f) The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4) shall ensure that each HMIWI subject to the emissions limits in § 60.52c undergoes an initial air pollution control device inspection that is at least as protective as the following:

(1) At a minimum, an inspection shall include the following:

(i) Inspect air pollution control device(s) for proper operation, if applicable;

(ii) Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

(iii) Generally observe that the equipment is maintained in good operating condition.

(2) Within 10 operating days following an air pollution control device inspection, all necessary repairs shall be completed unless the owner or operator obtains written approval from the Administrator establishing a date whereby all necessary repairs of the designated facility shall be completed.

(g) The owner or operator of an affected facility as defined in § 60.50c(a)(3) and (4) shall ensure that each HMIWI subject to the emissions limits under § 60.52c undergoes an air pollution control device inspection annually (no more than 12 months following the previous annual air pollution control device inspection), as outlined in paragraphs (f)(1) and (f)(2) of this section.

(h) For affected facilities as defined in § 60.50c(a)(3) and (4) that use an air pollution control device that includes a fabric filter and are not demonstrating compliance using PM CEMS, determine compliance with the PM emissions limit using a bag leak detection system and meet the requirements in paragraphs (h)(1) through (h)(12) of this section for each bag leak detection system.

(1) Each triboelectric bag leak detection system may be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D–243–02), Research Triangle Park, NC 27711. This

document is also available on the Technology Transfer Network (TTN) under Emissions Measurement Center Continuous Emissions Monitoring. Other types of bag leak detection systems shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system shall be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor shall provide an output of relative PM loadings.

(4) The bag leak detection system shall be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system shall be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm shall be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector shall be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector shall be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output shall be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition. Each adjustment shall be recorded.

(11) Record the results of each inspection, calibration, and validation check.

(12) Initiate corrective action within 1 hour of a bag leak detection system alarm; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

■ 19. Section 60.58c is amended as follows:

■ a. By revising paragraph (a)(2)(iv);

■ b. By redesignating paragraphs (b)(2)(viii) through (b)(2)(xv) as paragraphs (b)(2)(ix) through (b)(2)(xvi);

■ c. By adding paragraph (b)(2)(viii);

■ d. By revising newly designated paragraph (b)(2)(xvi);

■ e. By adding paragraphs (b)(2)(xvii) through (b)(2)(xix);

■ f. By revising paragraphs (b)(6) and (b)(11);

■ g. By revising paragraph (c) introductory text;

■ h. By revising paragraphs (c)(1) and (c)(2);

■ i. By adding paragraph (c)(4);

■ j. By revising paragraph (d) introductory text;

■ k. By revising paragraphs (d)(1) through (d)(3);

■ l. By adding paragraphs (d)(9) through (d)(11); and

■ m. By adding paragraph (g).

**§ 60.58c Reporting and recordkeeping requirements.**

(a) * * *

(2) * * *

(iv) If applicable, the petition for site-specific operating parameters under § 60.56c(j).

* * * * *

(b) * * *

(2) * * *

(viii) For affected facilities as defined in § 60.50c(a)(3) and (4), amount and type of $NO_x$ reagent used during each hour of operation, as applicable;

* * * * *

(xvi) For affected facilities complying with § 60.56c(j) and § 60.57c(d), the owner or operator shall maintain all operating parameter data collected;

(xvii) For affected facilities as defined in § 60.50c(a)(3) and (4), records of the annual air pollution control device inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(xviii) For affected facilities as defined in § 60.50c(a)(3) and (4), records of each bag leak detection system alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken, as applicable.

(xix) For affected facilities as defined in § 60.50c(a)(3) and (4), concentrations of CO as determined by the continuous emissions monitoring system.

* * * * *

(6) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emissions limits and/or to establish or re-establish operating parameters, as applicable, and a description, including sample calculations, of how the operating parameters were established or re-established, if applicable.

* * * * *

(11) Records of calibration of any monitoring devices as required under § 60.57c(a) through (d).

(c) The owner or operator of an affected facility shall submit the information specified in paragraphs (c)(1) through (c)(4) of this section no later than 60 days following the initial performance test. All reports shall be signed by the facilities manager.

(1) The initial performance test data as recorded under § 60.56c(b)(1) through (b)(14), as applicable.

(2) The values for the site-specific operating parameters established pursuant to § 60.56c(d), (h), or (j), as applicable, and a description, including sample calculations, of how the operating parameters were established during the initial performance test.

* * * * *

(4) For each affected facility as defined in § 60.50c(a)(3) and (4) that uses a bag leak detection system, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 60.57c(h).

(d) An annual report shall be submitted 1 year following the submissions of the information in paragraph (c) of this section and subsequent reports shall be submitted no more than 12 months following the previous report (once the unit is subject to permitting requirements under title V of the Clean Air Act, the owner or operator of an affected facility must submit these reports semiannually). The annual report shall include the information specified in paragraphs (d)(1) through (11) of this section. All reports shall be signed by the facilities manager.

(1) The values for the site-specific operating parameters established

pursuant to § 60.56(d), (h), or (j), as applicable.

(2) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to § 60.56(d), (h), or (j), as applicable.

(3) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded pursuant to § 60.56(d), (h), or (j) for the calendar year preceding the year being reported, in order to provide the Administrator with a summary of the performance of the affected facility over a 2-year period.

(9) For affected facilities as defined in § 60.50c(a)(3) and (4), records of the annual air pollution control device inspection, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(10) For affected facilities as defined in § 60.50c(a)(3) and (4), records of each bag leak detection system alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken, as applicable.

(11) For affected facilities as defined in § 60.50c(a)(3) and (4), concentrations of CO as determined by the continuous emissions monitoring system.

* * * * *

(g) For affected facilities, as defined in § 60.50c(a)(3) and (4), that choose to submit an electronic copy of stack test reports to EPA's WebFIRE data base, as of December 31, 2011, the owner or operator of an affected facility shall enter the test data into EPA's data base using the Electronic Reporting Tool located at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

■ 20. Table 1 to subpart Ec is redesignated as Table 1A and revised to read as follows:

TABLE 1A TO SUBPART Ec OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50c(a)(1) AND (2)

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time [1] | Method for demonstrating compliance [2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Particulate matter. | Milligrams per dry standard cubic meter (grains per dry standard cubic foot). | 69 (0.03) ..... | 34 (0.015) .... | 34 (0.015) .... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide. | Parts per million by volume. | 40 ..... | 40 ..... | 40 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |
| Dioxins/furans. | Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet). | 125 (55) or 2.3 (1.0). | 25 (11) or 0.6 (0.26). | 25 (11) or 0.6 (0.26). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride. | Parts per million by volume. | 15 or 99% ... | 15 or 99% ... | 15 or 99%5.1 | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide | Parts per million by volume. | 55 ..... | 55 ..... | 55 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides. | Parts per million by volume. | 250 ..... | 250 ..... | 250 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet. | 1.2 (0.52) or 70%. | 0.07 (0.03) or 98%. | 0.07 (0.03) or 98%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Cadmium ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 0.16 (0.07) or 65%. | 0.04 (0.02) or 90%. | 0.04 (0.02) or 90%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Mercury ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 0.55 (0.24) or 85%. | 0.55 (0.24) or 85%. | 0.55 (0.24) or 85%. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.

[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

■ 21. Add Table 1B to subpart Ec to read as follows:

TABLE 1B TO SUBPART EC OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50c(a)(3) AND (4)

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions limits | | | Averaging time[1] | Method for demonstrating compliance[2] |
|---|---|---|---|---|---|---|
| | | HMIWI size | | | | |
| | | Small | Medium | Large | | |
| Particulate matter. | Milligrams per dry standard cubic meter (grains per dry standard cubic foot). | 66 (0.029) .... | 22 (0.0095) .. | 18 (0.0080) .. | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60. |
| Carbon monoxide. | Parts per million by volume | 20 ..... | 1.8 ..... | 11 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 10 or 10B of appendix A–4 of part 60. |
| Dioxins/furans. | Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet). | 16 (7.0) or 0.013 (0.0057). | 0.47 (0.21) or 0.014 (0.0061). | 9.3 (4.1) or 0.035 (0.015). | 3-run average (4-hour minimum sample time per run). | EPA Reference Method 23 of appendix A–7 of part 60. |
| Hydrogen chloride. | Parts per million by volume | 15 ..... | 7.7 ..... | 5.1 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 26 or 26A of appendix A–8 of part 60. |
| Sulfur dioxide | Parts per million by volume | 1.4 ..... | 1.4 ..... | 1.6 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 6 or 6C of appendix A–4 of part 60. |
| Nitrogen oxides. | Parts per million by volume | 67 ..... | 67 ..... | 130 ..... | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 7 or 7E of appendix A–4 of part 60. |
| Lead ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet). | 0.31 (0.14) ... | 0.018 (0.0079). | 0.00069 (0.00030). | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Cadmium ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 0.017 (0.0074). | 0.0098 (0.0043). | 0.00013 (0.000057). | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |
| Mercury ..... | Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction. | 0.014 (0.0061). | 0.0035 (0.0015). | 0.0013 (0.00057). | 3-run average (1-hour minimum sample time per run). | EPA Reference Method 29 of appendix A–8 of part 60. |

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

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Federal Register

**Tuesday,**
**October 6, 2009**

## Part III

# Environmental Protection Agency

**40 CFR Parts 70 and 71**

**Operating Permit Programs; Flexible Air Permitting Rule; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 70 and 71**

**[EPA–HQ–OAR–2004–0087; FRL–8964–8]**

**RIN 2060–AM45**

## Operating Permit Programs; Flexible Air Permitting Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** We are revising the regulations governing State and Federal operating permit programs required by title V of the Clean Air Act (CAA or the Act) to promote flexible air permitting (FAP) approaches that provide greater operational flexibility and, at the same time, ensure environmental protection and compliance with applicable laws.

The revisions to our title V regulations consist of adding definitions for alternative operating scenario (AOS) and approved replicable methodology (ARM) and codifying some clarifications to existing provisions. These revisions are intended to clarify and reaffirm opportunities for accessing operational flexibility under existing regulations. We are not finalizing any revisions to our existing minor or major New Source Review (NSR) regulations. In particular, we are withdrawing that portion of the proposal which relates to Green Groups and their potential inclusion in NSR programs required by parts C and D of title I of the Act. Instead, we are encouraging States and sources to investigate in more depth the flexibilities currently available under the major NSR regulations.

**DATES:** This final rule is effective on November 5, 2009.

**ADDRESSES:** The EPA established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0087. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, 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 Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general issues concerning this action, please contact Michael Trutna, Air Quality Policy Division (C504–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5345; fax number (919) 541–4028; or electronic mail at *trutna.mike@epa.gov.*

For specific issues concerning the pilot permits used to support this rulemaking, contact David Beck, Office of Policy, Economics, and Innovation, Innovative Pilots Division (C304–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5421; fax number (919) 541–2664; or electronic mail at *beck.david@epa.gov*.

For issues relating to monitoring, recordkeeping, and reporting for FAPs, contact Barrett Parker, Sector Policies and Programs Division, Measurement Policy Group (D243–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone 919–541–5635; fax number (919) 541–1039; or electronic mail at *parker.barrett@epa.gov*.

For other part 70 issues, contact Juan Santiago, Operating Permits Group, Air Quality Policy Division (C504–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–1084; fax number (919) 541–5509; or electronic mail at *santiago.juan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

The information in this Supplementary Information section of this preamble is organized as follows:

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## I. General Information

### *A. Does This Action Apply to Me?*

Entities potentially affected by this final action are facilities currently required to obtain title V permits under State, local, Tribal, or Federal operating permits programs, and State, local, and Tribal governments that are authorized by EPA to issue such operating permits. Potentially affected sources are found in a wide variety of industry groups. In particular, we believe based on the collective experience in implementing the pilot permit activity that these groups will include, but are not limited to, the following:

| Industry group | SIC [a] | NAICS [b] |
|---|---|---|
| Aerospace Manufacturing | 372 | 336411, 336412, 332912, 336411, 335413. |
| Automobile Manufacturing | 371 | 336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213. |
| Industrial Organic Chemicals | 286 | 325191, 32511, 325132, 325192, 225188, 325193, 32512, 325199. |
| Chemical Processes | 281 | 325181, 325182, 325188, 32512, 325131, 325998, 331311. |
| Converted Paper and Paperboard Products. | 267 | 322221, 322222, 322223, 322224, 322226, 322231, 326111, 326112, 322299, 322291, 322232, 322233, 322211. |
| Magnetic Tape Manufacturing. | 369 | 334613. |
| Petroleum Refining | 291 | 32411. |
| Other Coating Operations | 226, 229, 251, 252, 253, 254, 267, 358, 363 | 313311, 313312, 314992, 33132, 337122, 337121, 337124, 337215, 337129, 37125, 337211, 337214, 337127, 322221, 322222, 322226, 335221, 335222, 335224, 335228, 333312, 333415, 333319. |
| Paper Mills | 262 | 322121, 322122. |
| Pharmaceutical Manufacturing. | 283 | 325411, 325412, 325413, 325414. |
| Printing and Publishing | 275 | 323114, 323110, 323111, 323113, 323112, 323115, 323119. |
| Pulp and Paper Mills | 262 | 32211, 322121, 322122, 32213. |
| Semiconductors | 367 | 334413. |
| Specialty Batch Chemical Processes. | 282, 283, 284, 285, 286, 287, 289, 386 | 3251, 3252, 3253, 3254, 3255, 3256, 3259, except 325131 and 325181. |

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Where Can I Get a Copy of This Document and Other Related Information?*

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

## II. Purpose

The purpose of this rulemaking is to clarify and reaffirm opportunities within the existing regulatory framework to encourage the wider use of the FAP approaches. The Agency has learned a great deal over the past decade through the implementation and evaluation of pilot permits. In light of that experience and the comments we received on the proposed FAP rulemaking (72 FR 52206, September 12, 2007),[1] we are finalizing certain elements of that proposal.[2]

## III. Background

*A. What Is a Flexible Air Permit?*

A FAP is a title V permit that by its design facilitates flexible operations at a source, allowing it to be market-responsive while ensuring equal or greater environmental protection than that achieved by conventional permits. In particular, a FAP contains one or more approaches that allow the source, under protection of the permit shield, to make certain types or categories of physical and/or operational changes without further review or approval of the individual changes by the permitting authority as they subsequently occur. Flexible air permit approaches, as discussed in this notice, include advance approvals of minor NSR, AOSs, and ARMs. In pursuing a FAP, the source must propose one or more of these approaches to the permitting authority who then would accept those which are judged to be appropriate in a particular situation. In order to be effective, the combination of FAP approaches contained in the title V permit must address all applicable requirements and requirements of part 70 relevant to the anticipated changes being authorized.[3] Flexible air permits cannot circumvent, modify, or contravene any applicable requirement and, instead, by their design must assure compliance with each one as it would become applicable to any of the authorized changes.

For more than a decade, we participated in a pilot permit activity with certain title V sources and permitting authorities through which were tested and evaluated various

[1] In addition to written comments submitted on the proposal, we have received input from stakeholders in outreach meetings held to discuss the proposal. These meetings, and the topics discussed, are documented in the docket for this rulemaking, Docket No. EPA–HQ–OAR–2004–0087. For purposes of this preamble, we refer to input from all these sources as ''comments.''

[2] On January 13, 2009, then Administrator Stephen L. Johnson signed a final Flexible Air Permitting Rule and the signed rule was made publicly available on EPA's Web site. The signed rule was submitted to the Office of Federal Register for publication. Rahm Emanuel, Assistant to the President and Chief of Staff, issues a memorandum on January 20, 2009, directing Agencies to withdraw from the Office of Federal Register ''all proposed and final regulations that have not been published in the **Federal Register** so that they can be reviewed and approved by a department or agency head.'' Administrator Lisa P. Jackson reviewed and approved the final Flexible Permitting Rule, and this rule as published is identical in substance to the rule previously signed January 13, 2009.

[3] ''Applicable requirements'' is a term that is used in title V. The EPA has defined the term to include, among other things, State implementation plan (SIP) rules, the terms and conditions of preconstruction permits issued under a SIP-approved NSR program, and requirements pursuant to the new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), maximum achievable control technology (MACT), and Acid Rain Programs. *See* 40 CFR 70.2.

permitting approaches that afford operational flexibility. The lessons learned through the pilot permit experience served, in part, as the basis for our adoption of the plantwide applicability limitation (PAL) provisions of the 2002 NSR Improvement rule. They also serve as a basis for this rulemaking, in which we clarify and reaffirm existing regulatory provisions that currently afford reasonable opportunities for operational flexibility, while ensuring the required levels of environmental protection. We intend that this rulemaking provide a more positive foundation upon which FAPs can be considered by sources and permitting authorities and, as appropriate, be designed and implemented.

*B. What Is the Title V Operating Permit Program?*

When Congress amended the Act in 1990, it established an operating permit program in title V of the Act for major (and certain other) stationary sources of air pollution. Title V mandates that each State develop and implement an operating permit program, and requires EPA to establish minimum standards for these programs. The purpose of the program is to improve the enforceability, and thus the effectiveness, of the Act's requirements by issuing to every covered source a permit that lists all the requirements applicable to the source under the Act and contains other terms as necessary to assure compliance with those requirements. States may delegate program responsibility to local agencies, and eligible Tribes may develop and implement a program at their option. In 1992, EPA promulgated regulations setting forth minimum requirements for State, local, and Tribal operating permit programs in part 70 of title 40 of the Code of Federal Regulations (40 CFR part 70). Currently all States and many local agencies administer operating permit programs approved by EPA pursuant to the part 70 requirements. There are 112 such State, territorial, and local operating permit programs. These programs are typically referred to interchangeably as ''title V programs'' or ''part 70 programs.''

In addition, title V requires EPA to implement an operating permit program in areas lacking an approved or adequately administered State, local, or Tribal program. Accordingly, in 1996 EPA promulgated the Federal operating permit program at 40 CFR part 71. In 1999, EPA amended part 71 specifically to address Indian country. Currently, EPA administers the part 71 program in Indian country, for sources located on the outer continental shelf, and for deep water ports.[4] There are currently no Tribes with approved part 70 programs, although one Tribe has received delegation to administer the part 71 Federal program.

The concept of operational flexibility in title V permits is not a new one. Since they were initially promulgated in 1992, the part 70 State operating permit program regulations have included operational flexibility provisions. One of these is the AOS provision found at 40 CFR 70.6(a)(9), which is one subject of this rulemaking.[5, 6] Section 70.6(a)(9) generally provides that any permit issued under part 70 must include terms and conditions for reasonably anticipated operating scenarios identified in its application by the source and as approved by the permitting authority. Over the years, we have proposed rulemaking or guidance to address operational flexibility further, but none has been finalized.[7]

Shortly after we promulgated part 70, we initiated and/or supported pilot permit activities with interested States.[8] Companies participating in this activity sought to reduce the cost, time, and delays associated with a permit revision for each operational change at a facility. We and the States sought to increase the sources' operational flexibility, while assuring compliance with applicable requirements, ensuring environmental protection, and facilitating pollution prevention (P2). These pilots typically allowed for both changes to operations of existing emissions units and the addition of new emissions units, provided that the changes were sufficiently well described in the permit application so that the permitting authority could confirm that all applicable requirements were identified and that the permit contained terms and conditions assuring compliance with all applicable requirements.

To evaluate the pilot permit activity, we conducted a thorough review of the six pilot permits for which at the time there was significant implementation experience.[9] We reviewed on-site records to track utilization of the flexible permit provisions, assessed how well the permits worked, evaluated total emissions reductions achieved, and analyzed the economic benefits associated with the permits. Overall, we found that the flexibility approaches which States implemented under their current authorities had worked well for both the sources and the permitting authorities, with significant benefits accruing as follows:

- *Environmental*—The sources generally achieved 30 to 80 percent reductions in actual plantwide emissions or emissions per unit of production.
- *Informational*—Permitting authorities and the public received better information about the scope of planned changes at the sources and the maximum, cumulative environmental effects of those changes.
- *Economic*—Increased permitting certainty and reduced transaction costs improved the participating companies' ability to compete effectively in the market and enabled them to retain, and in some cases, create jobs.
- *Administrative*—Even with the higher front-end design costs associated with the pilot permits, permitting authorities reported a net reduction in administrative costs over the life of the

[4] The EPA may also issue a part 71 permit where a State permitting authority fails to respond to an objection by the Administrator to a part 70 permit. *See* CAA section 505(c), 40 CFR 71.4(e).

[5] The Federal operating permit program at part 71 addresses reasonably anticipated operating scenarios in the same fashion as part 70. *See* 40 CFR 71.6(a)(9). This rulemaking affects both parts 70 and 71, and the revisions to each part are virtually identical. For ease of reference, this preamble discussion refers to the part 70 provisions, but the discussion applies equally to the part 71 program revisions. Section numbers given for the part 70 rules correspond directly to the analogous sections in part 71. The term ''title V permit'' refers to permits issued under either part 70 or part 71.

[6] The EPA included other operational flexibility provisions in the final part 70 regulations, including 40 CFR 70.4(b)(12), (b)(14), and (b)(15), which implement section 502(b)(10) of the Act. This rule does not address those provisions.

[7] In the 1990's, we proposed certain clarifications and modifications to the part 70 regulations. *See* generally 60 FR 45529 (August 31, 1995) and 59 FR 44460 (August 29, 1994). In those proposals, among other things, we discussed the concept of ''advance NSR'' in relation to AOSs, and proposed a definition for ''alternative operating scenarios.'' In August 2000, based in large part on the experience gained through the pilot permit activity discussed below, we issued a draft guidance document called White Paper Number 3 (64 FR 49803, Aug. 15, 2000), on which we solicited comment. That draft guidance addressed various flexible permitting approaches, including the use of the AOS provisions, Clean Buildings, and PALs. In fashioning the proposal on which this final rule is based, we considered a summary of those comments received on the prior proposals that addressed advance approval and AOSs (which is available in the docket) and the relevant individual comments received on the draft guidance (which are also in the docket).

[8] Sources at the following locations participated in the pilot permit activity: (1) 3M (St. Paul, MN); (2) Intel (Aloha, OR); (3) Lasco Bathware (Yelm, WA); (4) Imation (Weatherford, OK); (5) Cytec (Connecticut); (6) DaimlerChrysler (Newark, DE); (7) Merck (Elkton, VA); (8) Merck (Barceloneta, PR); (9) Saturn (Spring Hill, TN); (10) BMW (Spartanburg, SC); (11) Eli Lilly (West Lafayette, IN); (12) 3M (Nevada, MO); and (13) Imation (Camarillo, CA).

[9] The six permits that we analyzed were: (1) Intel (Aloha, OR); (2) 3M (St. Paul, MN); (3) Lasco Bathware (Yelm, WA); (4) DaimlerChrysler (Newark, DE); (5) Saturn (Spring Hill, TN); and (6) Imation (Weatherford, OK).

permits as a result of a reduction in subsequent permit revisions.

For a more extensive discussion of the findings of the pilot permit evaluation, *see* the evaluation report.[10]

*C. What Is the New Source Review (NSR) Program?*

The NSR program is a preconstruction permitting program that applies when a source is constructed or modified. The NSR program is composed of three different programs:

- Prevention of Significant Deterioration (PSD);
- Nonattainment major NSR (NA NSR); and
- Minor NSR.

1. Major NSR

We often refer to the PSD and NA NSR programs together as the major NSR program because these programs regulate only major sources.[11] These programs are mandated by parts C and D of title I of the Act.

Part C contains the PSD provisions. The PSD program applies when a major source that is located in an area that is designated as attainment or unclassifiable for any criteria pollutant is constructed or undergoes a major modification.[12] [13] Part D prescribes the NA NSR program, which applies when a major source that is located in an area that is designated as nonattainment for one or more criteria pollutants is newly constructed or undergoes a major modification for any of those pollutants. The implementing regulations for the PSD program are found at 40 CFR 52.21, 40 CFR 51.166, and 40 CFR 51.165(b). For NA NSR, the regulations are found at 40 CFR 52.24, 40 CFR 51.165, and 40 CFR part 51, appendix S.

As noted above, parts C and D set forth the statutory requirements for the PSD and NA NSR programs, and the implementing regulations include requirements for State major NSR programs. As a result, major NSR programs generally are similar across the States.

The PSD requirements include but are not limited to:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any national ambient air quality standards (NAAQS) or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and
- Thirty-day public comment period and opportunity for a public hearing on the permit.

Nonattainment NSR requirements include but are not limited to:

- Installation of Lowest Achievable Emission Rate (LAER) control technology;
- Offsetting new emissions with creditable emissions reductions;
- Certification that all major sources owned and operated in the State by the same owner are in compliance with all applicable requirements under the Act;
- An alternative siting analysis demonstrating that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification; and
- Thirty-day public comment on the permit.

Based on our pilot permit evaluation and our 1996 proposed modifications to the major NSR program, in December 2002 we finalized the NSR Improvement rule. In that rule, we promulgated regulations for PALs in the PSD and NA NSR programs. As explained in the preamble to the December 2002 final rule, a PAL is an alternative approach for determining NSR applicability on a plantwide basis. *See* 67 FR 80206. Sources with PALs can make changes without triggering the major NSR preconstruction permitting requirements, provided such changes remain below the limit established in their PAL and do not otherwise violate the requirements of the PAL. A PAL is an important technique which is often used in tandem with other FAP approaches such as advance approvals for minor NSR.

2. Minor NSR

Under section 110(a)(2)(C) of the Act, States are required to have ''minor'' NSR programs, which apply to new and modified sources that do not meet the emissions thresholds for the NSR programs that apply to major sources, as well as permit programs to meet parts C and D of the Act. In addition, section 110(j) requires all applicants for permits issued under title I of the Act to show that they will comply with standards of performance and all other requirements of the Act. The minor NSR program is part of each State's ''State implementation plan'' (SIP) and is designed to ensure that the construction or modification of any stationary source does not interfere with the attainment of the NAAQS. Aside from this requirement, which is stated in broad terms, the Act includes no specifics regarding the structure or functioning of minor NSR programs. The implementing regulations, which are found at 40 CFR 51.160 through 51.164, also are stated in very general terms. As a result, SIP-approved minor NSR programs can vary quite widely from State to State.

**IV. Overview of This Final Action**

This final action is primarily a reaffirmation of currently available flexibility options and the process for accessing them. This action adds some new definitions and clarifications to existing parts 70 and 71 provisions in order to promote greater certainty and reasonable consideration of these options. This notice discusses each of the FAP approaches (*e.g.,* advance approvals of minor NSR, AOSs, and ARMs) and the common process for their consideration. In this process, the source first proposes use of one or more of the FAP approaches to the permitting authority who then evaluates the proposal on a case-by-case basis.

Commenters have generally found these options to be available to the extent needed and appropriate under existing authorities. Commenters have also found the common process to be sufficient and effective in the reasonable consideration of the particular options proposed for a FAP. These commenters have convinced the Agency that more prescriptive approaches proposed to assure greater consistency may well be counterproductive to our objective for greater consideration and appropriate use of FAP approaches. While deciding not to prescribe specific approaches to the design and implementation of FAPs, EPA does intend to monitor State activities in these areas, to evaluate the effectiveness of various FAP approaches periodically, and to assess, on the basis of new experiences and other information, whether any additional rulemaking would be appropriate in the future.

*A. What Specific Changes to Parts 70 and 71 Is EPA Finalizing?*

We are finalizing a proposed revision to the title V permit application requirements at 40 CFR 70.5(c)(3)(iii) to facilitate the use of emissions caps, including those for advance approvals of minor NSR and for PALs, although

[10] ''Evaluation of the Implementation Experience with Innovative Air Permits.'' A copy of this report is located in the docket for this rulemaking, or can be accessed at *http://www.epa.gov/ttn/oarpg/t5/memoranda/iap_eier.pdf.*

[11] The Act uses the terms ''major emitting facility'' to refer to sources subject to the PSD program, and ''major stationary source'' to refer to sources subject to NA NSR. *See* CAA sections 165, 169, 172(c)(5), and 302(j). For ease of reference, we use the term ''major source'' to refer to both terms.

[12] The term ''criteria pollutant'' means a pollutant for which we have set a NAAQS.

[13] In addition, the PSD program applies to many noncriteria regulated pollutants.

the wording has been changed slightly in the final rule. The final revisions clarify that for emissions units subject to an annual emissions cap, the application may report the units' emissions as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine or assure compliance with an applicable requirement.

With respect to AOSs, after considering the comments we received on the proposed rules, we are finalizing only those aspects of our proposal that would preserve the current levels of flexibility and add no new administrative burden. In particular, we are revising the rules to:

- Add a definition of AOS, but eliminating the reference to ''physical and operational changes'' from the proposed definition.
- Clarify that the permitting authority shall require the source to supplement its application with additional information when necessary to define permit terms and conditions to implement a proposed AOS as requested by the source.
- Clarify that the compliance plan requirements for applications must address proposed AOSs when an application includes them.
- Clarify that applications must contain documentation that the source has obtained all authorizations required under the applicable requirements relevant to a proposed AOS or a certification the source has submitted all relevant materials for obtaining such authorizations.
- Clarify that permits must contain all authorizations as required under the applicable requirements relevant to an AOS.
- Use consistent terminology wherever the rules refer to AOSs.

We are not finalizing other proposed requirements relating to the specific content of AOSs in logs and permits and to the need to report AOS implementation every 6 months. We have been persuaded by the commenters on the proposal that these potential new requirements would not be necessary and may, in fact, be counterproductive.

In the final rules with respect to ARMs, we are adding the proposed definition of ARM and supplementing it with two clarifications added in 40 CFR 70.6(a)(1): (1) As is currently the case for AOSs, the source must identify in its application a potential ARM and the permitting authority must then choose to approve it before the ARM can be effective; and (2) an ARM cannot be used to circumvent any other applicable requirement. Although ARMs can reduce the number of potential permit revisions that a source must otherwise request, an ARM must be consistent with and implement an applicable requirement or requirement of part 70. We are not finalizing the proposed requirement for sources to identify in the 6-month monitoring report any ARMs implemented during the reporting period. Instead, we are clarifying that implementation records for all ARMs use must be kept on-site by the source.

Because the final rules represent clarifications to the existing part 70 regulations, we believe that many States will be able to implement the final rules without revising their regulations. This belief is further based on the pilot experience and on the comments received from States who affirmed that their current authority was sufficient to implement both AOSs and ARMs (*i.e.,* no State rulemaking was thought to be needed to incorporate the new definitions and clarified requirements).

However, since the AOS provisions are impacted by the rule and are one of the part 70 program minima, and State part 70 programs differ, some States may revise their current part 70 program to add sufficient authority to implement the final rule or opt to make current authority on flexible permits more explicit.

With respect to AOSs, for those States that believe they lack authority under their current part 70 programs to implement the final rule, or that chose to make current authority more explicit, such States should submit proposed revisions to their title V operating permits program to their EPA Regional Offices pursuant to 40 CFR 70.4(i). For other States if, based on their subsequent efforts to implement the final rule, we determine in writing that a particular part 70 program does not provide sufficient authority to implement the final rule or is inconsistent with the final rule, then the relevant State must revise the program pursuant to 40 CFR 70.4(i). Accordingly, the State will have, from the date of our written determination, 180 days, or such other period as the Administrator may specify following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the required program revisions, to submit a proposed operating permit program revision consistent with the final rule to us for review and approval.

With respect to ARMs, States may choose to send us specific revisions to their current programs at any time. There is no mandate for part 70 programs to contain provisions specific to ARMs. Thus, States are not obligated to revise their part 70 programs in this regard as a result of this final rule. However, optional rule changes may be useful to some States in implementing the final rule more effectively and to achieve the anticipated administrative benefits attributed to ARM implementation.

Regardless of whether States revise their rules to incorporate the part 70 rule changes that are being finalized in this action, the Agency wishes to reiterate that inclusion of AOSs or ARMs in a title V permit remains an essentially voluntary activity. A source owner in deciding whether to propose one must first determine that an AOS and/or ARM would be useful in increasing certainty and flexibility and then the permitting authority must determine whether or not to grant the source's request for an AOS and/or ARM. The permitting authority, on a case-by-case basis, may reject source proposals as inadequate to assure compliance with the underlying applicable requirements or otherwise inappropriate, depending on the specific facts of the situation.

*B. What Changes to Parts 51 and 52 Is EPA Finalizing?*

We are not finalizing any changes to the NSR program in parts 51 and 52. We did not propose any changes to the regulations for minor NSR based on our experience with several pilot States. Comments received on the proposal affirmed that the relevant pilot experience was broadly applicable and that States, in general, have sufficient existing authority to advance approve minor NSR, where they determine it appropriate to do so, and to incorporate the permit terms accomplishing this approval into title V permits as applicable requirements. As a result, we continue to believe revisions to our part 51 minor NSR regulations are not necessary. Where States are considering revisions to their current minor NSR programs to provide more explicit authority for authorizing advance approvals, EPA is willing to discuss possible revisions and to review any rule changes proposed by the State, consistent with 40 CFR 51.160 through 51.164.

We have also decided to terminate our rulemaking proposal for Green Groups. As discussed more fully later in this preamble, we instead intend to support States and sources who wish to explore the flexibilities available under the existing major NSR regulations. Upon request to do so, EPA is willing to assist States in an evaluation of their current SIPs and to discuss possible

replacement provisions with them consistent with our 40 CFR 51.165 and 51.166 regulations governing NA NSR and PSD SIPs.

*C. What Approach Is Being Used To Discuss the Final Actions?*

The final actions relative to parts 70 and 71 and to parts 51 and 52 are subsequently discussed in four sections entitled: V. Advance Approval of Minor NSR; VI. Alternative Operating Scenarios (AOSs); VII. Approved Replicable Methodologies (ARMs); and VIII. Green Groups. Each of these sections first summarizes what we proposed and the significant reactions of commenters to our proposal, and then describes what EPA is finalizing as a result. A more comprehensive summary and analysis of the written comments received can be found in our Response to Comments document, which is available in the public docket for this rulemaking as described in the **ADDRESSES** section of this preamble.

*D. What Are EPA's Recommendations for Public Participation in Flexible Permitting?*

Based on our experience with pilot permits, we believe that FAPs provide at least as much environmental protection as conventional permits and often promote superior environmental performance. Nevertheless, we also recognize that FAPs will contain features, such as AOSs, ARMs, or advance approval of minor NSR, that may not be familiar to the reviewing public at least until these approaches are more widely used. For this reason, we encourage permitting authorities to consider using their discretion to enhance the relevant public participation process (as currently required in both title V and NSR regulations), as appropriate, for a particular FAP. Some recommendations which we found to work well in the context of the pilot permits are described below.

During the permitting process, permitting authorities could consider making the permit application available to the public soon after receipt. We found in pilot permits that early outreach to the community, rather than waiting until the draft permit was prepared, was an effective public participation strategy. Some permitting authorities have also found it useful to issue a local press release (in addition to a conventional notice in the newspaper) when a permit containing innovative approaches is released for comment. Press releases have potential to reach more people and raise local awareness of FAP approaches.

The minimum public comment period required for a title V permit renewal or significant permit modification is 30 days. Where a significant amount of a permit's content consists of terms to incorporate operational flexibility, we suggest that permitting authorities consider expanding the comment period to 45 days or more. Note, however, that for some pilot permits, an up-front outreach to the public was sufficient to resolve community questions and comments early in the process, so that by the time of the public hearing and comment period no adverse comments were received.

Finally, in order to ensure adequate technical support and accessibility for the public in their efforts to understand and comment upon FAPs, we suggest that permitting authorities provide a principal point of contact for responding to technical questions and ensure the availability of draft permits, applications, and technical support documents on an Internet Web site. We believe that any additional costs here will be offset by the subsequent administrative cost savings to the permitting authority resulting from the reduced need to process permit revisions for sources with FAPs.

*E. What Types of Support Does EPA Intend To Offer?*

The Agency anticipates that the effort by States and sources to investigate FAPs will involve a potentially wide spectrum of sources (*see* section I.A). As a result, EPA intends to provide general support to States, sources, and the public on this and other FAP topics, potentially in the form of a Web site, workshops, and an EPA network of contacts. In addition, we will consider other types of support to individual States where requested to do so.

## V. Advance Approval of Minor NSR

*A. Background*

Pursuant to section 110(a)(2)(C) of the Act and its implementing part 51 regulations (*see* 40 CFR 51.160 through 51.164), States are required to adopt minor NSR programs that complement their major NSR programs required under parts C and D of title I the Act. Given the general nature of these requirements, the content of minor NSR programs varies widely among the States. Regardless of their specific provisions, through the pilot permit experience, we found that State minor NSR requirements, where applicable, are among the most important in designing a FAP for sources making frequent and/or rapid physical and operational changes. Absent an up-front authorization for these changes under minor NSR (usually categories or types of changes), an individual review by the permitting authority typically is required at the time each change would be approved.

We refer to up-front, categorical authorizations as ''advance approvals'' under minor NSR.[14]

Upon examining the provisions of their minor NSR programs, most of the States in which pilot permits were conducted (''pilot States'') found that they could issue advance approvals under existing minor NSR authority for a wide spectrum of changes, provided that certain boundary conditions were established in the minor NSR permit. The conditions established in the minor NSR permit to accomplish such approvals varied depending upon the requirements of the different State minor NSR programs and the specific facts of the particular situation.

The pilot permits employed several types of techniques to authorize, in a practicably enforceable manner, a category of changes under minor NSR. These techniques, while not necessarily transferable in all aspects to other permitting situations, do represent field-tested reference points from which similar advance approval approaches can be considered by other permitting authorities. Ultimately, as with all FAP approaches, in order for a minor NSR project proposing use of an advance approval to be viable, the source must first propose it to the permitting authority, and the permitting authority must then agree to pursue it in the context of its own SIP-approved minor NSR rules and the case-specific facts.

Permitting authorities in pilot States employed the following approaches and safeguards when authorizing the advance approval of minor NSR:

• *Scope of minor NSR project*—Permitting authorities were able to rely

[14] ''Advance approval'' generally refers to an authorization to make certain categories or types of changes which is issued to a source by its permitting authority pursuant to a specific applicable requirement that requires approval prior to making subject changes (*e.g.,* minor and major NSR, section 112(g), *etc.*). Changes within the types or categories of changes which are advance approved can subsequently be made over the duration of the permit without further review or approval by the permitting authority with respect to the particular applicable requirement for which the changes are advance approved. In order to explore use of a specific advance approval, a source would first propose its use which then could be accepted or rejected by the permitting authority, as appropriate. Advance approvals authorized under one particular applicable requirement (*e.g.,* advance approvals under minor NSR) may also address additional requirements which may or may not themselves require prior approval before the specified changes can be made (*e.g.,* MACT, NSPS, and State air toxics requirements).

upon available flexibility to interpret the relevant SIP-approved definitions (*e.g.,* emissions unit, facility, source) in order to fashion a reasonable scope and duration of the minor NSR pilot project (*i.e.,* ones that provide appropriate operational flexibility for the particular situation while ensuring environmental protection). In general, these advance approvals (*i.e.,* the minor NSR projects) consist of several categories of potential changes anticipated to occur over an appropriately defined period of time (*e.g.,* a range of possible types of changes, such as ''any of various physical changes to the rollers, drive mechanism, and other components of the coating section within a coating line''). In their permit applications requesting advance approval of minor NSR, pilot sources described these changes in sufficient detail to allow the permitting authority to conduct the relevant ambient air impact and control technology reviews, to determine relevant applicable requirements, and to assess the compatibility of the changes with the approved emissions reduction and monitoring approaches. The SIP-approved requirements concerning the timeliness of the approved construction project vary among the pilots, depending upon the content of the approved SIP and the ability to characterize the project (as deemed appropriate by the permitting authority) as a series of related ongoing changes.

• *Non-applicability of major NSR*—In order to assure the types of changes authorized under the advance approvals for minor NSR could subsequently occur without further review and approval by the permitting authority, the pilot permits contain terms to prevent major NSR from also applying to the same changes. These terms typically involve either a PAL based on actual emissions or a potential to emit (PTE) cap to prevent an existing source from becoming major, depending on whether the source is already major or not for the pollutant(s) involved in the advance approval of minor NSR.

• *Control technology requirements*—Permitting authorities imposed terms in pilot permits as necessary to assure compliance with all applicable control requirements. In all pilot permits, these terms require compliance with Federal standards (*e.g.,* MACT, NSPS, NESHAPs) that continue to apply regardless of the approach taken to advance approve minor NSR. In addition, the advance approved changes must meet any applicable SIP requirements, including those in some States to apply best available technology (BAT) to certain changes subject to their minor NSR programs. In those pilot permits subject to a State BAT requirement, permitting authorities also determined whether the advance approval allowed discrete changes with later construction times and whether any initial BAT determination for them would require re-evaluation.

• *Protection of ambient standards*—Pilot permits contain terms judged appropriate by the permitting authority to assure that the minor NSR pilot project would not interfere with the attainment and maintenance of the NAAQS. Typically, since the advance approvals requested by the pilot sources involved VOC emissions, pilot projects primarily focused on protecting the ozone NAAQS. The plantwide VOC emissions caps used in the pilots were determined to be adequate for purposes of safeguarding the ozone NAAQS, but for other pollutants (*e.g.,* air toxics) States sometimes required a replicable modeling procedure to screen the impacts of individual emissions increases relative to acceptable ambient levels. In the case of one pilot, an ambient dispersion model, complete with implementation assumptions, was included in the permit to evaluate any new air toxic pollutants of concern, or increases in existing toxic pollutants. Failure of a particular change to meet the screening levels triggered a case-by-case review of that change by the permitting authority. Additional safeguards were imposed to a varying extent, as applicable and as deemed appropriate, by the permitting authority to address averaging time concerns potentially applicable to NAAQSs other than ozone.

• *Public participation*—Each pilot permit project was subjected to an opportunity for public comment. Often this process was enhanced to facilitate better understanding and support for the project. (*See* section IV.D.)

To augment initial application information, pilot States, as part of authorizing advance approvals under their existing minor NSR programs, frequently decided to require sources to send a notice to the permitting authority contemporaneous with the operation of any entirely new emissions unit relying upon the advance approval. Pilot States were also able to add other permit terms, where necessary, to make enforceable any advance approvals of minor NSR that were authorized.

Often the permitting authorities were able in pilot permits to streamline various permit terms so as to accomplish multiple objectives and to simplify the overall permit. For example, the pilot source frequently requested its permitting authority to establish in the minor NSR permit a plantwide VOC emissions cap at a particular level for two purposes. First, the level was requested to prevent the applicability of major NSR. In cases where the existing plantwide VOC emissions were below the major source threshold, the permitting authority approved an emissions cap to constrain the PTE of the source in a practicably enforceable fashion so that it would not be a major source of VOC emissions for purposes of PSD. In other cases, where the source was an existing major stationary source for its VOC emissions, the source requested a plantwide cap level to function as a PAL. In response, the permitting authority approved the requested PAL consistent with the PAL provisions of the major NSR regulations (*see, e.g.,* 40 CFR 52.21(aa)). Accordingly, compliance with the PAL ensures that major NSR would not apply to any future changes made at the source during the time period over which the PAL was effective. Second, the VOC emissions level established in the PTE cap or in the PAL, as applicable, was interpreted by the permitting authority as a sufficient safeguard to prevent future changes approved under minor NSR, in combination with existing source emissions, from interfering with the ozone NAAQS. As such, the VOC emissions cap would both prevent major NSR from applying to changes at the source and ensure that the advance approval of changes under minor NSR does not jeopardize the NAAQS. Given the strategic importance of such caps, pilot sources typically maintained a significant margin of safety between their actual plantwide emissions and the level required by their emissions cap(s).

Under the current part 70 regulations, any permit terms accomplishing an advance approval pursuant to a SIP-approved minor NSR program must be incorporated into the title V permit as applicable requirements, and combined with other permit terms established in the part 70 permit as necessary to assure compliance with all requirements that will apply when the approved changes are subsequently implemented. Thus, the part 70 permit would include the requirements directly addressed in the minor NSR permit, as well as other requirements that the minor NSR permit did not address, if any. Changes advance approved under minor NSR can then be implemented without any further review or approval by the permitting authority, provided that the terms of the authorizing minor NSR permit are effective upon its issuance and are incorporated into the title V

permit as applicable requirements consistent with 40 CFR 70.2.

In our evaluation of pilot permits,[15] we found that the use of advance approvals under minor NSR improved operational efficiency at the plants because companies knew in advance what changes were authorized, making resource allocation more efficient and accommodating the typically incremental, iterative nature of industrial process improvements. We also found that P2 projects approved in advance became more attractive to the companies because such projects could be undertaken without the delay and uncertainty of future case-by-case approvals. In addition, P2-related projects reduced emissions and enabled sources to comply more easily with emissions limits such as the plantwide emissions caps that were often features of the pilot permits.

As mentioned above, pilot permit experience indicates that obtaining advance approval under minor NSR is often a critical element in the design of a FAP. This experience also suggests that many State minor NSR programs may already provide, in situations judged to be appropriate by the permitting authority, the legal authority necessary to issue minor NSR permits that accommodate various types of operational flexibility, which can be readily incorporated into title V permits. Although we did not propose any revisions to the minor NSR regulations at 40 CFR 51.160 through 51.164, we used the proposal preamble to encourage States to implement advance approvals in response to requests by sources under their existing minor NSR programs, as appropriate, and to seek additional authority to consider source proposals where they do not currently have such discretion. Based on pilot experience, we also expressed our belief that permitting authorities can often advance approve changes with respect to other applicable requirements that require a specific authorization without regulatory changes. *See* 72 FR 52215.

We proposed one revision to part 70 to facilitate the use of advance approvals under minor NSR, which, as mentioned, often rely upon one or more emissions caps to accomplish their authorizations.[16] This revision to 40 CFR 70.5(c)(3)(iii) would clarify that for emissions units subject to an annual emissions cap, the title V permit application may report the units' emissions (in tons per year) as part of the aggregate emissions associated with the cap, except where more specific information is needed to determine and/or assure compliance with an applicable requirement.

As explained in the proposal preamble (72 FR 52219), the introductory text in 40 CFR 70.5(c) states generally that the application must include information for each emissions unit. Existing 40 CFR 70.5(c)(3)(iii) further requires that the application provide the emissions rate in tons per year and in such terms as are necessary to establish compliance consistent with the applicable reference test method. We proposed to clarify this regulatory requirement as it applies to sources subject to title V permitting requirements that employ an annual emissions cap (*e.g.,* caps which are PALs, limit PTE, and/or enable advance approval for minor NSR). In particular, we proposed that for the operation of any emissions unit authorized under an annual emissions cap, a source can meet 40 CFR 70.5(c)(3)(iii) by reporting the aggregate emissions associated with the cap.

We noted in the proposal preamble that under the proposed approach, an emissions cap could be thought of as a constraint on annual emissions from each emissions unit under the cap as well as on the aggregated emissions from the group of units. That is, in the extreme, a unit could emit up to the full amount of the cap if all other units under the cap had zero emissions. Thus, for a group of emissions units under an annual emissions cap, the 40 CFR 70.5(c)(3)(iii) requirement for unit-by-unit emissions figures could be met by reporting in the permit application that the emissions cap represents the upper limit on emissions both from each unit in the group and from the entire group. The proposed revision to 40 CFR 70.5(c)(3)(iii) would simply clarify that in this particular situation, more specificity is not needed in the title V permit application (unless additional specificity is necessary to determine applicability or to assure compliance with one or more potentially applicable requirements). Reporting emissions data in this manner would be permissible except where the permitting authority determined that more specific emissions information was needed (*e.g.,* where an applicable requirement for a specific emissions unit depends on the emissions type or level, or where annual emissions figures are needed to assess compliance for the unit).

We did not propose any other revisions to part 70 related to advance approvals under minor NSR. Part 70 already requires incorporation into a title V permit of the terms of any State minor NSR permit, including those issued to advance approved changes. These permit terms are themselves applicable requirements as defined in 40 CFR 70.2. Sometimes, however, the permitting authority may need to include other terms in the title V permit, in addition to the terms of a minor NSR permit authorizing advance approved changes, so that the changes can be made without further review or approval. This would be the case if there were other applicable requirements also implicated by the advance approved changes that were not addressed in the minor NSR permit. In such cases, the part 70 permit must assure compliance with these applicable requirements as well.

We pointed out in the proposal preamble that an advance approval that is incorporated into a part 70 permit remains subject to all the conditions of the underlying authorization. For example, if an underlying minor NSR permit is contingent upon the source commencing construction of the authorized change(s) within a certain period, the part 70 permit must contain terms to ensure that the part 70 permit does not authorize operation if the source fails to meet the required deadline. The source is responsible for obtaining any extensions or additional authorizations as necessary to keep the advance approval in the part 70 permit in effect. *See* 72 FR 52217, footnote 23.

In the proposal preamble we also noted that an advance approval under minor NSR may be added to a title V permit through permit issuance or renewal or through the permit revision process. When an existing permit is to be revised to incorporate an advance approval of minor NSR, the appropriate revision track depends on the nature of the proposed advance approval and the process under which it was established (*e.g.,* whether the authorizing NSR process also addressed title V requirements). *See* 40 CFR 70.7(d) & (e). Note also that the permit shield (where available and granted by the permitting authority) can be extended to advance approvals added through permit issuance or permit renewal or to those added during a significant permit modification, but not to those added through other permit revision procedures.

Commenters generally agreed that no Federal rulemaking is needed on the advance approval of changes under minor NSR because States currently can,

[15] *See* footnote 9 for information on where to obtain our report ''Evaluation of the Implementation Experience with Innovative Air Permits.''

[16] In the proposal preamble, we discussed this proposed clarification as a revision for purposes of AOSs (72 FR 52219). We now believe that it is more appropriately portrayed as a revision in support of advance approvals under minor NSR.

at their discretion, employ a variety of advance approval techniques under their existing rules and authorities. Some commenters indicated that any new Federal rules might actually constrain innovation by the States in this area, rather than enable greater use of advance approvals. A commenter noted that some State minor NSR programs require contemporaneous minor source BACT determinations that are not consistent with the advance approval of a wide spectrum of changes, and some expressed concern about the burden and other costs that advance approval permits could impose upon State agencies for uncertain projects and uncertain environmental gain.

Several industry commenters urged EPA to further encourage States to issue advance approvals under minor NSR. On the other hand, an association of State and local air agencies indicated that States do not need our encouragement to use their minor NSR programs for advance approvals as appropriate, and objected that the discussion in the proposal preamble could be misinterpreted as having regulatory force. This commenter believed that advance approvals cannot be issued under some minor NSR programs.

We received few comments on our proposal to revise 40 CFR 70.5(c)(3)(iii). One State agency indicated that for a combined NSR/title V permit program unit-specific information is often needed for several purposes, including control technology assessment, modeling, compliance assessment, determining the appropriate level and frequency of monitoring, *etc.,* even if the unit is covered by an emissions cap. This commenter wanted to retain the ability to require such information as needed.

*B. Final Action*

Consistent with our proposal, we are not revising any part 51 requirement in order to require or facilitate advance approvals under minor NSR (or under any other applicable requirement). We continue to believe that many States are able to advance approve changes under their existing minor NSR programs, to the extent that they believe it is appropriate to do so. As mentioned by a commenter, EPA recognizes, however, that certain minor NSR rules are not as amenable to advance approval as are others. In particular, advance approvals under State rules that require sources to employ best available technology (where such rules are judged to be open to advance approval by the permitting authority and appropriate for use in a particular case) may require additional permit terms as necessary to assure that best available technology will be used.

We would also like to emphasize that permitting authorities, operating under their existing minor NSR regulations and authorities, must include terms as necessary to ensure the practical enforceability of advance approvals. For example, for purposes of tracking compliance with an emissions cap established in minor NSR, the minor NSR permit should contain sufficient terms that collectively act to monitor and quantify the relevant emissions at the site over the applicable time period.

We are finalizing the proposed revision to the title V permit application requirements at 40 CFR 70.5(c)(3)(iii) with minor changes. As proposed, the final revisions clarify that for emissions units subject to an annual emissions cap, the application may report the units' emissions as part of the aggregate emissions associated with the cap, except where the permitting authority determines that more specific information is needed. The EPA agrees with the commenter who wanted to assure that permitting authorities retained the ability to require more unit-specific information as needed to develop permit terms needed to determine or to assure compliance with all applicable requirements relevant to emissions units included under the emissions cap. As a result, the final rule language now indicates that unit-specific information must be provided whenever it is needed, including where necessary to determine or assure compliance with an applicable requirement.

We believe that the revised 40 CFR 70.5(c)(3)(iii) will facilitate the use of advance approvals under emissions caps. This combination of FAP tools was repeatedly validated in our evaluation of pilot permits. In addition, emissions caps were clearly shown to promote emissions reductions as sources sought to create ''head room'' under their caps to allow for additional growth. No other changes to part 70 are being made for the purposes of accomplishing advance approvals under minor NSR or incorporating them into part 70 permits. However, we again stress that an advance approval which is incorporated into a part 70 permit must include all the conditions of the underlying authorization. The source is responsible for obtaining any extensions or additional authorizations as necessary to keep the advance approval in the part 70 permit in effect.

While we believe that appropriately crafted advance approvals of minor NSR can, in certain cases, facilitate operational flexibility while protecting the environment (at least as effectively as would the individual review of each change as it occurs), we do not intend to imply that States should issue such advance approvals in any cases that would be inconsistent with their existing rules or, in their judgment, would be inappropriate. As a general matter, the permitting authorities have authority to decide, on a case-by-case basis, the merits of granting an advance approval of minor NSR to a particular requesting source. Additionally we do not intend to imply that States must revise their current rules to facilitate advance approvals in the future. Rather, where existing rules may limit advance approval opportunities, EPA simply encourages States to consider the adoption of more flexible minor NSR rules under the broad governing regulations in 40 CFR 51.160–51.164. It is EPA's policy to support State use of advance approvals under minor NSR, where they deem them appropriate, and particularly where States expect benefits similar to those found in our evaluation of pilot permits to occur.

We also acknowledge that States, in order to respond to requests by sources for advance approval of minor NSR, may incur additional up-front development costs for which they may have to charge additional service fees. However, based on the pilot permit experience, annual administrative costs associated with FAPs should decline over time and, over the life of the permit, be less than those for conventional permits.

## VI. Alternative Operating Scenarios

*A. Background*

Since they were initially promulgated in 1992, the part 70 State operating permit program regulations have included the AOS provisions found at 40 CFR 70.6(a)(9).[17] These provisions were promulgated consistent with section 502(b)(6) of the Act, which requires permit programs to include provisions for adequate, streamlined and reasonable procedures for expeditious processing of the application and expeditious review of permit actions. Accordingly, 40 CFR 70.6(a)(9) is a mandatory part 70 program element, but its use is discretionary on the part of both sources

[17] As noted previously, our proposed and final actions related to AOSs apply equally to part 70 and part 71. For simplicity, we refer only to part 70 in this preamble discussion. The provisions of part 71 generally mirror those of part 70, so the part 71 paragraphs that correspond to the cited paragraphs in part 70 differ only by designating part 71 instead of part 70 (unless otherwise noted). For example, the AOS provisions of part 71 are found at 40 CFR 71.6(a)(9) rather than at 40 CFR 70.6(a)(9).

and permitting authorities. In particular, 40 CFR 70.6(a)(9) provides that any permit issued under part 70 must include terms and conditions for reasonably anticipated operating scenarios identified by the source in its application, as approved by the permitting authority.[18]

The Agency outlined broad policy on the design and implementation of AOSs in our final part 70 rule and then further explained our policy in the September 12, 2007 proposal. In the final part 70 rule, we emphasized the importance of 40 CFR 70.6(a)(9), noting that a permit that contains approved AOSs ''will be a more complete representation of the operation at the permitted facility.'' *See* 57 FR 32276. We also explained that once a permit with approved AOSs is issued, the need for additional permit modifications will be substantially reduced since the permit will already contain appropriate terms and conditions to accommodate the approved operating scenarios. In the final part 70 rule, we did not place any restrictions on the types of operations that could qualify as a reasonably anticipated operating scenario. Instead, the Agency deferred to the process under which a candidate AOS would be identified by the source and considered for approval by the permitting authority to establish those AOSs which would be appropriate for streamlining purposes.

In the September 12, 2007 proposal, the Agency explained that, when deciding to approve an AOS, the permitting authority must ensure that the proposed operating scenarios are adequately described for each relevant emissions unit such that all applicable requirements [19] [20] associated with each scenario are identified and appropriate terms and conditions to assure compliance with these requirements (when they become applicable) are included in the permit. We also noted that the source must obtain all specific authorizations which are required under any applicable requirements (*e.g.,* those under minor NSR) in order to implement any AOS approved by the permitting authority without any further review or approval on their part. In addition, EPA affirmed that, while States must have sufficient authority in their part 70 programs to grant an AOS, if proposed by a source, permitting authorities retain the discretion as to the appropriateness of doing so on a case-by-case basis, depending on the specific facts of each situation. The Agency further conveyed that changing to an AOS can not be used to circumvent applicable requirements or to avoid an enforcement action. A switch to an AOS does not affect the compliance obligations applicable to a source under its previous operation.

As with advance approvals, we noted in the proposal preamble that an AOS may be added to a title V permit through permit issuance or renewal or through the permit revision process. When an existing permit is to be modified, the appropriate modification track (significant or minor) depends on the nature of the proposed AOS (or the proposed revision to an AOS) and whether it would qualify for treatment as a minor permit modification under existing 40 CFR 70.7(e)(2)(i). We noted also that the permit shield (where available and granted by the permitting authority) can be extended to AOSs added during permit issuance or renewal or through a significant permit modification, but not to those added through minor permit modification procedures (per existing 40 CFR 70.7(e)(2)(vi)).

In addition, we pointed out in the proposal preamble that the contents of the AOS log, such as its description of requirements that apply to a particular AOS, are not permit provisions for purposes of the permit shield. Thus, a source would not be deemed to be in compliance with the applicable requirements of the Act simply because it was in compliance with the description of applicable requirements contained in the log, if that description were inaccurate.

On a few occasions prior to our September 2007 proposal, we proposed rulemaking and guidance on AOSs. These proposals focused primarily on how AOSs might relate to advance approvals. We did not finalize our proposals.[21]

In the preamble to our September 2007 proposed rulemaking we also proposed several specific revisions to the existing part 70 and part 71 regulations as they apply to AOSs. The Agency stated that the primary purpose of these revisions to parts 70 and 71 is to build upon the existing regulatory framework and to ensure that the flexible permitting approaches with which we have experience are more readily and widely used.

We specifically proposed to define the term ''alternative operating scenario (AOS)'' in 40 CFR 70.2 and to codify certain related requirements to promote consistency and a common understanding of AOSs. The proposed definition read as follows:

> *Alternative operating scenario (AOS)* means a scenario authorized in a part 70 permit that involves a physical or operational change at the part 70 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

The other proposed revisions included the following:

- Revisions to 40 CFR 70.5(c)(7) to clarify that the permitting authority may require the source to include in its application additional information as necessary to define permit terms and conditions implementing any AOS;
- Additional revisions to 40 CFR 70.5(c)(7) to clarify that the application must include a demonstration that the source has obtained all authorizations required under the applicable requirements that apply to any AOS, or a certification that the source has submitted a complete application for such authorizations;

[18] Alternatively, if a title V permit is issued without an AOS, it must nonetheless, pursuant to 40 CFR 70.6(a)(1), contain terms sufficient to assure compliance with all applicable requirements at the time of permit issuance. While permissible to do so, failure to address anticipated changes in an AOS which are not otherwise sufficiently addressed by the included applicable requirements may result in the need for a permit revision or, if available under the State's part 70 program, an off-permit action which would require an advance notice and would not be eligible for the permit shield. On the other hand, if an AOS were authorized in a title V permit, then the source could subsequently implement it without further review or approval, provided that such implementation was contemporaneously recorded in an on-site log upon making the relevant change(s).

[19] ''Applicable requirement'' as defined in 40 CFR 70.2 includes all the separate emissions reduction, monitoring, recordkeeping, and reporting requirements of a particular standard or SIP regulation and all the terms and conditions of preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I of the Act.

[20] Failure to anticipate and include a particular change in a part 70 permit (including under an AOS) does not in and of itself bar the source from implementing the change, without a permit revision, if it can satisfy the requirements of the off-permit provisions in an approved part 70 permit program. *Cf.* 40 CFR 70.4(b)(12) and (b)(14).

[21] In the 1990s, we proposed certain clarifications and modifications to the part 70 regulations. *See* generally 60 FR 45529 (August 31, 1995) and 59 FR 44460 (August 29, 1994). In those proposals, among other things, we discussed the concept of ''advance NSR'' in relation to AOSs, and proposed a definition for ''alternative operating scenarios.'' In August 2000, we issued a draft guidance document called White Paper Number 3 (64 FR 49803, Aug. 15, 2000), on which we solicited comment. That draft guidance addressed various flexible permitting approaches, including the use of the AOS provisions. In fashioning the proposal on which this final rule is based, we considered a summary of the comments received on the prior proposals that addressed AOSs (which is available in the docket) and the relevant individual comments received on the draft guidance (which are also in the docket).

• Revisions to the compliance plan requirements for applications under 40 CFR 70.5(c)(8) to clarify that such plans must address AOSs when an application includes them;

• Revisions to 40 CFR 70.6(a)(3)(iii)(A) to require the source to identify in the 6-month monitoring report any AOSs implemented during the reporting period;

• Revisions to 40 CFR 70.6(a)(9)(i) to clarify what specific information must be included in the AOS log (already required under the existing regulations) when an AOS is implemented;

• Revisions to 40 CFR 70.6(a)(9)(iii) to clarify what constitutes an acceptable description in a title V permit for an AOS;

• Additional revisions to 40 CFR 70.6(a)(9)(iii) to make clear that the permitting authority cannot grant final approval of an AOS until the source has obtained all the authorizations required under the applicable requirements relevant to that AOS; and

• Revisions to use consistent terminology wherever the rules refer to AOSs.

The commenters on our proposal generally indicated an overall consensus that the proposed additional requirements for AOSs are not necessary or useful. They pointed out that AOSs are already provided for in part 70, and that permitting authorities have been implementing these provisions without difficulty for years. On the other hand, some commenters believe that use of AOS provisions, in their experience, has not been necessary in some States. In these States, commenters assert that permitting authorities have been able to address prospective operating scenarios identified by the source by simply including in the title V permit the applicable requirements and corresponding compliance assurance terms (*i.e.,* monitoring, recordkeeping, and reporting requirements) related to these scenarios. Commenters further asserted that in many cases, such terms are adequate to assure compliances at all times without AOS-specific logs or reports. Therefore, they objected to the level of detail proposed for the content of AOS logs and permit terms, and to the requirement to document AOS implementation in the 6-month monitoring reports. These commenters also claim that the proposed requirements would be unnecessarily burdensome and would not improve compliance assurance. Moreover, some States indicated the rulemaking on AOSs, as proposed, might have the unintended consequence of stifling innovative approaches to operational flexibility by prescribing a rigid approach to AOSs. These commenters collectively seek to preserve the current levels of available flexibility and the avenues for accessing it.

We also received a number of comments specific to our proposed definition of AOS. Most of these commenters objected to the inclusion of the phrase ''physical or operational change'' in the definition, believing that this will cause confusion with the similar phrase ''physical change or change in the method of operation'' used in the NSR program.

*B. Final Action*

Based on the comments received, the States' current approach to implementing existing AOS rules (described above) has proven to be fundamentally sound and effective. We are persuaded that the proposed specific revisions which would be new requirements would not promote more widespread use of AOSs and other effective strategies than does the current process-based approach and that these revisions might instead be counterproductive. The Agency has therefore decided to not impose any additional requirements onto an already working approach. Rather, we intend to preserve the flexibility available under existing rules by codifying a definition of ''AOS'' (as modified in response to comments received) and promulgating a few minor clarifications to the existing rules intended to improve certainty. The Agency believes that these actions, in light of the comments received, are appropriate and consistent with the basic streamlining tenets of section 502(b)(6) of the Act on which the provisions for AOSs are based.

Commenters have convinced us that permitting authorities are currently able, in response to a request by a source for more operational flexibility, to develop title V permits which allow the source to shift among identified operating scenarios. Commenters correctly point out that, under the current rule, in lieu of using an AOS, this result might be achieved by relying on the authority and provisions contained in the applicable requirements implicated by the anticipated scenario. This would be true where the applicable monitoring and/or reporting requirements assure compliance (including requirements for records that effectively identify when the scenario operates) or where the source and permitting authority have opted to streamline the relevant applicable requirements consistent with White Paper Number 2.[22] Conversely, AOSs would be useful where additional records are needed to document when a new scenario occurs. We are therefore agreeing with commenters that, for flexibility purposes, the current process is effective in developing: (1) Appropriate permit design options to access the inherent flexibility under relevant applicable requirements to provide for alternative modes of operation; and (2) AOSs which are determined to be adequate and otherwise appropriate by the permitting authority in reducing administrative costs while assuring compliance with all applicable requirements.

In finalizing these limited revisions, the Agency wishes to make some additional observations relative to AOSs. First, as in the past, an AOS is essentially defined through the process used to establish it. This allows AOSs to encompass situations in which the relevant applicable requirements might be sufficient with respect to monitoring and/or recordkeeping to determine the compliance status of the unit at a given time but the source and permitting authority have nonetheless opted to use an AOS for greater certainty. We continue to believe that this result is acceptable if the source and permitting authority choose to pursue it. Although a log is required to record

[22] In streamlining, the compliance terms are based on the most stringent requirement applicable to the proposed changes and are effective upon permit issuance. In guidance generally referred to as ''White Paper Number 2,'' we interpreted our part 70 rules to allow sources to streamline multiple applicable requirements that apply to the same emissions unit(s) into a single set of requirements that assure compliance with all the subsumed applicable requirements. *See* ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program,'' March 5, 1996, (*http://www.epa.gov/ttn/oarpg/t5/memoranda/wtppr-2.pdf*). If all the applicable requirements that apply to a set of changes are streamlined in the permit and the permitting authority approves the proposed streamlining, the source need only comply with the streamlined requirement. This benefits all parties by simplifying and focusing the compliance requirements contained in the permit. As a result, a source relying upon emissions limit streamlining implicitly has chosen not to pursue the use of AOSs, since the source would always be required to meet the worst case scenario at all times regardless of which scenario was actually operated.

As explained in White Paper Number 2, sources that seek to streamline applicable requirements should submit their request as part of their title V permit application, identifying the proposed streamlined requirements and providing a demonstration that the streamlined requirements assure compliance with all the underlying, subsumed applicable requirements. Upon approval of the streamlined requirements, the permitting authority would place the requirements in the title V permit (*see* White Paper Number 2 for the complete guidance on the streamlining of applicable requirements). A source can request in its title V permit application that the permitting authority streamline an advance approval already authorized under minor NSR with all other relevant applicable requirements. For the complete text of the elements that must be included in a title V application, *see* 40 CFR 70.5(c).

implementation of an AOS, the primary objectives of section 502(b)(6) are still met, since the authorized changes can subsequently occur without further review or approval by the permitting authority. On the other hand, in the absence of an AOS, the title V permit authorizing multiple operating scenarios at a particular emissions unit which implicate different applicable requirements must require sufficient records to determine, at any point in time, which requirements apply to the unit and whether the unit is in compliance with each of them. If permit terms ensuring this result can be written by relying upon the authority contained in the relevant applicable requirements themselves and not that in 40 CFR 70.6(a)(9), then there would be no need for the permitting authority to approve an AOS. Conversely, if the permitting authority would need the authority contained in 40 CFR 70.6(a)(9), for example, to require the operational and/or material use records needed to determine which scenario is operating at any time, then the permitting authority, as appropriate, could either authorize these changes as AOSs (if first proposed by the source) or reject the operating scenario proposed without this recordkeeping and address future changes under the applicable off permit (as available from the permitting authority) or permit revision provisions.

We have decided to finalize a definition for ''alternative operating scenario (AOS)'' and to revise the various references to AOSs to use consistent terminology. We believe that the term ''AOS'' should be defined and used consistently in the regulations.

The final definition reads as follows:

*Alternative operating scenario (AOS)* means a scenario authorized in a part 70 permit that involves a change at the part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

The final definition is different from the proposed definition in that we no longer define an AOS as involving a ''physical or operational change.'' We agree with the commenters that inclusion of the phrase ''physical or operational change'' invites confusion with the major NSR provisions.

The deletion of this phrase also helps to clarify the interface between the concepts of advance approvals (*e.g.,* advance approval of minor NSR) and AOSs. As mentioned in the previous section, we recognized, based on our evaluation of pilot permits, that potentially many States could currently advance approve minor NSR and then incorporate the terms of the authorizing minor NSR permit into the title V permit as applicable requirements. While not proposing to do so, the Agency nonetheless took comment on whether some aspects of such advance approvals might also involve AOSs. Commenters strongly affirmed the current abilities of States to authorize advance approvals of minor NSR and that these authorizations should be kept generally separate and distinct from AOSs. The EPA agrees with these commenters and finds that the deletion of the phrase is useful in maintaining this separation.[23] Thus, in most cases, advance approval of minor NSR is simply another example of how the inherent flexibility in an applicable requirement can be accessed without the need for an AOS.

The deletion of the phrase ''physical or operational'' is also consistent with our previously stated decision to preserve the scope and operation of the current rule regarding AOSs. That is, the Agency believes, in light of comments received, it is not necessary to constrain the scope of AOSs by limiting them to those triggered by a ''physical or operational'' change when the current approach only restricts the establishment of AOSs to those which both the source and permitting authority must agree are appropriate and are consistent with all underlying applicable requirements, including those involving NSR. The existing process to establish an AOS in a title V permit also addresses any potential concerns that too many AOSs might be proposed, including, for example, those involving a switch from one compliance option to another as provided for under a MACT (or other) standard. We do not believe that the population of AOSs actually approved will be impacted by the deletion. First, the deletion just preserves the status quo. Moreover, sources and permitting authorities are unlikely to establish alternative MACT compliance options as one or more AOSs, since the extensive monitoring and recordkeeping requirements typically found in MACT standards can themselves authorize shifts in compliance options after being incorporated into a title V permit.

In addition to adding a revised definition of AOS and standardizing the part 70 references to AOSs to use consistent terminology, we have decided to finalize three other aspects of our proposed rules which we believe will also preserve the basic operation of the current rule while improving certainty. First, we are essentially finalizing the proposed revisions to 40 CFR 70.5(c)(7) to clarify that the permitting authority shall require the source to include in its application additional information as necessary to define permit terms and conditions to implement any AOS. Note that the final version obligates the permitting authority to require, as contained in the proposal, additional information to develop and implement AOSs, but this requirement only extends to situations where the permitting authority believe such information is necessary. We believe that this obligation has always been implicit in the previously existing language of the section, but that an explicit clarification is appropriate. Second, we are finalizing our proposed revisions to the compliance plan requirements for applications under 40 CFR 70.5(c)(8) to clarify that such plans must address proposed AOSs when an application includes them. We believe that this clarification also merely codifies existing policy and is appropriate to ensure that all applicants understand what is required for AOSs when a source chooses to request one.

Finally, we are finalizing our proposed revisions to 40 CFR 70.5(c)(7) to specify that the application must include a demonstration that the source has obtained all authorizations required under the applicable requirements that apply to any AOS being requested for approval by the source, or a certification that the source has submitted a complete application for such authorizations, and additional revisions

[23] Alternative operating scenarios, in contrast to advance approvals of minor NSR, more often involve the reversible shifts in operation of existing emissions units which implicate different applicable requirements and require additional monitoring and/or recordkeeping to determine what requirements apply at a particular time. On the other hand, advance approvals of minor NSR generally involve either: (1) The implementation of a modification to any existing unit which irreversibly triggers new applicable requirements such that the emission unit cannot return to its preconstruction status in the future; or (2) the construction and operation of a new unit which represents the beginning of the initial or baseline operation of the unit. In some cases, however, one or more AOSs may be used to complement an advance approval. For example, a complementary AOS might be useful where the source anticipates varying operation of the future or changed existing emissions unit in a manner that would implicate a set of applicable requirements different from those of the minor NSR advance approval.

While AOSs and advance approvals of minor NSR are typically used as separate FAP approaches, sources and permitting authorities are not precluded from relying upon AOS authority to establish an advance approval of minor NSR in a title V permit. For example, an AOS might be appropriate where a different control approach would not be effective until and unless a particular change were made to an existing emissions unit.

to 40 CFR 70.6(a)(9)(iii) to make clear that the permitting authority cannot grant final approval of an AOS until the source has obtained all the authorizations required under the applicable requirements relevant to that AOS. These actions again just codify existing policy and should be manageable given the relatively few AOSs that may also involve an advance approval (*e.g.,* the preconstruction approval of a new unit requiring AOSs for its multiple future operating modes or for its involvement as a replacement component unit in an AOS for an existing emissions unit at the same source). This clarification will also help to ensure that any additional resources required for AOS development are focused on sources which are likely to use them and to eliminate any confusion over a provision approved without such authorizations.

As noted above, we have been convinced by numerous commenters from both State and local permitting agencies and industry that the other more specific requirements proposed for AOSs are unnecessary and potentially could undermine the streamlining objectives of the AOS provisions. We have, therefore, elected to not finalize them. In particular, proposed revisions that we are not finalizing are the following:

- Revisions to 40 CFR 70.6(a)(3)(iii)(A) to require additionally that the source identify in the 6-month monitoring report any AOSs implemented during the reporting period;
- Revisions to 40 CFR 70.6(a)(9)(i) to clarify the type of information that must be included in the AOS log when an AOS is implemented; and
- Revisions to 40 CFR 70.6(a)(9)(iii) to clarify what constitutes an acceptable description in a title V permit for an AOS.

Based on comments received, the Agency is persuaded that the new reporting requirements, as proposed for inclusion in the 6-month monitoring report, would not be necessary or useful. We generally believe that sufficient information about AOSs and their use already exists from the combination of the AOS provisions contained in the permit and the required reports concerning annual compliance certification and the prompt reporting of deviations from achieving compliance with the AOS terms of the permit. In addition, pursuant to 40 CFR 70.6(a)(9)(i), permits must require the source to keep an on-site log that contemporaneously records the implementation of any AOS which occurred during the duration of the title V permit. Pursuant to 40 CFR 70.6(a)(3)(ii)(B), the source owner must keep these records at their site for at least 5 years. Under 40 CFR 70.6(a)(6)(v) the source must submit to the permitting authority, upon their request, this and any other on-site information which is required to be kept by the permit or is needed by the permitting authority to determine compliance with the permit.

The Agency also agrees with commenters that there is no need to standardize the content of AOS logs and permit provisions. While not finalizing any specific content or format requirements for permits or logs involving AOSs, the Agency notes that there remains an overall obligation that the information which is required by the permitting authority for AOSs must be adequate to assure compliance with all applicable requirements. Thus, the structure of the AOS implementation log required by the permitting authority is relatively flexible, provided that the required records are, in total, sufficient to verify the requirements applicable to a particular operating scenario and whether the source was in compliance with them.

## VII. Approved Replicable Methodologies

### *A. Background*

Under the Act, title V permits are required to assure compliance with all applicable requirements. Sometimes, circumstances change for a source that bring about the need to recalculate or update a value used either in determining the compliance status of the source with an applicable requirement or in determining the applicability of a requirement. An advance approval under minor NSR or an AOS can incorporate flexibility into a permit, but the scope of changes that can be authorized in them can be severely limited with respect to a particular applicable requirement, if such recalculations or updates are involved and require case-by-case review/approval and a permit revision to ensure ongoing implementation. To facilitate such implementation, and to encourage additional permitting techniques that reduce the need for permit revisions (in a manner consistent with part 70), we proposed the use of ARMs.

In our September 12, 2007 proposal on flexible air permitting, EPA included provisions dealing with ARMs. Therein we stated our belief that ARMs are available now as one type of permit term described in 40 CFR 70.6(a)(1) that can assure compliance with all applicable requirements at the time of permit issuance. In order to establish an ARM, a source would first propose one to the permitting authority who would then consider the appropriateness of authorizing it on a case-by-case basis, depending on the specific facts of the situation. In all cases, the implementation of the proposed ARM must be consistent with all underlying applicable requirements.

While we believed that ARMs as proposed are generally available without any rulemaking (depending on the structure and content of individual part 70 programs, as approved for States), we proposed to codify certain additions to 40 CFR parts 70 and 71 in order to promote greater certainty and use of ARMs, where the permitting authority decides it is appropriate to do so.

*In particular, we proposed to define ARMs at 40 CFR 70.2 as part 70 permit terms that:* (1) Specify a protocol which is consistent with and implements an applicable requirement or requirement of part 70, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and (2) require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of part 70, including where an ARM is used for determining applicability of a specific requirement to a particular change. In the proposal preamble we also noted that within the scope of this definition, an ARM may be used to assure that a given requirement does not apply in a particular situation.

As proposed, the terms of an ARM must specify when the ARM is to be used, the applicable methodology (*e.g.,* equation or algorithm), and the purpose for which the output obtained upon the execution of the prescribed methodology will be used (*e.g.,* to determine compliance with an applicable requirement or to modify the level of the parameters used to determine compliance in the future). All necessary terms and conditions must be included in the permit at the time the ARM is approved so that no permit revision will be required in the future to implement the ARM.

We emphasized that an ARM, like any provision of a part 70 permit, cannot modify, supersede, or replace an applicable requirement, including, but not limited to, any monitoring, recordkeeping, or reporting required under applicable requirements.[24]

[24] Under the authority of 40 CFR 70.6(a)(3), however, the permit can also contain additional streamlined monitoring or gap-filling periodic

Instead, we proposed ARMs as a strategic approach for incorporating into a title V permit relevant applicable requirements and the requirements of part 70. The ARM provides a method for obtaining and updating information consistent with an underlying applicable requirement(s) or requirement(s) of part 70 in such a manner so as to avoid the need to reopen or revise the permit to incorporate the updated information. As such, an ARM must work within and be consistent with the applicable part 70 rules that govern permit revisions.

We further explained that the protocol to obtain information under an ARM must be objective and scientifically valid and reliable—such as an EPA test method or monitoring method (usually specified in the applicable requirement itself). We noted that an ARM also includes the instructions governing how the results of the protocol are to be used. For example, an ARM could specify that firebox temperature measurements taken during a performance test of a thermal oxidizer be used to: (1) Define a temperature level that assures compliance with a particular applicable requirement; and (2) revise and update the minimum firebox operating temperature of the oxidizer previously relied upon to assure compliance.

We found permit terms containing ARMs to be useful in maintaining the effect of the advance approvals found in the pilot permits. Pervasively, all the pilot permits contained ARMs as the quantification methodology by which the source would sum VOC emissions from individual emissions units on an ongoing basis. These ARMs also included requirements governing when the aggregation procedures for determining total actual VOC emissions for the site would be compared to the relevant plantwide emissions cap(s) in order to assess source compliance. In some cases, the aggregation ARM relied on other ARMs to assure that certain input values were replicably determined. For example, two of the pilot permits contained replicable testing procedures. These procedures, once implemented, determined the control device operating parameter values that the source must monitor to demonstrate compliance with capture and destruction efficiency requirements (*i.e.,* the applicable requirement). Without the replicable testing procedures in the permit, those values would have been included on the face of the permit, and the source would have had to seek a permit revision each time it repeated the testing procedures and the operating parameter values changed.[25] Another pilot permit specified the process (*i.e.,* compliance method) by which a source-specific emissions factor could be updated and used to determine whether emissions remained under the source's PTE cap where both the emissions cap and the ARM were established in its minor NSR permit. By including these replicable processes (*e.g.,* replicable testing and/or emissions factor updating procedures) in the permit instead of specific operating values and emissions factors, sources could update those values and indicate compliance based on the latest results consistent with the replicable testing procedures in the title V permit, and forego a permit revision each time the values are changed.

In addition to proposing a definition of an ARM, we also proposed that the 6-month monitoring reports (required under existing 40 CFR 70.6(a)(3)(iii)) must identify any ARMs implemented during the reporting period, and that for ARMs generating values related to parametric monitoring (*e.g.,* an ARM used to determine the minimum operating temperature of a thermal oxidizer during a performance test), the source must also include the results of the ARM in the 6-month monitoring report. We also proposed to modify 40 CFR 70.6(a)(1) to include a reference to ARMs, because ARMs are an example of permit terms that assure compliance with applicable requirements. Although we believe that the proposed regulatory change to 40 CFR 70.6(a)(1) is a relatively simple clarification, given that all permits must include terms that assure compliance with applicable requirements and the requirements of part 70, we proposed the change to promote increased consideration of ARMs, where appropriate. We recognized that we could have proposed to modify other provisions of part 70, such as 40 CFR 70.6(a)(9), to include a reference to ARMs, but given the structure and content of the existing regulations, we did not believe that such additional changes were needed.

As with advance approvals and AOSs, we noted in the proposal preamble that an ARM may be added to a title V permit through permit issuance or renewal or through the permit revision process. When an existing permit is to be modified, the appropriate modification track (significant or minor) depends on the nature of the proposed ARM (or a proposed change to an ARM which requires a permit revision) and whether it would qualify for treatment as a minor permit modification under existing 40 CFR 70.7(e)(2)(i). We also noted that the permit shield (where available and granted by the permitting authority) can be extended to ARMs added through a significant permit modification, but not to those added through minor permit modification procedures (per existing 40 CFR 70.7(e)(2)(vi)). In addition, we pointed out in the proposal preamble that a source that incorrectly applies the procedures and criteria for an ARM will be considered not to be in compliance with the terms of the permit (and therefore not in compliance with the Act).

In proposing ARMs, we stated our belief that ARMs are authorized under title V of the Act and its implementing regulations. Section 502 sets forth the minimum elements for a State operating permit program. Among other things, section 502 provides that for a State operating permit program to be approved, the permitting authority must have adequate authority to ''issue permits and assure compliance by all sources required to have a permit * * * with each applicable standard, regulation or requirement'' under the Act. *See* CAA section 502(b)(5)(A). Section 504(a) of the Act also requires that each title V permit contain ''enforceable limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' The Act further provides that any State operating permit program must include ''adequate, streamlined, and reasonable procedures * * * for expeditious review of permit actions.'' *See* CAA section 502(b)(6).

Several State commenters indicated that the rulemaking on ARMs is unnecessary because States already issue permits with these sorts of terms under existing authority, as evidenced by EPA's discussion of ARM-like permit terms in some of the pilot permits. These commenters also expressed concern that this Federal rulemaking on ARMs might have the unintended consequence of stifling innovative approaches to operational flexibility by prescribing a rigid approach to ARMs. Some commenters expressed concern

monitoring as needed to assure compliance with applicable requirements. We pointed out that an ARM could operate on the information gathered under these obligations as well.

[25] Although an ARM can reduce the number of permit revisions a source must make, it cannot modify an applicable requirement. For example, there are some instances where the applicable requirement requires a notice to the permitting authority, such as where the requirement calls for notice of a performance test or the submission of certain performance test results. An ARM can not abrogate these requirements.

that an ARM could be used to avoid the applicability of major NSR, which might otherwise apply when the operating conditions of a control device are altered and actual emissions are anticipated to increase as a result.

Several industry commenters indicated that the rulemaking and EPA's expression of support for ARMs would help to clarify for States that ARMs are supported by the Act and viewed favorably by EPA. However, none of these commenters expressed support for the proposed 6-month reporting requirements for ARMs, and one industry commenter objected to the proposed 6-month reporting requirement for ARMs on the basis that no additional reporting is warranted for what is simply a method for showing compliance.

*B. Final Action*

In response to these commenters, EPA has decided to finalize the proposed definition with minor changes and to add certain additional clarifications to § 70.6(a)(1). In doing so, we reaffirm the proposal as summarized in the preceding section, except as described below in this section. As previously mentioned, these final rules with respect to ARMs do not affect any specific minima for part 70 programs, and, due to their clarifying nature, we do not expect many States to opt to revise their operating permit programs (*see* footnote 13).

While we agree that States currently have authority to issue ARMs in title V permits, we do not agree that placing a definition for ARM in our part 70 rules will stifle innovation by the States. On the contrary, we believe that finalizing the ARM definition will clarify the availability of this aid to flexible permitting to those States and sources that are not aware of it or have had prior issues concerning its use.

The final definition is nearly identical to the one proposed (*i.e.* we added a minor clarification that the results of the ARM be recorded as well as used for assuring compliance with any applicable requirement or requirement of part 70). The final definition reads as follows:

*Approved replicable methodology (ARM)* means part 70 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

We wish to emphasize that, under the final definition, an ARM may be used as a means to determine the applicability of a requirement, not just as an aid for assuring compliance. The EPA has included other ARM-like mechanisms in several of our national standards for MACT and NSPS. If a source proposes an ARM to delineate which changes are subject to one requirement instead of another, examples should be provided to the permitting authority and to the record supporting proposed approval of the ARM illustrating the prospective use of the ARM (if approved). We believe that the permitting process is the best forum for clarifying how a proposed ARM would work in the relevant situations reasonably expected to occur over the duration of the permit. However, in the case where the permitting authority has significant concerns over how an applicability ARM would operate in certain situations, the permitting authority should not authorize the ARM for those situations.

We are also revising 40 CFR 70.6(a)(1) to acknowledge that ARMs may be considered as one type of part 70 permit term that assures compliance with applicable requirements. We are also adding two clarifications that appropriately focus ARM implementation. The Agency believes that these clarifications in combination with the mentioned final definition will promote increased consideration of ARMs, where appropriate.

This final version of 40 CFR 70.6(a)(1) incorporates existing policy that a source must first request an ARM in its part 70 permit application before it can be considered by the permitting authority. Note that this request could appear as part of the originally submitted application or in the later submittal of supplemental application material (*e.g.,* a letter requesting consideration of a replicable protocol as an ARM). As is the case for AOSs, the permitting authority must then decide whether to accept the proposed ARM and may reject it or modify it for several appropriate reasons, including concerns over its replicability and/or value in lowering administrative costs. This addition is consistent with the basic process required for the establishment of AOSs which, based on comments received, is effective in ensuring that FAP approaches are appropriately considered.

Relevant to the first element of the final ''ARM'' definition, sources will identify candidate protocols that if judged to be replicable could be considered further as a potential ARM by the permitting authority. Candidates for such protocols would frequently arise from already established applicable requirements, such as MACT standards, NSPS, or preconstruction permits (*e.g.,* minor or major NSR). If accepted by the permitting authority as an ARM, pursuant to the second element of the final definition, the part 70 permit would contain the ARM (*i.e.,* the combination of the replicable protocol and the instructions for its use, including the type of data to be inputted).

The second clarification to 40 CFR 70.6(a)(1) was added in response to those commenters who were concerned that ARM implementation of one applicable requirement might circumvent the applicability of another applicable requirement. We believe that this final clarification adequately conveys appropriately that an ARM created under part 70 to streamline the implementation of one applicable requirement cannot be used to contravene compliance with another requirement under the Act or to circumvent its applicability as a result of implementing an ARM. Accordingly, the terms of an NSR permit, which are applicable requirements that must be incorporated into a title V permit, cannot subsequently be changed using an ARM created under different authority. Approved replicable methodologies can be used to update values only when the applicable requirement allows for this to occur. For example, if an existing NSR permit includes specific parametric monitoring levels as compliance indicators, to automate the updating of such levels the NSR permit would need to be revised to establish an ARM. The title V process could not create an ARM to revise the NSR conditions directly. Similarly, the potential applicability of other requirements implicated by the implementation of an ARM (*e.g.,* NSR) must be independently evaluated and determined.

As noted above, no commenters specifically supported our proposed reporting requirements for ARMs, and one commenter specifically opposed the reporting requirement. In addition, numerous States opposed the ARM proposal in general as being unnecessary and likely to reduce, rather than expand, the flexibility available under the existing rules. Although these commenters did not specifically refer to the reporting portion of the ARM

proposal (or most other specifics of the proposal), we believe that this is one aspect of the proposal that was targeted as unnecessary and potentially restrictive. Finally, several commenters raised concerns regarding our similar proposal to require reporting the implementation of AOSs in the 6-month monitoring report which we believe are also appropriate to consider in deciding whether to require the 6-month reporting of ARMs. As a result, we have concluded that the information contained in the permit about the nature of any approved ARM and the instructions for its use along with the required reports concerning annual compliance certification and the prompt reporting of deviations from achieving compliance with the ARM should generally be sufficient. In addition, sources must keep on-site records of ARM implementation.[26] Moreover, any required on-site records must be submitted to the permitting authority upon their request pursuant to 40 CFR 70.6(a)(6)(v). Therefore, we have decided to drop the proposed requirement for the 6-month monitoring report to identify any ARMs implemented during the reporting period.

## VIII. Green Groups

### *A. Background*

We proposed to modify the major NSR regulations in order to create an alternative means to comply with major NSR. Specifically, we proposed to allow a new pathway that would treat a number of emissions activities as a single emissions unit (which we termed, a ''Green Group'') where the emissions from each of these activities would be routed to a common emissions control device meeting BACT/LAER, and future emissions increases and other changes within the Green Group would be approved for a 10-year period in a major NSR permit. The proposed approach was described as an extension of our December 2002 NSR reform regulations (67 FR 80186, December 31, 2002). In particular, Green Groups would complement the use of plantwide emissions caps (termed, plantwide applicability limitations, or PALs) by providing a flexible permitting option for a section of a plant. Like PALs, we proposed that Green Groups would be a mandatory minimum element of a State NSR program, but the permitting authorities would retain discretion as to when to approve individual Green Groups requested by sources.[27] However, we also solicited comment on whether Green Groups should be a voluntary, rather than mandatory, program element for States.

The Green Group provisions were proposed to encourage a wide spectrum of sources to construct specified types of changes for a 10-year period with greater certainty and flexibility in exchange for implementing BACT/LAER, regardless of whether or to what extent the source may have been subject to the current major NSR regulations. That is, the Green Group provisions, as an alternative means to comply with major NSR, did not require an evaluation of whether conventional major NSR would otherwise apply.

In its permit application, the source would be required to describe the new and existing emissions activities to be included in a Green Group in sufficient detail to allow the permitting authority to determine BACT or LAER (as applicable) for the Green Group taken as a whole and to conduct an ambient air impact analysis to safeguard relevant ambient increments and standards (including the determination of any offsets necessary in nonattainment areas) or to safeguard air quality values in any relevant Class I areas. We further proposed that the type of detail required in a permit to describe the authorized changes in the Green Group must be sufficient to allow the permitting authority to determine, when a change subsequently was implemented, whether the permitting authority contemplated that change in the scope of the advance approval contained in the major NSR permit.

We proposed that, in general, two types of emissions limits must be set in the major NSR permit for Green Groups: (1) An emissions limit to constrain the overall emissions of the Green Group; and (2) a limit to ensure that BACT/LAER technology is being employed and is effective across the Green Group (*e.g.,* lbs/gal, percent reduction). These two limits would complement each other and collectively implement the core requirements for the Green Group. The amount of any actual emissions increase from authorized changes above previous actual emissions would be limited by the annual emissions cap and by the BACT/LAER emissions limitation, both of which would apply to the applicable emissions unit, in this case designated as the Green Group, and would be placed in the major NSR permit.

The major NSR review process must determine the level of monitoring, recordkeeping, reporting, and testing (MRRT) to assure compliance with the control technology requirement and any other emissions limit(s) imposed by the permitting authority on emissions unit(s) as necessary to meet major NSR. We proposed specifically for Green Groups that a source would be required to monitor all emissions activities that comprise the Green Group to ensure compliance with the Green Group limit using essentially the same approaches that would meet our requirements for tracking emissions associated with a PAL. These monitoring, recordkeeping, and reporting requirements would be incorporated into the NSR permit that established the Green Group.

We proposed that all NSR projects using a Green Group be of a 10-year duration, for two reasons. First, we stated that this time frame represents a balance between the useful life of the emissions control system and the time frame in which additional major NSR review is likely to result in little, if any, added environmental benefit. Second, we stated that a 10-year duration for a Green Group is supported by the same rationale we used in choosing a 10-year period for the duration of PALs. For PALs we concluded that a 10-year period was necessary to ensure that the normal business cycle would be captured generally for any industry; to balance the need for regulatory certainty with the administrative burden; and to align the PAL renewal with the title V permit renewal. *See* 67 FR 80216, 80219. In proposing a 10 year duration for the Green Group, the Agency also solicited comment on the appropriateness of a 15-year period.

The Agency further proposed to exclude from application to a Green Group the existing PSD part 52 requirements in 40 CFR 52.21(r)(2) for timely construction and in paragraph (j)(4) of both parts 51 and 52 PSD requirements for the BACT reevaluation of later independent phases of phased construction projects. We also clarified, albeit without proposing specific rule language, that the provisions of 40 CFR 52.21(r)(4), 51.166(r)(2), and 51.165(a)(5)(ii), which subject a source to major NSR upon the relaxation of certain permit terms that had previously allowed the source to avoid major NSR, are met during any major NSR process like one that would establish a Green Group. Finally, we noted that, under the

[26] The authority to impose this requirement typically arises from the ARMs themselves being applicable requirements (*e.g.,* provisions within NSPS or MACT standards or terms of preconstruction permits) but also can occur under other authorities such as 40 CFR 70.6(a)(9) authority where the ARM would be part of an AOS.

[27] The major NSR rules refer to the ''reviewing authority,'' while part 70 refers to the ''permitting authority.'' For purposes of consistency with the other sections of this preamble, we use the term ''permitting authority'' in this section. In these discussions, this term is intended to have the same meaning as ''reviewing authority.''

current NSR regulations, an emissions change is only creditable for netting purposes to the extent that the permitting authority has not previously relied on it in issuing a major NSR permit. *See* 40 CFR 52.21(b)(3)(iii). Accordingly, emissions increases and decreases that occur at the emission activities of a source subject to a current major NSR permit, like those in a Green Group during its effective period, are not to be included in future netting calculations at the same source.

In our proposal, we based the legal rationale for Green Groups on the premise that the changes and emissions activities within a Green Group are specifically authorized to occur as a result of undergoing, not avoiding, major NSR. Conversely, other changes that a source seeks to implement, but that are not authorized in the Green Group, cannot occur without first obtaining all necessary preconstruction approvals that would apply to such changes. The determination of whether the newly proposed, but unauthorized changes trigger NSR would be made using the ''actual-to-projected-actual test'' under, for example, 40 CFR 52.21(a)(2)(iv). The Agency noted that this legal rationale for Green Groups differs from the legal rationale for Clean Units, a provision in the 2002 NSR reform rules that employed an allowable emissions test for netting purposes which the U.S. Court of Appeals for the DC Circuit vacated. *New York* v. *EPA,* 413 F.3d at 40 (DC Cir. 2005).

Finally, as discussed in the proposal preamble, we believe that the environment and the public would potentially benefit from Green Groups for several reasons. First, we believe that substantial environmental benefits could occur because a Green Group would require all included emissions activities to be controlled to the level of BACT or LAER. The BACT or LAER limits would apply to existing emissions activities (which otherwise would remain uncontrolled or be subject to less stringent control requirements), as well as to emissions activities that are modified or added pursuant to the Green Group authorization. In addition, absent a Green Group, some modifications and new emissions activities might not be subject to major NSR because their emissions would be below applicability thresholds or because they would ''net out'' of review. Even when individual changes would prove to be subject to major NSR, the resulting BACT might in some cases be less stringent than that required for a Green Group, given the economies of scale in evaluating BACT at the same time for all the activities and authorized changes making up a Green Group. Moreover, we expect that environmental benefits would accrue from the better and more frequent type and amount of monitoring proposed to be required for Green Groups. Finally, we believe that Green Groups would also promote greater administrative efficiency for permitting authorities and sources, because a Green Group would eliminate iterations of permitting processes that produce little or no environmental benefit.

The commenters, while mixed in their overall reaction to the Green Group concept, generally did not support the specifics of the Green Group proposal. State commenters indicated that the proposed 10-to-15-year term of the Green Group is inappropriate because the Act and good environmental stewardship require BACT/LAER reviews and air quality analyses to be conducted contemporaneously with the time of each change at a facility. These commenters disagreed with our assertion that BACT and LAER typically do not advance significantly over the proposed 10- or 15-year period. They added that such permits would unfairly reserve PSD increments for projects that might never be built and that the air quality status in the area of a Green Group could also change due to, for example, transported pollution, revisions to the NAAQS, and natural events. State commenters also questioned the environmental benefits of Green Groups and did not believe that the pilot permits contained in the docket supported the Green Group approach. They also asserted that Green Groups share the legal flaws of Clean Units. State commenters further conveyed that many permitting authorities already offer considerable flexibility and that it is the permitting authorities who can best decide the structure of their own programs in this regard. The State commenters generally believe that the Green Group proposal should be abandoned, but if it is finalized it should be a voluntary element of the major NSR program, rather than mandatory as proposed.

The environmental group that commented on the proposal asserted that the proposed 10-to-15-year term of the Green Group is inconsistent with the Act's requirements for contemporaneous BACT/LAER and air quality reviews. The environmental group also indicated that Green Groups suffer from the same legal flaws as Clean Units. Like most State commenters, the environmental group believes that the Green Group proposal should be abandoned, but if it is finalized it should be voluntary for the States.

Industry commenters, on the other hand, typically favored some aspects of the proposal and believe the Green Group to be a real incentive for sources to control beyond their legal requirements in exchange for greater regulatory certainty and operational flexibility. These commenters often argued that a term of 10 to 15 years would be necessary to justify the expenditure for state-of-the-art controls for a Green Group. They agreed with the proposal that Green Groups should be a mandatory element of the major NSR program and attributed real benefits such as those associated with lower administrative costs. They believe that Green Groups are legally defensible and clearly different from Clean Units. However, industry commenters asserted that the proposal did not reflect how manufacturing facilities are constructed and operated. In particular, they stated Green Groups should not be limited to a single control device and that pollution prevention should be allowed as the primary Green Group control approach. In addition, they indicated that the proposed monitoring, recordkeeping, and reporting requirements are unnecessarily detailed and prescriptive.

*B. Final Action*

Primarily for certain policy reasons raised by commenters and on our belief that the current major NSR regulations already provide considerable flexibility to States, EPA has decided to withdraw our proposal on Green Groups. As described below, the Agency will consider initiating another rulemaking related to flexibility under the major NSR regulations if new data becomes available after additional field experience that supports such an approach. Any such rulemaking would be an entirely new rulemaking separate and distinct from the Green Group proposal being withdrawn in this action.

Notwithstanding our withdrawal of the Green Group proposal, we wish to note that certain statements we made in support of the proposal are not affected by the Green Group withdrawal. First, the requirements of 40 CFR 51.165(a)(5)(ii), 51.166(r)(2), and 52.21(r)(4) are met when an emissions unit with emissions limits previously taken to avoid major NSR subsequently undergoes major NSR review.[28] Next, we continue to believe that a longer-

[28] Sections 51.165(a)(5)(ii), 51.166(r)(2), and 52.21(r)(4) provide that when a source or modification that took an emissions limit to avoid major NSR review wishes to relax that limitation, it must undergo major NSR as if construction had not yet commenced.

term major NSR project is clearly different from a Clean Unit and may be defended on that basis. Construction of the later portions of an approved major NSR project is simply ''building out'' the permit as authorized and does not rely on an allowables emissions test. Finally, pursuant to 40 CFR 52.21(b)(3)(iii), and to analogous provisions in 40 CFR 51.166(b)(3)(iii) and 51.165(a)(1)(vi)(C)(*2*), emissions increases and decreases that occur as authorized in a major NSR permit qualify as having been ''relied upon by the permitting authority'' in issuing a major NSR permit. As such, these emissions changes are not to be included in the future netting calculations at the same source during the time that the NSR permit would be effective.

Our decision to withdraw the Green Group proposal is in large part based on the significant new information and policy perspectives conveyed in certain comments received on this proposal. Based on the varying types of concerns raised by commenters, EPA no longer believes that promulgation of the Green Group approach—which was EPA's effort to develop a single, nationally uniform approach for Green Groups to achieving advance approval under major NSR—is appropriate. While an approach like that proposed for Green Groups might be effective in certain situations, several commenters pointed out serious reservations about initial air quality and technology reviews becoming stale over the 10-year life of a Green Group. Others were concerned that the proposed Green Group approach was not flexible enough to encompass already tested approaches involving emissions units serviced by multiple control approaches. These commenters also persuaded the Agency that a mandatory, one-size-fits-all approach under the major NSR rules could be counterproductive as well as too inflexible. Many of the same commenters believed that national rules requiring a specific template for Green Groups across all States could instead stifle future innovation and flexibility while adding complexity and unnecessary administrative burden.

The Agency is also not finalizing our proposal on Green Groups because we believe that the current major NSR regulations already provide States considerable ability to design and implement their SIPs in ways that provide operational flexibility while addressing the types of concerns raised by commenters. The major NSR regulations, in general, are quite detailed and prescriptive as to what changes are subject to review, but afford considerable flexibility to determine specifically how subject NSR projects must be permitted. The inherent flexibility for States to design and implement their SIP provisions with respect to NSR projects arises from the structure and content of the part 51 PSD and the nonattainment (''NA'') NSR regulations.

First, the definition of ''project'' can accommodate a wide spectrum of physical and operational changes, provided such changes are authorized by the permitting authority.[29] Similarly, the definition of ''emissions unit'' is elastic in its ability to include several types of situations, ranging from a simple piece of equipment to a collection of them at the same site.[30] A ''project'' involves changes to or addition of one or more emissions units. Thus, the permitting authority may define these terms in its SIP broadly or narrowly, for a particular case, provided that the physical and operational changes included in the project are covered by the major NSR requirements, as appropriate.

Moreover, the other provisions of the part 51 PSD and NA NSR regulations do not impose limitations on the scope or implementation of NSR projects once they are defined by the permitting authority. The NA NSR regulations do not contain any specific provisions that restrict how the permitting authority might define the scope, duration, and timeliness of an NSR project. The part 51 PSD regulations only indirectly affect the acceptable scope of an NSR project in their requirements and the BACT reevaluations of certain phases of phased construction projects.[31]

As a result, under the current major NSR regulations, with the exception of the relatively narrow class of construction projects with independent phases for PSD purposes,[32] States are free to design and implement their major NSR SIPs to address contemporaneity of construction, project scope and duration, number and types of emissions units comprising the project which are subject to emissions tracking, timely construction of authorized changes, and reevaluation of initial control technology and/or air quality impact reviews as they judge to be reasonable. For example, a SIP may be structured to allow the permitting authority to determine these aspects of a major NSR permit on a case-by-case basis after balancing appropriately the benefits of operational flexibility with the types of concerns raised by commenters on the Green Group proposal.

The same part 51 flexibility has allowed states to adopt voluntarily some additional PSD regulatory constraints into their SIPs similar to those contained in paragraphs (r)(2) and (n)(1) of the 40 CFR part 52 regulations, which regulate the timeliness of construction and the required level of information for reviewing proposed NSR projects.[33] The part 52 regulations, which apply to interim EPA implementation of the PSD program in the absence of an approved SIP, contain these additional requirements in paragraphs (r)(2) and (n)(1) to help preserve the available PSD air quality increments until the State can assume full responsibility for the program under an approved SIP.

The EPA believes that States which have opted to include these additional regulatory constraints in their SIPs retain considerable discretion to interpret and implement them within the meaning of their SIP approved language. Affected States may choose to implement their programs consistent with policies that EPA has developed in our implementation of these provisions or to explore the adoption of different policies through their own administrative procedures. In addition, in accordance with their plans for preserving PSD increments and for protecting the NAAQS, States may maintain their current SIPs or opt to revise them as appropriate consistent with the applicable part 51 and/or part D requirements in order to allow greater flexibility to the permitting authority in reasonably determining how NSR projects can be approved on a case-by-case basis. The Agency is willing to work with States to evaluate their

[29] ''Project'' is defined in the major NSR regulations as ''a physical change in, or change in the method of operation of, an existing major stationary source.'' *See,* for example, 40 CFR 52.21(b)(52).

[30] ''Emissions unit'' is defined in the major NSR regulations as ''any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant. * * *'' *See,* for example, 40 CFR 52.21(b)(7).

[31] The part 51 PSD requirement related to the permitting of subject projects only mandates that States in their SIPs require reevaluations of certain BACT determinations for the later independent phases of an approved phased construction project at the latest reasonable time prior to their commencement of construction (*see* 40 CFR 51.166(j)(4)). This longstanding safeguard was established in order to prevent inappropriate reserving of the available PSD increment by an individual source (*see* 43 FR 26396).

[32] *See* footnote 30.

[33] Section 52.21(n)(1) requires more specific detailed information about construction schedules and plans to be submitted by sources than do the analogous requirements of part 51 (*see* 40 CFR 51.166(n)(1)). Section 52.21(r)(2), which has no counterpart in 40 CFR 51.166, ensures the timely construction of non-phased projects and provides, without specification, the opportunity for the permitting authority to extend these deadlines.

current SIPs and to assist them in discussing possible revisions where requested to do so.

The EPA is interested in learning more as to whether the flexibility under existing major NSR regulations to sources and permitting authorities is sufficient and appropriate. In order to gain additional perspectives about the currently available level of flexibility—including the need for it; the benefits, costs, and/or impediments associated with its use; and any lack of safeguards to assure its effectiveness—the Agency is encouraging States and sources to explore how projects subject to major NSR might be more flexibly permitted and administratively managed. Where a State would agree to investigate such possibilities with a requesting source, we ask that the State give us an advance notice of the project before any permit is released for comment. In addition, EPA requests that the State make available relevant information about both the development of the permit and its subsequent implementation so as to facilitate any future analysis on our part. We also intend to collect other information that would be useful to informing us as to whether a new rulemaking should be initiated in the future.

In summary, the concerns of commenters on the potential inflexibility of the proposed Green Group affirms the need, at least for now, to maintain the relative openness of the current major NSR rules. These rules essentially defer to the States as to whether to adopt more specific requirements or to resolve flexibility needs on a case-by-case basis. This outcome is entirely consistent with the stated preference contained in State comments received on the proposal that States be allowed to structure their own SIP programs with respect to NSR flexibility.

## IX. Statutory and Executive Order Reviews

### *A. Executive Order 12866—Regulatory Planning and Review*

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

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collection requirements resulting from this final rule are associated with obtaining FAPs under minor or major NSR (pursuant to the requirements of title I of the Act and the implementing regulations at 40 CFR 51.160 through 51.166, appendix S to 40 CFR part 51, and 40 CFR 52.21) and/or under the title V operating permit program (pursuant to the requirements of title V of the Act and the implementing regulations at 40 CFR parts 70 and 71). The NSR and title V programs are established programs with approved information collection requests (ICRs). This final rule will encourage permitting authorities and sources to work together to create FAPs, which will eliminate the need for some subsequent permits and permit revisions and thereby reduce the burden on both the permitting authorities and sources.

The NSR program requires a permit to be obtained by the owner or operator prior to constructing a new stationary source of air pollutants or modifying an existing source in such a way that air pollution emissions increase or a new air pollutant is emitted. The minor NSR program applies to minor sources and minor modifications, while the major NSR program applies to major sources and major modifications. The information collection for sources under NSR results from the requirement for owners or operators to submit applications for NSR permits. In some cases, sources must conduct preconstruction monitoring to determine the existing ambient air quality. For permitting authorities, the information collection results from the requirement to process permit applications and issue permits, and to transmit associated information to EPA. The EPA oversees the NSR program, and the information collected by sources and permitting authorities is used to ensure that the program is properly implemented.

The title V program requires major sources and certain other sources of air pollutants to obtain an operating permit that contains all the requirements that apply to the source under the Act. The information collection for sources under the title V program results from the requirement for owners or operators to submit applications for title V permits and to submit deviation reports, semi-annual monitoring reports, and annual compliance certifications. For permitting authorities, the information collection results from the requirement to process permit applications and issue permits, to review the reports submitted by sources, and to transmit associated information to EPA. The EPA oversees the title V program, and the information collected by sources and permitting authorities is used to ensure that the program is properly implemented.

Flexible air permits are innovative permits that authorize sources to make certain anticipated changes to their operations without being required to obtain new or revised permits at the times these changes are implemented, while assuring that all applicable requirements of the Act are met and that the environment is protected at least as well as it would have been under conventional permitting procedures. The initial burden to apply for and issue a FAP is greater than for a conventional permit, but this increase in burden is more than compensated for by the subsequent burden reduction for foregone new permits and permit revisions. Thus, the net effect of this final FAP rule is a reduction in the burden the approved ICRs for the NSR and title V programs.

As a result of this final rule, we estimate that 845 sources will obtain FAPs each year over the 3-year period of this ICR, with a total annual burden reduction averaging approximately 251,000 hours, or almost 300 hours per source. We do not expect a burden increase or reduction in capital costs, operation and maintenance costs, or purchase-of-services costs. For the 112 permitting authorities over the 3-year period of this ICR, we estimate a total annual burden reduction averaging about 197,000 hours, or nearly 1,800 hours per permitting authority and 234 hours per permit. 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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

### *C. Regulatory Flexibility Act*

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 as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule merely clarifies existing requirements and allows regulated entities to seek additional flexibility for their Clean Air Act permits. It does not create a new burden for regulated entities. Because FAPs are voluntary on the part of all permittees, including any small entities that are subject to permitting requirements, only those permittees who expect to reduce their permitting burden will seek FAPs. We have determined there will be cost savings for small entities associated with this final rule. We have therefore concluded that this final rule will relieve regulatory burden for all affected small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C., 1531–1538 State, local, and Tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector. As discussed previously, we estimate that this rule will save State, local, and Tribal permitting authorities an average of $11.5 million per year over the first 3 years of implementation and result in an administrative burden reduction averaging 197,000 hours per year over that period. Similarly, we estimate that this rule will save permittees an average of $20.6 million per year and reduce their administrative burden by an average of 251,000 hours per year over the first 3 years. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed earlier, this rule is expected to result in cost savings and an administrative burden reduction for all permitting authorities and permittees, including small governments to the extent that they fall in either category.

*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 final 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. This rule is projected to result in cost savings and administrative burden reductions for States and will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs or for the part 51 and part 52 NSR programs. Thus, Executive Order 13132 does not apply to this rule.

In spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA solicited comment on the proposed rule from State and local officials. We believe that this final rule is generally responsive to the comments received from these and other groups.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action merely clarifies existing requirements and allows regulated entities to seek additional flexibility for their CAA permits. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in 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. This action merely clarifies existing requirements and allows regulated entities to seek additional flexibility for their CAA permits.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule merely clarifies existing requirements and allows regulated entities to seek additional flexibility for their CAA permits. Such FAPs achieve equal or better environmental protection than that achieved using more conventional permits.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 November 5, 2009.

**X. Judicial Review**

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 7, 2009. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. 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. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

Pursuant to section 307(d)(1)(V) of the Act, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' This action finalizes some, but not all, elements of a previous proposed action—the Flexible Air Permitting Rule proposed on September 12, 2007 (72 FR 52206). That action included proposed revisions to the PSD regulations under part C of title I of the Act and was, therefore, subject to section 307(d) pursuant to section 307(d)(J). Consequently, although the proposed PSD revisions are not being finalized in this action, the procedural requirements of section 307(d) have been complied with for purposes of this action.

**List of Subjects**

*40 CFR Part 70*

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 71*

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 25, 2009.

**Lisa P. Jackson,**

*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

## PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Section 70.2 is amended by adding definitions of ''Alternative operating scenario (AOS)'' and ''Approved replicable methodology (ARM)'' in alphabetical order, to read as follows:

**§ 70.2 Definitions.**

* * * * *

*Alternative operating scenario (AOS)* means a scenario authorized in a part 70 permit that involves a change at the part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

* * * * *

*Approved replicable methodology (ARM)* means part 70 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

* * * * *

■ 3. Section 70.4 is amended by revising paragraph (d)(3)(xi) to read as follows:

**§ 70.4 State program submittals and transition.**

* * * * *

(d) * * *

(3) * * *

(xi) *Approval of AOSs.* The program submittal must include provisions to insure that AOSs requested by the source as approved by the permitting authority are included in the part 70 permit pursuant to § 70.6(a)(9).

* * * * *

■ 4. Section 70.5 is amended as follows:

■ a. By revising paragraph (c)(2);

■ b. By revising paragraph (c)(3)(iii);

■ c. By revising paragraph (c)(7);

■ d. By adding paragraph (c)(8)(ii)(D); and

■ e. By adding paragraph (c)(8)(iii)(D).

The additions and revisions read as follows:

**§ 70.5 Permit applications.**

* * * * *

(c) * * *

(2) A description of the source's processes and products (by Standard Industrial Classification (SIC) Code) including those associated with any proposed AOS identified by the source.

(3) * * *

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.

* * * * *

(7) Additional information as determined to be necessary by the permitting authority to define proposed AOSs identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing any AOS under § 70.6(a)(9) or implementing § 70.4(b)(12) or § 70.6(a)(10) of this part. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials to the appropriate permitting authority for obtaining such authorization(s).

(8) * * *

(ii) * * *

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) * * *

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

* * * * *

■ 5. Section 70.6 is amended by revising paragraphs (a)(1) introductory text and (a)(9) to read as follows:

**§ 70.6 Permit content.**

(a) * * *

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include ARMs identified by the source in its part 70 permit application as approved by the permitting authority, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this part or circumvent any applicable requirement that would apply as a result of implementing the ARM.

* * * * *

(9) Terms and conditions for reasonably anticipated AOSs identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permitting authority shall not approve a proposed AOS into the part 70 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

* * * * *

## PART 71—[AMENDED]

■ 6. The authority citation for part 71 continues to read as follows:

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

■ 7. Section 71.2 is amended by adding definitions of ''Alternative operating scenario (AOS)'' and ''Approved replicable methodology (ARM)'' in alphabetical order, to read as follows:

**§ 71.2 Definitions.**

* * * * *

*Alternative operating scenario (AOS)* means a scenario authorized in a part 71 permit that involves a change at the part 71 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

* * * * *

*Approved replicable methodology (ARM)* means part 71 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

* * * * *

■ 8. Section 71.5 is amended as follows:

■ a. By revising paragraph (c)(2);

■ b. By revising paragraph (c)(3)(iii);

■ c. By revising paragraph (c)(7);

■ d. By adding paragraph (c)(8)(ii)(D); and

■ e. By adding paragraph (c)(8)(iii)(D).

The additions and revisions read as follows:

**§ 71.5 Permit applications.**

* * * * *

(c) * * *

(2) A description of the source's processes and products (by SIC Code) including those associated with any proposed AOS identified by the source.

(3) * * *

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.

* * * * *

(7) Additional information as determined to be necessary by the permitting authority to define proposed AOSs identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing any AOS

under § 71.6(a)(9) or implementing § 71.6(a)(10) or § 71.6(a)(13). The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials to the appropriate permitting authority for obtaining such authorization(s).

(8) * * *

(ii) * * *

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) * * *

(D) For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

* * * * *

■ 9. Section 71.6 is amended by revising paragraphs (a)(1) introductory text and (a)(9) to read as follows:

**§ 71.6 Permit content.**

(a) * * *

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include ARMs identified by the source in its part 71 permit application as approved by the permitting authority, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this part or circumvent any applicable requirement that would apply as a result of implementing the ARM.

* * * * *

(9) Terms and conditions for reasonably anticipated AOSs identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permitting authority shall not approve a proposed AOS into the part 71 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

* * * * *

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**H.R. 2918/P.L. 111–68**

Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2010, and for other purposes. (Oct. 1, 2009; 123 Stat. 2023)

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