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Presidential Documents

Title 3—

The President

Memorandum of November 30, 2009

Assignment of Functions Under the National Defense Authorization Act for Fiscal Year 2010; the Department of Homeland Security Appropriations Act, 2010; and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign the authority to perform the functions conferred upon the President by sections 1041(c) and (d) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) (NDAA); sections 552(d),(e), and (h) of the Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83) (DHS Appropriations Act); sections 428(d), (e), and (g) of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Public Law 111–88) (DOI Appropriations Act); and sections 14103(d) and (f) of the Supplemental Appropriations Act, 2009 (Public Law 111–32), as continued in effect by section 115 of the Continuing Appropriations Resolution, 2010 (Division B of Public Law 111–68), as amended (Supplemental Appropriations Act), as follows:

1. To the Secretary of Defense, in consultation with the Attorney General, the function of providing to the Congress, regarding detainees who will remain in the custody of the Department of Defense, the plans specified in section 1041(c) of the NDAA, section 552(d) of the DHS Appropriations Act, section 428(d) of the DOI Appropriations Act, and section 14103(d) of the Supplemental Appropriations Act;

2. To the Secretary of Defense, the consultation specified in section 1041(d) of the NDAA, regarding detainees who will remain in the custody of the Department of Defense;

3. To the Attorney General, in consultation with the Secretary of Defense, the function of submitting to the Congress the reports specified in section 1041(c) of the NDAA, section 552(d) of the DHS Appropriations Act, section 428(d) of the DOI Appropriations Act, and section 14103(d) of the Supplemental Appropriations Act, regarding detainees who will be transferred to the custody of the Department of Justice;

4. To the Attorney General, the consultation specified in section 1041(d) of the NDAA, regarding detainees who will be transferred to the custody of the Department of Justice;

5. To the Attorney General, in consultation with the Secretary of Defense, the function of submitting to the Congress the reports specified in section 552(h) of the DHS Appropriations Act, section 428(g) of the DOI Appropriations Act, and section 14103(f) of the Supplemental Appropriations Act; and

6. To the Secretary of State, in consultation with the Secretary of Defense, of providing to the Congress the information specified in section 552(e) of the DHS Appropriations Act, section 428(e) of the DOI Appropriations Act.

Any reference in this memorandum to the statutory provisions referenced herein shall be deemed to include references to any hereafter-enacted provisions of law that are the same or substantially the same as such provisions.

The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, November 30, 2009.

[FR Doc. E9–28887
Filed 12–1–09; 8:45 am]
Billing code 4410–19–P

Rules and Regulations

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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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1604, 1651, 1653, and 1690

Uniformed Services Accounts; Death Benefits; Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts; Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations regarding uniformed services accounts to conform with mandatory tax provisions as well as current recordkeeping practices and allow only for *pro rata* court-ordered payments.

The Agency amends its regulations regarding death benefits to provide for a clear process by which children of participants can establish parentage.

The Agency amends its court order regulations so that when a court order directs that a payment includes earnings, the Agency is able to make a payment which calculates the payee's award amount based on the current price of the shares he/she was awarded.

The Agency amends its court order regulations to remove a provision which permits courts to direct payment from only the tax-exempt balance of a uniformed services account.

The Agency amends its regulations at part 1690, subpart B, to add a regulation outlining the circumstances under which a TSP account may be frozen.

DATES: This final rule is effective December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Tim Carey at 202–942–1666 or Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On October 22, 2009, the Agency published a proposed rule with request for comments in the **Federal Register** (74 FR 54491). The Agency received one comment on the proposed rule and that comment supported the Agency's proposed change to its method of calculating court order awards. Therefore, the Agency is publishing the proposed rule as final without change.

Uniformed Services Accounts

The Agency amends its regulations regarding uniformed services accounts, and, specifically, its provisions relating to the division of a uniformed services account pursuant to a court order or legal process. The amendment removes a provision suggesting that courts could direct the Plan to make a court-ordered payment other than one that is *pro rata* from both taxable and tax-exempt contributions.

Uniformed services accounts are unique in that some or all of a uniformed services member's contributions may derive from tax-exempt income as a result of the combat zone tax exclusion. In 2001, the Agency issued final regulations regarding the uniformed services' participation in the TSP. Among many changes, the Agency determined that ''the TSP can honor a court order or legal process that apportions combat zone (tax-exempt) contributions between the participant and the payee,'' and, therefore, the final version of 5 CFR 1604.9(b) regarding court-ordered payments from a uniformed services member's account stated that payment will be made *pro rata* from all sources ''unless the court order or legal process directs otherwise.'' (66 FR 50716, October 4, 2001).

The Agency recently analyzed its authority and record keeping capability to issue payments from, as the regulation suggests, only one source of contributions in a uniformed services participant's account. The Agency has concluded that the Internal Revenue Code (I.R.C.) permits only *pro rata* payments from both taxable and tax-exempt funds, and that a court cannot direct the Plan to make a payment from, for example, only tax-exempt funds.

Specifically, I.R.C. sections 72 and 402(e)(1)(A) preclude an allocation of basis pursuant to a court order if such allocation is other than *pro rata.* In particular, for purposes of determining tax liability, a spousal alternate payee is treated the same as the participant and, therefore, a distribution to a spouse or former spouse made pursuant to a court order must be made *pro rata* from taxable and tax-exempt amounts in a uniformed services account. 26 U.S.C. 402(e)(1)(A). Therefore, the Agency's regulation permitting courts to order a payment other than *pro rata* is not permitted by the I.R.C. and is amended.

Additionally, the Agency's record keeping system cannot issue a payment from only one source of funds because it is programmed to make all payments from uniformed services accounts on a *pro rata* basis from taxable and tax-exempt balances. Therefore, changing this regulation to remove the language which suggests a court could direct the Agency to issue a payment other than one which is *pro rata* is not only technically correct but also reflects current record keeping processes.

Death Benefits

The Agency amends its regulations regarding death benefits, and, in particular, its regulation regarding payment to a participant's child or children. Specifically, the amendment clarifies the documentation children should submit in the event that the identity of their father or mother is in dispute or unclear.

As familial matters, including guidelines related to parentage, are rooted in state, not Federal, law, the Agency cannot adjudicate or otherwise determine matters of paternity or maternity. In support of their contention that they are the proper beneficiary of their parent's account, children of deceased participants often submit insufficient or otherwise unclear documentation (e.g., copies of obituaries and personal mementos). A lack of guidance regarding which documents to submit in support of parentage adds unnecessary time and inconvenience to the processing of death benefit determinations.

The Agency, therefore, augments its death benefits regulations to describe the documentation it requires in support of a purported child's claim that a participant was his or her parent. Specifically, the Agency requests that affected children submit a court order or administrative finding or documentation which would establish parentage in the state in which the participant resided prior to his death.

Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts

The Agency amends its court order regulations to allow for court-awarded payments which account for investment earnings and losses as well as to reflect the previously-discussed requirement that all payments from participants' accounts be paid *pro rata*.

Currently, in order for the Agency to take into account investment losses, a court order has to divide the account as of the date of distribution or identify a fixed amount that the parties agreed upon. Further, per the Agency's regulations, if a court order specifies that earnings are to be awarded and no specific rate is provided, even when an account experiences investment losses, the Agency awards earnings using its Government Securities Investment (G) Fund rate. 5 CFR 1653.4(f)(3).

The Agency, which receives many court orders directing that payments reflect earnings and losses until the date of distribution, amends its regulations so that the division of an account factors in the current price of those shares included in a payee's award amount.

In particular, if earnings, defined to include losses, are requested and a rate is not specified, the Agency will determine the amount to be awarded by determining the payee's award amount (e.g., the percentage or fraction of the participant's account), and, based on the participant's investment allocation as of the effective date of the court order, the number and composition of shares that the payee's award amount would have purchased as of the effective date. (Determining the shares as of the effective date of the court order, and not a later date, preserves the court's intent and protects the payee from investment decisions made by the participant after the effective date of the court order.) The Agency will then multiply the price per share as of the payment date, which is generally two business days prior to the date of the award's disbursement, by the number and composition of shares comprising the payee's award amount as of the court order's effective date.

The Agency believes that this calculation will result in more equitable awards as well as more efficient court order processing as parties are not required to return to court for additional or clarifying language.

As previously discussed, the Agency also amends its court order and legal process regulations in order to conform with the I.R.C. and current record keeping procedures. In particular, the Agency removes language from § 1653.5(d) which states that a court may specify a particular payment from the tax-exempt balance of a uniformed services account. Please see the **SUPPLEMENTARY INFORMATION** discussion regarding Uniformed Services Accounts for an overview as to why the Agency is removing such language.

Thrift Savings Plan

The Agency adds a regulation outlining the circumstances under which a participant's account may be frozen and when access to the Agency's Web site and ThriftLine may be blocked. Though uncommon, freezes (or administrative holds) prevent a participant from withdrawing funds, including loans, from his or her account, and, therefore, the Agency is providing regulatory notice to its participants regarding the circumstances under which such a hold may occur and also the consequences of such a hold.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register.** This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1604

Military personnel, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

■ 1. The authority citation for part 1604 continues to read as follows:

Authority: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

■ 2. Amend § 1604.9 to revise paragraph (b) to read as follows:

§ 1604.9 Court orders and legal processes.

* * * * *

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the payment will be made pro rata from all sources.

* * * * *

PART 1651—DEATH BENEFITS

■ 3. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 4. Amend § 1651.1 to add the definition of ''Administrative finding'', in alphabetical order, in paragraph (b) to read as follows:

§ 1651.1 Definitions.

* * * * *

(b) * * *

Administrative finding means an evidence-based determination reached by a hearing, inquiry, investigation, or trial before an administrative agency of competent jurisdiction in any State, territory or possession of the United States.

* * * * *

■ 5. Amend § 1651.6 to add a paragraph (d) to read as follows:

§ 1651.6 Child or children.

* * * * *

(d) *Parentage disputes.* If the identity of the father or mother of a child is in dispute or otherwise unclear (e.g., only one parent is listed on a birth certificate), the purported child must submit to the TSP either:

(1) A court order or other administrative finding establishing parentage; or

(2) Documentation sufficient for establishing parentage under the law of the state in which the participant was domiciled at the time of death.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 6. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

■ 7. Amend § 1653.1 to add the definitions of ''Payment date'' and ''TSP investment earnings or earnings'', in alphabetical order, in paragraph (b) to read as follows:

§ 1653.1 Definitions.

* * * * *

(b) * * *

* * * * *

Payment date refers to the date on which earnings are determined and is generally two business days prior to the date of an award's disbursement.

* * * * *

TSP investment earnings or earnings means both positive and negative fund performance attributable to differences in TSP fund share prices.

■ 8. Amend § 1653.4 to revise paragraph (f)(3) and remove paragraph (f)(4) to read as follows:

§ 1653.4 Calculating entitlements.

* * * * *

(f) * * *

(3) If earnings are awarded and the rate is not specified, the Agency will calculate the amount to be awarded by:

(i) Determining the payee's award amount (e.g., the percentage or fraction of the participant's account);

(ii) Determining, based on the participant's investment allocation as of the effective date of the court order, the number and composition of shares that the amount in paragraph (f)(3)(i) of this section would have purchased as of the effective date; and

(iii) Multiplying the price per share as of the payment date by the number and composition of shares calculated in paragraph (f)(3)(ii) of this section.

* * * * *

§ 1653.5 [Amended]

■ 9. Amend § 1653.5 by removing the last sentence of paragraph (d).

PART 1690—THRIFT SAVINGS PLAN

■ 10. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

■ 11. Add § 1690.15 to read as follows:

§ 1690.15 Freezing an account—administrative holds.

(a) The TSP may freeze (e.g., place an administrative hold on) a participant's account for any of the following reasons:

(1) Pursuant to a qualifying retirement benefits court order as set forth in part 1653 of this chapter;

(2) Pursuant to a request from the Department of Justice under the Mandatory Victims Restitution Act;

(3) Upon the death of a participant;

(4) Upon suspicion or knowledge of fraudulent account activity or identity theft;

(5) In response to litigation pertaining to an account;

(6) For operational reasons (e.g. to correct a processing error or to stop payment on a check when account funds are insufficient);

(7) Pursuant to a written request from a participant; and

(8) For any other reason the TSP deems prudent.

(b) An account freeze (i.e., administrative hold) prohibits a participant from withdrawing funds, including loans, from his or her account. The participant continues to have the capability to conduct all other transactions including making contributions, changing contribution allocations, and making interfund transfers.

(c) The Agency will notify the participant that his or her account has been frozen unless it determines it prudent to not notify the participant that his of her account has been frozen.

(d) A participant may block on-line and ThriftLine access to his or her account by writing to the TSP or by submitting a request at *http://www.tsp.gov*.

(e) A participant may remove a participant-initiated freeze (administrative hold) by submitting a notarized request to the TSP.

[FR Doc. E9–28752 Filed 12–1–09; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0915; Directorate Identifier 2009–NM–224–AD; Amendment 39–16049; AD 2009–21–10]

RIN 2120–AA64

Airworthiness Directives; AVOX Systems and B/E Aerospace Oxygen Cylinder Assemblies, as Installed on Various Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain AVOX Systems and B/E Aerospace oxygen cylinder assemblies, as installed on various transport airplanes. This AD requires removing certain oxygen cylinder assemblies from the airplane. This AD was prompted by the reported rupture of a high-pressure gaseous oxygen cylinder, which had insufficient strength characteristics due to improper heat treatment. We are issuing this AD to prevent an oxygen cylinder from rupturing, which, depending on the location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

DATES: This AD is effective December 17, 2009.

We must receive comments on this AD by January 19, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

During routine hydrostatic testing, a United States Department of Transportation Type 3HT–1850 high-pressure gaseous oxygen cylinder ruptured under what would be considered normal operating conditions. Further investigation indicates that the cylinder had insufficient strength characteristics due to improper heat treatment. The improper heat treatment is limited to specific production batches, but the affected oxygen cylinders may be installed on various transport airplanes and aircraft certificated in other categories. The oxygen cylinders contain gaseous oxygen under high pressure. Rupture of an oxygen cylinder, depending on its location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

FAA's Determination and Requirements of This AD

Certain affected airplanes have been approved by the aviation authorities of other countries, and are approved for operation in the United States.

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This AD requires removing the affected oxygen cylinder assemblies from transport airplanes.

Related Rulemaking

The FAA is currently evaluating the risk associated with these oxygen cylinder assemblies installed on aircraft certificated in other categories to determine whether any action is necessary to address the unsafe condition on these aircraft.

FAA's Justification and Determination of the Effective Date

This AD addresses the consequences of the potential rupture of certain oxygen cylinder assemblies. Because of our requirement to promote safe flight of civil aircraft and thus the critical need to ensure the proper functioning of the oxygen cylinders and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0915; Directorate Identifier 2009–NM–224–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–21–10 AVOX Systems and B/E Aerospace: Amendment 39–16049. Docket No. FAA–2009–0915; Directorate Identifier 2009–NM–224–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the oxygen cylinder assemblies, approved under United States Department of Transportation Regulations for Type 3HT cylinders, identified in Table 1 of this AD. These oxygen cylinder assemblies may be installed on various transport airplanes, certificated in any category, identified in but not limited to the airplanes included in Table 2 of this AD.

TABLE 1—AFFECTED OXYGEN CYLINDER ASSEMBLY PART NUMBERS

Manufacturer	Part Nos.
AVOX Systems	*6350A34 series, 800112–03, 800112–10, 800112–13, 801293–03, 801307–00, 801307–01, 801307–02, 801307–03, 801307–07, 801307–09, 801307–23, 801307–24, 801365–04, 801365–14, 801375–00, 801977–05, *8915 series. (*For example, 6350A34–X–X or 8915XX–XX, where "X" denotes a part number digit).
B/E Aerospace	B43570–3, B43570–5, 176018–115, 176112–115, 176177–115, 176181–115, 176529–97.

TABLE 2—AFFECTED AIRPLANES

Manufacturer	Model
Airbus	A300 B4–620, B4–622, B4–605R, and F4–605R airplanes. A310–203, –204, –221, –222, –304, and –324 airplanes. A318–111 and –112 airplanes. A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes. A320–111, –211, –212, –214, –231, –232, and –233 airplanes. A321–111, –112, –131, –211, and –231 airplanes. A330–301, –321, and –322 airplanes. A340–211 and –212 airplanes. A340–311 and –312 airplanes.
The Boeing Company	707–100 long body, –200, –100B long body, and –100B short body series airplanes; and 707–300, –300B, –300C, and –400 series airplanes. 727, 727C, 727–100, 727 –100C, 727–200, and 727–200F series airplanes. 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes. 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. 757–200, –200PF, –200CB, and –300 series airplanes. 767–200, –300, –300F, and –400ER series airplanes. 777–200, –200LR, –300, –300ER, and 777F series airplanes.
Gulfstream Aerospace Company	G–IV airplanes.
McDonnell Douglas Corporation	DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes. DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes. DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), and DC–10–40 airplanes. MD–10–10F and MD–10–30F airplanes. MD–11 and MD–11F airplanes. MD–88 airplanes. MD–90–30 airplanes.
Short Brothers	SD3–30, SD3–SHERPA, and SD3–60 SHERPA airplanes.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD was prompted by the reported rupture of a high-pressure gaseous oxygen cylinder, which had insufficient strength characteristics due to improper heat treatment. The Federal Aviation Administration is issuing this AD to prevent an oxygen cylinder from rupturing, which, depending on the location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 90 days after the effective date of this AD, inspect to determine the serial number of the oxygen cylinder assemblies installed in the airplane. The serial number is stamped into the steel cylinder near the neck. A review of airplane records is acceptable in lieu of this inspection if the serial numbers of the oxygen cylinder assemblies can be conclusively determined from that review. For any oxygen cylinder assembly that has a serial number identified in Table 3 of this AD: Remove it from the airplane before further flight.

TABLE 3—AFFECTED OXYGEN CYLINDER ASSEMBLY SERIAL NUMBERS

Cylinder manufacturer	Affected serial Nos.
AVOX Systems	ST82307 through ST82309 inclusive. ST82335 through ST82378 inclusive. ST82385 through ST82506 inclusive, except for S/N ST82498, which ruptured. ST82550 through ST82606 inclusive. ST82617 through ST82626 inclusive. ST83896 through ST83905 inclusive. ST84209 through ST84218 inclusive. ST84224 through ST84236 inclusive. ST86138, ST86143, ST86145, ST86150, ST86169, ST86172, ST86177. ST86299 through ST86307 inclusive.
B/E Aerospace	K495120 through K495121 inclusive. K617383 through K617423 inclusive. K629573 through K629577 inclusive. K674451 through K674455 inclusive. K757064 through K757066 inclusive.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a United States Department of Transportation Type 3HT oxygen cylinder assembly that has a part number identified in Table 1 of this AD and a serial number identified in Table 3 of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically refer to this AD.

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on November 25, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28807 Filed 12–1–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1130; FRL–9087–7]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a site-specific revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Rochester Public Utilities Silver Lake Plant (RPU–SLP), located in Rochester, Minnesota. In its October 16, 2007, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in RPU–SLP's revised Federally enforceable joint Title I/Title V document into the Minnesota SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (CAA). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective February 1, 2010, unless EPA receives adverse comments by January 4, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1130, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–1130. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the 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 Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@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. General Information
1. What Is the Background for This Action?
2. Why Is EPA Taking This Action?
3. What Is a ''Title I Condition?''
II. What Action Is EPA Taking?
III. Statutory and Executive Order Reviews

I. General Information

1. What Is the Background for This Action?

The Silver Lake Plant is an electric generating station located at 425 West Silver Lake Drive Northeast, in Rochester, Olmsted County, Minnesota, having a total generating capacity of approximately 100 megawatts. Emission sources at the facility include four pulverized coal-fired dry-bottom boilers, a natural-gas-fired steam heating boiler, coal handling and storage facilities, fly and bottom ash storage and handling facilities, and fugitive emissions from unpaved roads. Boilers 1, 2, 3, and 4 were constructed in 1949, 1952, 1962, and 1969, respectively. The primary fuels for these four boilers are bituminous coal and natural gas.

Emission limits for the four boilers were part of the 1981 Rochester SO_2 SIP approved by EPA. On March 9, 2001 (66 FR 14087), EPA approved a Title V permit into the SIP entitled ''Minnesota Air Emission Permit No. 10900011–001,'' issued to RPU–SLP on July 22, 1997. This Title V permit included 24-hour average Total Ambient Culpability Weighted Emission Factor (TACWEF) equations that limited the facility to 2718.6 pounds per hour (lbs/hr) of SO_2, to provide for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS). Other SO_2 SIP requirements were included in the Title V permit for operation of Continuous Emission Monitors (CEMs), recordkeeping, and reporting deviations.

The Title V permit also contained emission limits and control strategies for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). These emission limits and control strategies were originally contained in an administrative order for RPU–SLP previously approved by EPA as part of the Rochester PM10 SIP on June 13, 1995 (60 FR 31088). EPA inadvertently omitted incorporating by reference the PM10 limits when the Title V permit replaced the administrative orders in Minnesota's SIP on March 9, 2001. These PM10 limits still apply to the facility and are included in the joint Title I/Title V document as Title I SIP conditions.

The SIP revision submitted by MPCA on October 16, 2007, consists of ''Minnesota Air Emission Permit No. 10900011–004,'' issued to RPU–SLP on September 7, 2007, which serves as a joint Title I/Title V document. The State has requested that EPA approve into the Minnesota SO_2 SIP only the portions of the permit cited as ''Title I Condition: State Implementation Plan for SO_2'' and ''Title I Condition: State Implementation Plan for PM10.''

Minnesota held a public hearing regarding the SIP revision and the joint Title I/Title V document on August 23, 2007. The MPCA received one public comment in support of the Title V permit and SIP revision.

2. Why Is EPA Taking This Action?

EPA is taking this action because the State's SIP submittal for RPU–SLP is fully approvable. The SIP revision results in a substantial decrease in SO_2 emissions and satisfies the applicable SO_2 requirements of the CAA.

Under the 2001 SIP conditions, the four boilers are limited to a 3.2 lb/mmBtu emission limit for SO_2 when operating alone, and to sulfur emission limits determined based on TACWEF equations when more than one unit is operating on coal at the same time. The facility's SIP approved PM10 limits are carried over into the joint Title I/Title V document and have not changed in content since they were approved by EPA in 1995.

RPU–SLP initiated changes to the facility to comply with the Clean Air Interstate Rule (CAIR) and to meet their Best Available Retrofit Technology (BART) obligations under the Regional Haze Rule. The changes also satisfy the terms of a 2006 settlement agreement between the Minnesota Center for Environmental Advocacy (MCEA), MPCA, and RPU–SLP, which resulted from MCEA's appeal of a previous permit amendment to RPU–SLP, ''Air Emissions Permit No. 10900011–003'' issued in 2004. Significant changes that occurred in that permit action included a decreased limit on the amount of coal burned per year and lower SO_2 emission limits. A SIP revision was not required for the 2004 permit amendment because the SO_2 limits in that permit satisfied the SO_2 limits in the SIP. In order to meet the requirements of the settlement, RPU–SLP initiated a project to install additional pollution control equipment for SO_2, PM, and Nitrogen Oxides (NOx) on Unit 4. A spray-dryer absorber, designed to achieve a 70–85% removal rate, will be installed to control SO_2 and existing electrostatic precipitators will be replaced with fabric filters to control PM. The project will also involve building changes, including removal of an office building and the attachment of two equipment buildings to the north side boiler building. There are no physical changes being made to RPU–SLP Units 1–3.

The new SO_2 limits incorporated from the joint Title I/Title V document into the SIP will be 2.3 lb/mmBtu for Units 1–3 for any unit when operating alone for all averaging times. New group limits of 1.9 lb/mmBtu limit for the 24-hour and 1-hour averaging times and 2.3 lb/mmBtu limit for the 3-hour averaging time will apply to Units 1–3 if more than one unit is operating on coal. These new group limits are more stringent than the SO_2 limits currently in the SIP and will replace the TACWEF equations, which will be removed upon approval of the SIP revision. An interim SIP limit of 2.1 lb/mmBtu will apply to Unit 4 while the pollution control project is installed. This limit will be

replaced by a final SIP limit of 0.6 lb/mmBtu for Unit 4 once the pollution control project is operational.

MPCA is currently preparing an update to the Rochester SO_2 maintenance plan, as the Rochester area was redesignated to attainment of the SO_2 NAAQS on March 9, 2001 (66 FR 14087). Section 175A of the CAA requires States to submit a revised maintenance plan eight years after redesignation of any area as an attainment area. MPCA has indicated that this maintenance plan update will include nearby sources, regional sources, background sources, and future growth. Revised air dispersion modeling was conducted for this SIP revision using the AERMOD model with Rochester meteorological data to ensure continued attainment of the SO_2 NAAQS in the area. Based on the modeling results, the changes at RPU–SLP described above are projected to lower the air quality impacts from the facility, compared to emission limits currently allowed under the 2001 SIP. The modeling compared RPU–SLP's current operating scenario to the post-project scenario. EPA therefore finds the SIP revision is fully approvable because it results in a substantial decrease in SO_2 emissions at RPU–SLP from what is allowed under the 2001 SIP, and subsequent lower SO_2 ambient concentrations in the Rochester area.

3. What Is a ''Title I Condition?''

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in State-issued permits are not Federally enforceable because the permits expire. The State then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into the Minnesota SIP on May 2, 1995 (60 FR 21447), include the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the [NAAQS] and which was part of the [SIP] approved by EPA or submitted to the EPA pending approval under section 110 of the act. * * *'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has also initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as ''Title I conditions,'' therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the State's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both titles I and V of the CAA (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

II. What Action Is EPA Taking?

EPA is approving into the Minnesota SO_2 SIP for the City of Rochester, Olmsted County, certain portions of Minnesota Air Emission Permit No. 10900011–004, issued to RPU–SLP on August 23, 2007. Specifically, EPA is only approving into the SIP those portions of the joint Title I/Title V document cited as ''Title I Condition: State Implementation Plan for SO_2'' and ''Title I Condition: State Implementation Plan for PM10.'' In addition, EPA is removing from the Minnesota SO_2 SIP all other references to Title I conditions for RPU–SLP that are not relevant to attainment of the NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective February 1, 2010 without further notice unless we receive relevant adverse written comments by January 4, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 1, 2010.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 17, 2009.

Walter W. Kovalick Jr.,

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 Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for ''Rochester Public Utilities, Silver Lake Plant'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
* *	*	*	*	* *
Rochester Public Utilities, Silver Lake Plant.	10900011–004	9/7/07	December 2, 2009, [Insert page number where the document begins].	Only conditions cited as ''Title I Condition: SIP for SO_2'' and ''Title I Condition: SIP for PM10.''
* *	*	*	*	* *

* * * * *

[FR Doc. E9–28681 Filed 12–1–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2009–0707; FRL–8979–5]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

Correction

In rule document E9–27044 beginning on page 57908 in the issue of November 10, 2009, make the following correction:

1. On page 57915, the second table should appear as follows:

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.21(f)(6)

Organism	Methodology	SM 20th edition [6]	SM 21st edition [1]	SM online [3]	Other
E. coli	ONPG–MUG Test	9223 B	9223 B	9223 B–97	Modified Colitag™ [13]

2. On page 57917, the first table should appear as follows:

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)

Contaminant	Methodology	EPA method	ASTM [4]	SM 21st edition [1]
*	* * * *	*	*	
HAA5	LLE (diazomethane)/GC/ECD			6251 B
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	557 [14]		
Bromate	Two-Dimensional Ion Chromatography (IC)	302.0 [18]		
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	557 [14]		
	Chemically Suppressed Ion Chromatography		D 6581–08 A	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B	
Chlorite	Chemically Suppressed Ion Chromatography		D 6581–08 A	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B	

3. On page 57917, the fourth table heading, Alternative Testing Methods With MRL > 0.0010 mg/L for Monitoring Listed at 40 CFR 141.132(b)(3)(ii)(B) should read Alternative Testing Methods With MRL ≤ 0.0010 mg/L for Monitoring Listed at 40 CFR 141.132(b)(3)(ii)(B).

4. On page 57918, the table should appear as follows:

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)

Contaminant	Methodology	EPA Method	ASTM [4]	SM 21st edition [1]	SM Online [3]
*	* * * *	*	*	*	*
Sulfate	Ion Chromatography			4110 B	
	Gravimetric with ignition of residue			4500–SO_4^{-2} C	4500–SO_4^{-2} C–97
	Gravimetric with drying of residue			4500–SO_4^{-2} D	4500–SO_4^{-2} D–97
	Turbidimetric method		D 516–07	4500–SO_4^{-2} E	4500–SO_4^{-2} E–97
	Automated methylthymol blue method			4500–SO_4^{-2} F	4500–SO_4^{-2} F–97
*	* * * *	*	*	*	*

[FR Doc. Z9–27044 Filed 12–1–09; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0330; FRL–8799–9]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of hexythiazox in or on potato. The Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 2, 2009. Objections and requests for hearings must be received on or before February 1, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0330. 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., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0330 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 1, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0330, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of May 9, 2007 (72 FR 26375) (FRL–8128–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7182) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540–6635. The petition requested that 40 CFR 180.448 be amended by establishing tolerances for combined residues of the insecticide/miticide hexythiazox, (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, in or on potato at 0.02 parts per million (ppm). That notice referenced a summary of the petition prepared by Gowan, the registrant, on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of hexythiazox in or on potato at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Hexythiazox has a low order of acute toxicity by the oral, dermal and inhalation routes of exposure. It produces mild eye irritation, is not a dermal irritant, and is negative for dermal sensitization.

The target organs of hexythiazox are the liver and adrenal glands in dogs, rats and mice, with the dog being the most sensitive species. Effects seen in the chronic dog study include increased liver and adrenal weights, along with associated histopathology of the liver (hypertrophy) and adrenal glands (adrenal cortex hypertrophy). Increased liver weights, along with decreased body weight and weight gain were also observed in the rat and the mouse studies. In the subchronic study in the rat, increased liver weights in both sexes were observed, in addition to increased ovarian and kidney weights, and adrenal histopathology (fatty degeneration of the adrenal zona fasciculata) in the females.

Previously, an acute endpoint was selected for the acute dietary risk assessment for females ages 13 and above, based on delayed ossification observed in the rat developmental toxicity study. However, delayed ossification is not considered an appropriate endpoint attributable to a single exposure. No other endpoint attributable to a single exposure was identified from the available oral toxicity database.

There was no qualitative or quantitative evidence of increased susceptibility of fetuses from *in utero* exposure in studies in rats and rabbits. Although the rat developmental study showed delayed ossification in the offspring, this occurred at the same or higher dose than the maternal LOAEL of 720 milligrams/kilograms/day (mg/kg/day), at which decreased body weight gain and food consumption were observed. No adverse effects were observed in the developmental rabbit study at the highest dose tested (HDT) of 1,080 mg/kg/day. There was no evidence of increased susceptibility through postnatal exposure of offspring to hexythiazox.

Previously, carcinogenic risk for hexythiazox was assessed quantitatively

assuming the cancer response is linear at low doses. However, in June 2009, the Agency re-evaluated the carcinogenic potential of hexythiazox following release of EPA's Final Guidelines for Carcinogen Risk Assessment in March, 2005. After considering the updated guidelines, EPA has classified hexythiazox as ''likely to be carcinogenic to humans'' based upon increased incidences of benign and malignant liver tumors in high-dose female mice, and benign mammary gland tumors, observed in high dose male rats. There was no evidence of carcinogenicity in male mice and female rats. However, EPA determined that a non-quantitative risk assessment approach (i.e., nonlinear, reference dose (RfD) approach) was appropriate for hexythiazox. This change in position was based on a re-evaluation of the weight of the evidence taking into account the updated 2005 cancer risk assessment guidelines. EPA concluded that the evidence as a whole was not strong enough to warrant quantitative estimation of carcinogenic risk to humans, based on the following considerations:

i. The liver tumors in mice are a very common tumor in that species were only observed in high dose females.

ii. The mammary tumors in rats were benign and were only observed in high dose male rats.

iii. Hexythiazox was shown to be non-mutagenic in mammalian somatic cells and germ cells. Additionally, the chronic NOAEL used for establishing the chronic RfD (2.5 mg/kg/day, from the 1–year toxicity feeding study in the dog), is approximately 65-fold lower than the lowest dose that induced tumors (in female mice at 163 mg/kg/day). Therefore, the chronic RfD of 0.025 mg/kg/day is judged to be protective of all chronic effects including potential carcinogenicity of hexythiazox.

There is no evidence of neurotoxicity or potential immunotoxicity for hexythiazox in the toxicology database.

Specific information on the studies received and the nature of the adverse effects caused by hexythiazox as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Hexythiazox. Human Health Risk Assessment to Support New Use on Potatoes Grown in Oregon, Washington and Idaho Only,'' page 10 in docket ID number EPA–HQ–OPP–2007–0330.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for hexythiazox used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Hexythiazox. Human Health Risk Assessment to Support New Use on Potatoes Grown in Oregon, Washington and Idaho Only,'' page 10 in docket ID number EPA–HQ–OPP–2009– EPA–HQ–OPP–2007–0330.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to hexythiazox, EPA considered exposure under the petitioned-for tolerance as well as all existing hexythiazox tolerances in (40 CFR 180.448). EPA assessed dietary exposures from hexythiazox in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for hexythiazox; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance level residues, assumed 100 percent crop treated (PCT), and incorporated default processing factors.

iii. *Cancer.* EPA has determined that the chronic reference dose is sufficient to evaluate all chronic risks for this chemical, including carcinogenic potential. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., chronic exposure.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for hexythiazox. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for hexythiazox in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of hexythiazox. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of hexythiazox for chronic exposures, including cancer and non-cancer assessments are estimated to be 2.26 parts per billion (ppb) for surface water and 0.00503 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For

chronic dietary, including cancer, risk assessment, the highest modeled water concentration value of 2.26 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Hexythiazox is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found hexythiazox to share a common mechanism of toxicity with any other substances, and hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that hexythiazox does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) SF (safety factor). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for hexythiazox includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. As discussed in Unit III.A., there was no evidence of increased quantitative or qualitative susceptibility of fetuses or offspring following exposure to hexythiazox in these studies.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for hexythiazox is incomplete under the new 40 CFR part 158 data requirements for conventional pesticides, which requires certain generic testing, including acute and subchronic neurotoxicity studies and an immunotoxicity study. However, the toxicology database does not show any evidence of treatment-related effects on the nervous system or the immune system. The overall weight of evidence suggests that this chemical does not directly target either system. Although acute and subchronic neurotoxicity studies and an immunotoxicity study are required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registrations, the Agency does not believe that conducting these studies will result in a lower POD than that currently used for overall risk assessment, and therefore, a database uncertainty factor (UFDB) is not needed to account for the lack of these studies.

ii. There is no indication that hexythiazox is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that hexythiazox results in increased susceptibility of *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to hexythiazox in drinking water. There are no uses which would result in postapplication exposure of children or incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by hexythiazox.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate UFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, hexythiazox is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to hexythiazox from food and water will utilize 45% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure. There are no residential uses for hexythiazox.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Hexythiazox is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to hexythiazox through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Hexythiazox is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to hexythiazox through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.A., the Agency has determined that the chronic reference dose is sufficient to evaluate all chronic risks for this chemical, including carcinogenic

potential. As noted in this Unit there are no chronic risks of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The existing enforcement method (high performance liquid chromatography using ultraviolet detection (HPLC/UV)) published in the *Pesticide Analytical Manual (PAM) II* is adequate to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican MRLs (maximum residue levels) for residues of hexythiazox on potatoes.

V. Conclusion

Therefore, a tolerance is established for combined residues of hexythiazox, (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, in or on potato at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.448 is amended by alphabetically adding potato to the table in paragraph (c) to read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Potato	0.02
* * * * *	

[FR Doc. E9–28673 Filed 12–01–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0556; FRL–8799–2]

Fenpyroximate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of fenpyroximate and its Z-isomer in or on berry, low growing, subgroup 13–07G, at 1.0 part per million (ppm). Nichino America, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 2, 2009. Objections and requests for hearings must be received on or before February 1, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0556. 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., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0556 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 1, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0556, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7520) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE, 19808. The petition requested that 40 CFR 180.566 be amended by establishing tolerances for combined residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, in or on berry, low growing, subgroup 13–07G, at 1.0 part per million (ppm). That notice referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of fenpyroximate and its Z-isomer in or on berry, low growing, subgroup 13–07G, at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity,

completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fenpyroximate has moderate oral and inhalation toxicity. It has low dermal toxicity and is not an eye or skin irritant. Fenpyroximate is a slight to moderate skin sensitizer.

Subchronic oral toxicity studies in the rat show the primary effects included decreased body weight and weight gain at the lowest observed adverse effect level (LOAEL) while there were hematological effects at higher doses. In the 21–day dermal toxicity study in rats, there were clinical signs in the females (including red nose/mouth/nasal discharge); decreased body weights, body weight gains, and food consumption in males and females; and increased liver weights and hepatocellular necrosis in the females. In the subchronic oral dog study, there was bradycardia observed at the LOAEL. This effect was present at 6 weeks (first time point measured) and did not appear to increase in severity with time. Also observed at this dose level were diarrhea, decreased body weight, body weight gain, and food consumption. At higher doses, there was also emesis (vomiting). The highest dose resulted in first- and second-degree heart block, increased urea concentration, decreased glucose and altered plasma electrolyte levels among other signs of toxicity.

In the chronic oral rat and mouse studies, signs of toxicity were similar to those in the oral subchronic rat study. The chronic dog study also revealed signs of toxicity including bradycardia, diarrhea, decreased body weight gain, and food consumption.

The 2–generation reproductive toxicity study indicated that maternal (decreased body weight) and offspring toxicity (decreased lactational weight gain) occurred at the same dose, suggesting no evidence of sensitivity or susceptibility. Reproductive parameters were not affected in this 2–generation reproduction study. The rat and rabbit developmental toxicity studies were tested at doses that produced minimal or no maternal or offspring toxicity.

There are no neurotoxicity studies other than a negative delayed acute neurotoxicity study in the hen. There was no indication of neurotoxicity present in any of the existing subchronic or chronic toxicity studies.

There was no concern for mutagenic activity in several studies including: *Salmonella, E. Coli*, *in vitro* mammalian cell gene mutation assay at the Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus, mammalian cell chromosome aberration assay, *in vivo* mouse bone marrow micronucleus assay, DNA repair disk diffusion assay, and an unscheduled DNA synthesis assay.

There was no evidence of carcinogenic potential in either the rat or mouse study. Therefore, fenpyroximate is classified as ''not likely to be carcinogenic to humans'' by all relevant routes of exposure.

Specific information on the studies received and the nature of the adverse effects caused by fenpyroximate as well as the no-observed-adverse-effect-level (NOAEL) and LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fenpyroximate. Human-Health Risk Assessment for Proposed Section 3 Uses on Berry, Low growing Subgroup 13–07G,'' pages 10–13, in docket ID number EPA–HQ–OPP–2008–0556.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fenpyroximate used for human risk assessment can be found at *http://www.regulations.gov* in document ''Fenpyroximate. Human-Health Risk Assessment for Proposed Section 3 Uses on Berry, Low growing Subgroup 13–07G,'' page 5, in docket ID number EPA–HQ–OPP–2008–0556.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fenpyroximate, EPA considered exposure under the petitioned-for tolerance, as well as all existing fenpyroximate tolerances in (40 CFR 180.566). EPA assessed dietary exposures from fenpyroximate in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary exposure assessment was conducted for females 13–49 years old. Since an effect of concern attributable to a single dose in toxicity studies was not identified for the general U.S. population, an acute dietary exposure assessment was not performed for subgroups other than females 13–49 years old.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted acute dietary analysis for fenpyroximate assuming 100% crop treated (CT) and existing and proposed tolerance-level residues for all commodities. Dietary Exposure Evaluation Model (DEEM(TM)) (ver. 7.81) default processing factors were assumed for all commodities excluding apple, pear, and grape juice (0.11X); grape, raisin (2.7X); orange, grapefruit, tangerine, lemon and lime juice (0.06X); tomato paste and puree (1.0X); and peppermint and spearmint oil (0.08X). The petitioner submitted adequate tomato processing data indicating that residues of fenpyroximate *per se* did not concentrate in tomato paste or puree as

all processing factors were <1.0X. Residues of the Z-isomer did not concentrate in tomato puree; however, residues of Z-isomer concentrated slightly in tomato paste. When residues are combined, the average processing factors were <0.89X for tomato paste and <0.57X for tomato puree. Default processing factor of 1.0X was assumed for both tomato paste and tomato puree.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed 100% CT and existing and proposed tolerance-level residues for all commodities. DEEM(™) (ver.7.81) default processing factors were assumed with the exceptions listed in Unit III.C.1.

iii. *Cancer*. Fenpyroximate is classified as ''not likely to be a human carcinogen.'' There was no evidence of carcinogenicity in mouse studies or in combined chronic/carcinogenicity studies in the rat. In addition, bacterial reverse mutation and *in vitro* mammalian cell gene mutation studies showed no mutagenic effects. Therefore, a dietary exposure assessment to evaluate cancer risk was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for fenpyroximate. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fenpyroximate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenpyroximate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on proposed application rates and the environmental fate properties of fenpyroximate, some surface and ground water contamination may occur. However, the risk of water contamination from parent compound is relatively low, based on its high sorption potential. Unlike its parent compound, the sorption of the M-3 metabolite is much less, and it may move into water resources more readily. Environmental fate data indicate that parent and its Z-isomer are stable to photolysis in soil and immobile in soil. Major degradates formed in the aqueous layer were M-3 (50%), M-8 (36%), M-16 (4-hydroxymethylbenzoic acid, 58%) and M-11 (25 to 30%), and M-3 (>10%), M-11 (25 to 30%) and M8 (16 to 19%) in the soil. However, data from a field dissipation study showed M3 (32%) being the only significant degradate found in the field.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWC) of fenpyroximate, and its degradates, M1 and M3, for acute exposures are estimated to be 8.74 parts per billion (ppb) for surface water and 0.001 ppb for ground water. For chronic exposures for non-cancer assessments the EDWCs are estimated to be 0.51 ppb for surface water and 0.001 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 8.74 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 0.51 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenpyroximate is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fenpyroximate to share a common mechanism of toxicity with any other substances, and fenpyroximate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenpyroximate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no concern for prenatal and/or postnatal toxicity resulting from exposure to fenpyroximate. There is no evidence (qualitative or quantitative) of increased susceptibility following prenatal and postnatal exposure in adequate developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenpyroximate is adequate to characterize potential prenatal and postnatal risk for infants and children. Acceptable/guideline studies for developmental toxicity in rats and rabbits and reproduction toxicity in rats are available for FQPA assessment.

EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect relatively recently, these studies are not yet available for fenpyroximate. In the absence of an immunotoxicity study, EPA evaluated the available fenpyroximate toxicity data to determine whether an additional database uncertainty factor (UF) is needed to account for potential toxicity. No evidence of immunotoxicity was found in studies conducted with fenpyroximate. Due to the lack of evidence of immunotoxicity for fenpyroximate, EPA does not believe that conducting an immunotoxicity study with fenpyroximate will result in a NOAEL less than the chronic Reference dose (cRfD) NOAEL of 0.97 milligram/kilogram/day (mg/kg/day) already established for fenpyroximate, and an additional database UF is not

needed to account for potential immunotoxicity.

Acute and subchronic neurotoxicity testing in rats is also required as a result of the changes to the pesticide data requirements in December of 2007 (40 CFR part 158). Although neurotoxicity studies in rats have not yet been submitted, there is no evidence of neurotoxicity in any study in the toxicity database for fenpyroximate. Therefore, EPA has concluded that an additional UF is not needed to account for the lack of these data.

ii. There is no indication that fenpyroximate is a neurotoxic chemical in available studies, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fenpyroximate results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary exposure assessments were performed based on 100% CT and tolerance-level residues for existing and proposed uses. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fenpyroximate in drinking water. These assessments will not underestimate the exposure and risks posed by fenpyroximate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenpyroximate will occupy 7.6% of the aPAD for females 13–49 years old, the only population subgroup of interest.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenpyroximate from food and water will utilize 42% of the cPAD for children 1–2 years old, the population subgroup receiving the greatest exposure. There are no residential uses for fenpyroximate.

3. *Short-term and intermediate-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Similarly, intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenpyroximate is not registered for any use patterns that would result in residential exposure. Therefore, the short- and intermediate-term aggregate risk is the sum of risk from exposure to fenpyroximate through food and drinking water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. There was no evidence of carcinogenicity in mouse studies or in combined chronic/carcinogenicity studies in the rat. In addition, bacterial reverse mutation and *in vitro* mammalian cell gene mutation studies showed no mutagenic effects. Therefore, fenpyroximate is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenpyroximate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An acceptable enforcement method, gas chromatography with nitrogen-phosphorus detector (GC/NPD) method DFG S19, is available for enforcement of tolerances for residues in or on plant commodities. This method has undergone a petition method validation and is listed in the U.S. EPA Index of Residue Analytical Methods under fenpyroximate, Method ID 2000_109M, ''Quantification of Fenpyroximate Residues in Raw Agricultural and Processed Commodities.'' Method S19 has a limit of quantitation of 0.02 ppm for the combined residues of fenpyroximate and its Z-isomer in strawberries.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Codex and Mexican maximum residue limits (MRLs) are established for residues of fenpyroximate *per se* in or on several crop commodities but not for the crops requested. Harmonization with the other Codex and Mexican MRLs is not possible because the U.S. tolerance expressions include additional metabolites/isomers. There are currently no established Canadian MRLs.

V. Conclusion

Therefore, a tolerance is established for combined residues of the insecticide fenpyroximate parent and its Z-isomer, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, in or on berry, low growing, subgroup 13–07G at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 13, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.566 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * *	* *
Berry, low growing, crop subgroup 13–07G	1.0
* * *	* *

* * * * *

[FR Doc. E9–28676 Filed 12–01–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[MB Docket No. 07–91; FCC 07–228]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission (FCC) is correcting final rules affecting the conversion to digital television that were published in the **Federal Register** at 73 FR 5634, January 30, 2008, which were inadvertently omitted from the rules in the **Federal Register**.

DATES: Effective December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7142.

SUPPLEMENTARY INFORMATION: The Commission's Report and Order in MB Docket No. 07–91, FCC 07–228, adopted December 22, 2007 and released December 31, 2007, revised § 15.120(b) of the Commission's rules. However, the revision to § 15.120(b) to change the words ''in diameter'' to ''measured diagonally'' was inadvertently omitted from the rules appendix of the **Federal Register** summary document, 73 FR 5634, published January 30, 2008. With this document, the Commission amends its rules by revising § 15.120(b) as was intended.

List of Subjects in 47 CFR Part 15

Communications equipment, Digital Television, and Digital Television Equipment.

■ Accordingly, 47 CFR part 15 is corrected by making the following correcting amendments:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

§ 15.120 [Amended]

■ 2. In § 15.120, paragraph (b), remove the words ''or larger in diameter'' and add, in their place, the words ''or larger, measured diagonally,''.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E9–28625 Filed 12–1–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 230
Wednesday, December 2, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1130; FRL–9087–8]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a site-specific revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Rochester Public Utilities Silver Lake Plant (RPU–SLP), located in Rochester, Minnesota. In its October 16, 2007, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in RPU–SLP's revised Federally enforceable joint Title I/Title V document into the Minnesota SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act.

DATES: Comments must be received on or before January 4, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1130, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 692–2551.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register,** EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: November 17, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–28677 Filed 12–1–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 090224232–91321–03]

RIN 0648–AX50

Endangered and Threatened Species: Designation of Critical Habitat for Cook Inlet Beluga Whale

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

ACTION: Proposed rule; request for comment.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for the Cook Inlet beluga whale (*Delphinapterus leucas*) distinct population segment under the Endangered Species Act (ESA). Two areas are proposed, comprising 7,809 square kilometers (3,016 square miles) of marine habitat. We solicit comments from the public on all aspects of the proposal.

DATES: Comments and information regarding this proposed rule must be received by close of business on February 1, 2010. Requests for public hearings must be made in writing and received by January 19, 2010.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources, Alaska Region, NMFS, ATTN: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX50'' by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK, 99802–1668.
- Fax: 907–586–7557
- Hand deliver to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and generally will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business

Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, WordPerfect, of Adobe portable document file (PDF) format only.

The proposed rule, maps, status reviews, and other materials relating to Cook Inlet beluga whales and this proposal can be found on our Web site at: *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, Alaska Region, (907) 586–7824; or Marta Nammack, NMFS, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Rulemaking Background

We are responsible for determining whether species, subspecies, or distinct population segments (DPSs) are threatened or endangered and for designating critical habitat for these species under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). To be considered for listing under the ESA, a group of organisms must constitute a ''species'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' We consider a group of organisms to be a DPS for purposes of ESA listing when it is both discrete from other populations and significant to the species to which it belongs (61 FR 4722; February 7, 1996). We previously found the Cook Inlet beluga whale population segment to be reproductively, genetically, and physically discrete from the four other known beluga populations in Alaska and significant because it is in a unique ecological setting for the taxon, and its loss would result in a significant gap in the taxon's range. Following completion of a Status Review of the Cook Inlet beluga whale under the ESA, we published a proposed rule to list this DPS as an endangered species on April 20, 2007 (72 FR 19854). We subsequently extended the date for final determination on the proposed action by 6 months, until October 20, 2008 (73 FR 21578), as provided for by the ESA (section 4(b)(6)(B)(i)). We published a Final Rule to list the Cook Inlet beluga whale as an endangered species on October 22, 2008 (73 FR 62919). Initiating the process for designation of critical habitat, we published an Advance Notice of Proposed Rulemaking on April 14, 2009 (74 FR 17131).

We considered various alternatives to the critical habitat designation for the Cook Inlet beluga whale. The alternative of not designating critical habitat for the Cook Inlet beluga whale would impose no economic, national security, or other relevant impacts, but would not provide any conservation benefit to the species. This alternative is not .proposed because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of Cook Inlet beluga whale. The alternative of designating all eligible occupied habitat areas also was considered and rejected because some areas within the occupied range were not considered to be critical habitat, and did not contain the identified physical or biological features that are essential to the conservation of the Cook Inlet beluga.

An alternative to designating critical habitat within all eligible occupied areas is the designation of critical habitat within a subset of these areas. Under section 4(b)(2) of the ESA, we must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. We have the discretion to exclude any particular area from designation as critical habitat if the benefits of exclusion (i.e., the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (i.e., the conservation benefits to the Cook Inlet beluga whale if an area were designated), so long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the areas considered for designation would reduce the total impacts of designation. The determination to exclude any particular areas depends on our ESA 4(b)(2) analysis, which is described in detail in the ESA 4(b)(2) analysis report. Under this proposed rule (the preferred alternative), we do not propose to exclude any areas. The total estimated economic impact associated with this proposed rule is $157,000 to $472,000 (discounted at 7 percent) or $187,000 to $571,000 (discounted at 3 percent). We propose this alternative because it results in a critical habitat designation that provides for the conservation of the Cook Inlet beluga whale, without economic effects of sufficient significance to warrant any exclusions from that designation. Other areas within their range did not contain the identified physical or biological features that are essential to the conservation of the Cook Inlet beluga. This alternative also meets the requirements under the ESA and our joint NMFS-USFWS regulations concerning critical habitat.

Critical Habitat

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section also grants the Secretary of Commerce (Secretary) discretion to exclude any area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary's discretion is limited, as he may not exclude areas that ''will result in the extinction of the species.''

The ESA defines critical habitat under section 3(5)(A) as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . ., on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is additional to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

Issues for Consideration and Evaluation

Section 4(a)(3) of the ESA requires us to designate critical habitat for threatened and endangered species. We are currently proposing to designate critical habitat for the Cook Inlet beluga whale. We have considered a number of issues in developing this proposed rule:

- What areas are occupied by the species at the time of listing?
- What physical and biological features are essential to the species' conservation?
- Are those essential features ones that may require special management considerations or protection?

• Are there any areas outside those currently occupied that are ''essential for conservation?''

• What economic, national security, and other relevant impacts would result from a critical habitat designation?

• What is the appropriate geographic scale for weighing the benefits of exclusion and benefits of designation?

• Will the exclusion of any particular area from the critical habitat designation result in the extinction of the species?

Answering these questions involves a variety of considerations that we outline below.

Cook Inlet Beluga Whale Biology and Habitat Use

The beluga whale is a small, toothed whale in the family Monodontidae, a family it shares with only the narwhal. Belugas are also known as ''white whales'' because of the white coloration of the adults. The beluga whale is a northern hemisphere species that inhabits fjords, estuaries, and shallow water of Arctic and subarctic oceans. Five distinct stocks of beluga whales are currently recognized in Alaska: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet. The Cook Inlet population is numerically the smallest of these, and is the only one of the five Alaskan stocks occurring south of the Alaska Peninsula in waters of the Gulf of Alaska.

A detailed description of the biology of the Cook Inlet beluga whale may be found in the Proposed Listing Rule (72 FR 19854; April 20, 2007). Belugas generally occur in shallow, coastal waters, and while some populations make long seasonal migrations, Cook Inlet belugas reside in Cook Inlet year round. Data from satellite tagged whales documented that Cook Inlet belugas concentrate in the upper Inlet at rivers and bays in the summer and fall, and then tend to disperse into deeper waters moving to mid Inlet locations in the winter. The Traditional Ecological Knowledge (TEK) of Alaska Natives and systematic aerial survey data document a contraction of the summer range of Cook Inlet belugas over the last 2 decades of the twentieth century. While belugas were once abundant and frequently sighted in the lower Inlet during summer, they are now primarily concentrated in the upper Inlet. This constriction is likely a function of a reduced population seeking the highest quality habitat that offers the most abundant prey, most favorable feeding topography, the best calving areas, and the best protection from predation. An expanding population would likely use the lower Inlet more extensively.

While mating is assumed to occur sometime between late winter and early spring, there is little information available on the mating behavior of belugas. Most calving in Cook Inlet is assumed to occur from mid-May to mid-July (Calkins, 1983), although Native hunters have observed calving from April through August (Huntington, 2000). Newborn calves have been observed in mid-to-late July. Alaska Natives described calving areas as the northern side of Kachemak Bay in April and May, off the mouths of the Beluga and Susitna rivers in May, and in Chickaloon Bay and Turnagain Arm during the summer (Huntington, 2000). The warmer waters from these freshwater sources may be important to newborn calves during their first few days of life (Katona *et al.*, 1983; Calkins, 1989). Surveys conducted from 2005 to 2007 in the upper Inlet by LGL, Inc., documented neither localized calving areas nor a definitive calving season, since calves were encountered in all surveyed locations and months (April-October) (McGuire *et al.*, 2008). The warmer, fresher coastal waters may also be important areas for belugas' seasonal summer molt.

Cook Inlet belugas are opportunistic feeders and feed on a wide variety of prey species, focusing on specific species when they are seasonally abundant. Pacific eulachon are an important early spring food resource for beluga whales in Cook Inlet, as evidenced by the stomach contents of a beluga hunted near the Susitna River in April 1998 that was filled exclusively with eulachon (NMFS unpubl. data). These fish first enter the upper Inlet in April, with two major spawning migrations occurring in the Susitna River in May and July. The early run is estimated at several hundred thousand fish and the later run at several million (Calkins, 1989).

In the summer, as eulachon runs begin to diminish, belugas rely heavily on several species of salmon as a primary prey resource. Beluga whale hunters in Cook Inlet reported one whale having 19 adult king salmon in its stomach (Huntington, 2000). NMFS (unpubl. data) reported a 14 foot 3 inch (4.3 m) male with 12 coho salmon, totaling 61.5 lbs (27.9 kg), in its stomach.

The seasonal availability of energy-rich prey such as eulachon, which may contain as much as 21 percent oil (Payne *et al.*, 1999), and salmon are very important to the energetics of belugas (Abookire and Piatt, 2005; Litzow *et al.*, 2006). Native hunters in Cook Inlet have stated that beluga whale blubber is thicker after the whales have fed on eulachon than in the early spring prior to eulachon runs. In spring, the whales were described as thin with blubber only 2–3 inches (5–8 cm) thick compared to the fall when the blubber may be up to 1 ft (30 cm) thick (Huntington, 2000). Eating such fatty prey and building up fat reserves throughout spring and summer may allow beluga whales to sustain themselves during periods of reduced prey availability (e.g., winter) or other adverse impacts by using the energy stored in their blubber to meet metabolic needs. Mature females have additional energy requirements. The known presence of pregnant females in late March, April, and June (Mahoney and Shelden, 2000; Vos and Shelden, 2005) suggests breeding may be occurring in late spring into early summer. Calves depend on their mother's milk as their sole source of nutrition, and lactation lasts up to 23 months (Braham, 1984), though young whales begin to consume prey as early as 12 months of age (Burns and Seaman, 1986). Therefore, the summer feeding period is critical to pregnant and lactating belugas. Summertime prey availability is difficult to quantify. Known salmon escapement numbers and commercial harvests have fluctuated widely throughout the last 40 years; however, samples of harvested and stranded beluga whales have shown consistent summer blubber thicknesses.

In the fall, as anadromous fish runs begin to decline, belugas again return to consume the fish species found in nearshore bays and estuaries. This includes cod species as well as other bottom-dwellers such as Pacific staghorn sculpin and flatfishes, such as starry flounder and yellowfin sole. This change in diet in the fall is consistent with other beluga populations known to feed on a wide variety of food. Pacific staghorn sculpin are commonly found nearshore in bays and estuaries on sandy substrate (Eschmeyer *et al.*, 1983). Flatfish are typically found in very shallow water and estuaries during the warm summer months and move into deeper water in the winter as coastal water temperatures cool (though some may occur in deep water year-round) (Morrow, 1980).

The available information indicates that Cook Inlet belugas continue to move within the Inlet during the winter months. They concentrate in deeper waters in mid Inlet past Kalgin Island, with occasional forays into the upper Inlet, including the upper ends of Knik and Turnagain Arms. While the beluga whales move into the mid Inlet during the winter, ice cover does not appear to limit their movements. Their winter

distribution does not appear to be associated with river mouths, as it is during the warmer months. The spatial dispersal and diversity of winter prey likely influence the wider beluga winter range throughout the mid and lower Inlet.

There is obvious and repeated use of certain habitats by Cook Inlet beluga whales. Intensive aerial abundance surveys conducted in June and July since 1993 have consistently documented high use of Knik Arm, Turnagain Arm, Chickaloon Bay and the Susitna River delta areas of the upper Inlet. Ninety-six to one hundred percent of all belugas sighted during these surveys were in the upper Inlet near Anchorage (Rugh *et al.*, in review). The high use of these areas by belugas is further supported by data from satellite tagging studies.

The range of Cook Inlet belugas has been previously defined as the waters of the Gulf of Alaska north of 58.0° N. and freshwater tributaries to these waters based on then-available scientific data (65 FR 34590, May 31, 2000; MMPA Sec. 216.15(g); 76 FR 62919, Oct. 22, 2008). There are few beluga sightings in the Gulf of Alaska outside Cook Inlet. In the 1970s and 1980s, beluga sightings occurred across much of the northern and central parts of Cook Inlet, but in the 1990s the summer distribution narrowed to primarily the northernmost portions of Cook Inlet. More of the Inlet was used by beluga whales during the spring, summer, and fall during the 1970s and 1980s than is presently used. However, because sightings continue to occur over the entire described range, we consider the present range of this DPS to be occupied habitat. The present range of the listed Cook Inlet beluga is limited to Cook Inlet waters north of a line from Cape Douglas to Cape Elizabeth (Figure 1).

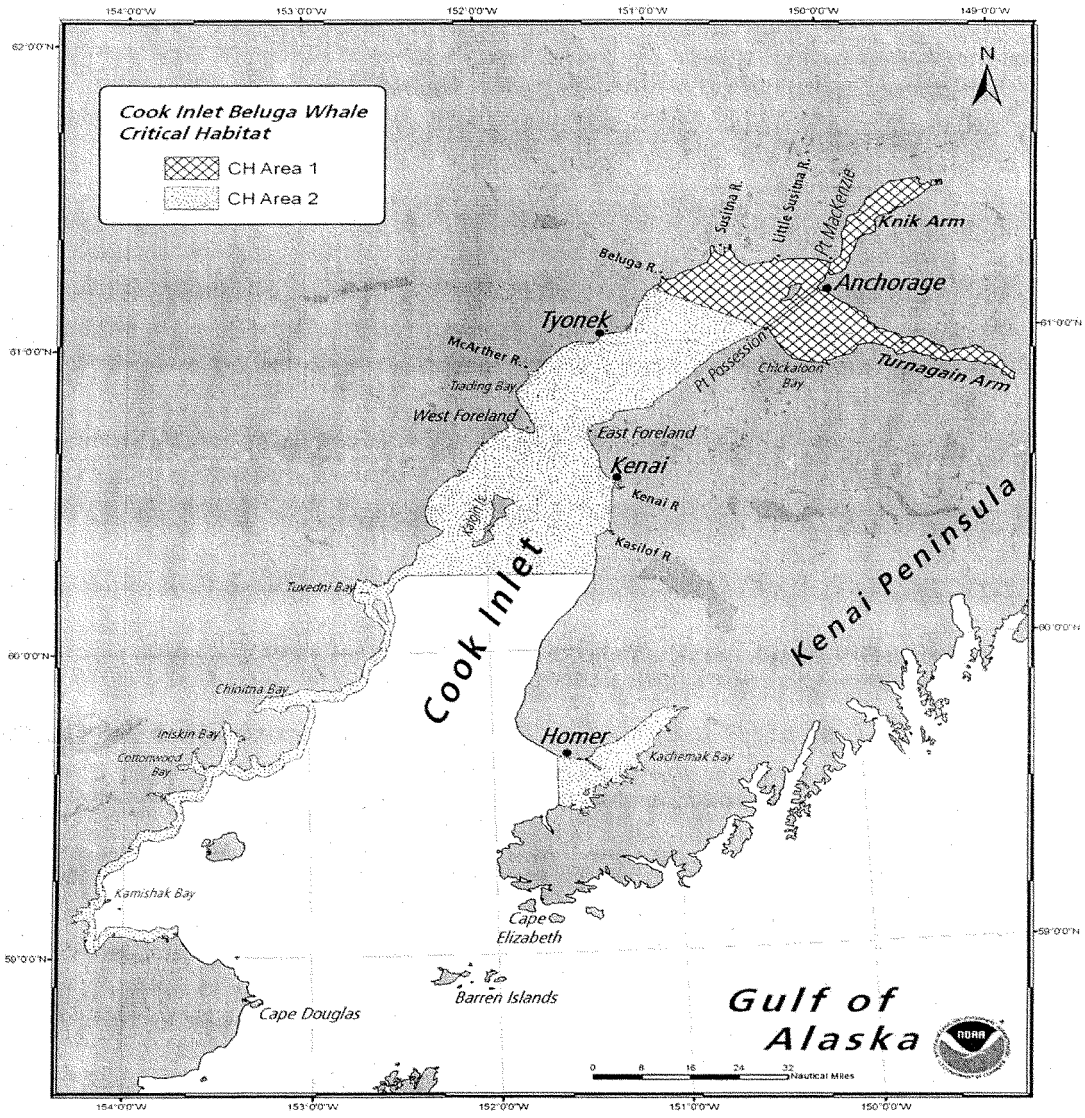
Proposed Critical Habitat

After considering comments received in response to the Advance Notice of Proposed Rulemaking (74 FR 17131; April 14, 2009), sighting reports, satellite telemetry data, TEK, scientific papers and other research, the biology and ecology of the Cook Inlet DPS of beluga whales, and information indicating the presence of one or more of the identified PCEs within certain areas of their range, we have identified the ''specific areas'' within the geographical area occupied by the Cook Inlet beluga whale to be proposed as critical habitat. We propose to designate critical habitat within the following areas (Figure 1).

Area 1: Area 1 encompasses 1,918 square kilometers (741 sq. mi.) of Cook Inlet northeast of a line from the mouth of Threemile Creek (61° 08.5′ N., 151° 04.4′ W.) to Point Possession (61° 02.1′ N., 150° 24.3′ W.). This area is bounded by the Municipality of Anchorage, the Matanuska-Susitna Borough, and the Kenai Peninsula borough. The area contains shallow tidal flats, river mouths or estuarine areas, and is important as foraging and calving habitats. Mudflats and shallow areas adjacent to medium and high flow accumulation streams may also provide for other biological needs, such as molting or escape from predators (Shelden *et al.*, 2003). Area 1 also has the highest concentrations of belugas from spring through fall as well as the greatest potential for adverse impact from anthropogenic threats.

Many rivers in Area 1 habitat have large eulachon and salmon runs. Two such rivers in Turnagain Arm, Twenty-mile River and Placer River, are visited by belugas in early spring, indicating the importance of eulachon runs for beluga feeding. Beluga use of upper Turnagain Arm decreases in the summer and then increases again in August through the fall, coinciding with the coho salmon run. Early spring (March to May) and fall (August to October) use of Knik Arm is confirmed by studies by Funk *et al.* (2005). Intensive summer feeding by belugas occurs in the Susitna delta area, Knik Arm and Turnagain Arm.

Figure 1. Proposed critical habitat for Cook Inlet beluga whales.



Whales regularly move into and out of Knik Arm and the Susitna delta (Hobbs *et al.*, 2000; Rugh *et al.*, 2004). The combination of satellite telemetry data and long-term aerial survey data demonstrate beluga whales use Knik Arm 12 months of the year, often entering and leaving the Arm on a daily basis (Hobbs *et al.*, 2005; Rugh *et al.*, 2005, 2007). These surveys demonstrate intensive use of the Susitna delta area (from the Little Susitna River to Beluga River) and Chickaloon Bay (Turnagain Arm) with frequent large scale movements between the delta area, Knik Arm and Turnagain Arm. During annual aerial surveys conducted by NMML in June-July, up to 61 percent of the whales sighted in Cook Inlet were in Knik Arm (Rugh *et al.*, 2000, 2005). The Chickaloon Bay area also appears to be used by belugas throughout the year.

Belugas are particularly vulnerable to impacts in Area 1 due to their high seasonal densities and the biological importance of the area. Because of their intensive use of this area (e.g., foraging, nursery, predator avoidance), activities that restrict or deter use of or access to Area 1 habitat could reduce beluga calving success, impair their ability to secure prey, and increase their susceptibility to predation by killer whales. Activities that reduce anadromous fish runs could also negatively impact beluga foraging success, reducing their fitness, survival, and recovery. Furthermore, the tendency for belugas to occur in high concentrations in Area 1 habitat predisposes them to harm from such events as oil spills.

Area 2: Area 2 consists of 5,891 square kilometers (2,275 square miles) of less concentrated spring and summer beluga use, but known fall and winter use areas. It is located south of Area 1, north of a line at 60° 25.0' N., and includes nearshore areas south of 60° 25.0' N. along the west side of the Inlet and Kachemak Bay on the east side of the lower inlet.

Area 2 is largely based on dispersed fall and winter feeding and transit areas in waters where whales typically occur in smaller densities or deeper waters. It includes both near and offshore areas of the mid and upper Inlet, and nearshore areas of the lower Inlet. Due to the role of this area as probable fall feeding areas, Area 2 includes Tuxedni,

Chinitna, and Kamishak Bays on the west coast and a portion of Kachemak Bay on the east coast. Winter aerial surveys (Hansen, 1999) sighted belugas from the forelands south, with many observations around Kalgin Island. Based on tracking data, Hobbs *et al.* (2005) document important winter habitat concentration areas reaching south of Kalgin Island.

Belugas have been regularly sighted at the Homer Spit and the head of Kachemak Bay, appearing during spring and fall of some years in groups of 10–20 individuals (Speckman and Piatt, 2000). Belugas have also been common at Fox River Flats, Muddy Bay, and the northwest shore of Kachemak Bay (NMFS unpubl. data), sometimes remaining in Kachemak Bay all summer (Huntington, 2000).

Dive behavior indicates beluga whales make relatively deeper dives (e.g., to the bottom) and are at the surface less frequently in Area 2, and hence are less frequently observed (Hobbs *et al.*, 2005). It is believed these deep dives are associated with feeding during the fall and winter months (NMFS unpubl. data). The combination of deeper dives, consistent use of certain areas, and stomach content analyses indicate that belugas whales are actively feeding in these areas. Hence, deeper mid Inlet habitats may be important to the winter survival and recovery of Cook Inlet beluga whales.

Physical and Biological Features Essential for Conservation

ESA section 3(5)(A)(i) defines critical habitat to include those ''specific areas within the geographical area occupied by the species at the time it is listed . . . on which are found those physical or biological features . . . (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at section 50 CFR 424.12(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection'' (also referred to as ''Essential Features'' or ''Primary Constituent Elements''). Pursuant to the regulations, such requirements include, but are not limited to, the following: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations go on to emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features ''may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

Scientific research, direct observation, and TEK indicate fish are the primary prey species of the Cook Inlet beluga whale, and that certain species are especially important. This importance may be due to feeding strategies of the whales, physical attributes of the prey (e.g., size), the caloric value of the prey, the availability of the prey, and the life-history aspects of the whales, among other considerations. Two fish species that are highly utilized by Cook Inlet beluga whales are king or Chinook salmon and Pacific eulachon. Both of these species are characterized as having very high fat content, returning to the upper Inlet early in the spring, and having adult (spawning) returns which occupy relatively narrow timeframes during which large concentrations of fish may be present at or near the mouths of tributary streams.

Analysis of stomach contents and research of fatty acid signatures within beluga blubber indicate the importance of other species of fish and invertebrates to the diets of these whales. The most prominent of these are other Pacific salmon (sockeye, chum, and coho), Pacific cod, walleye pollock, saffron cod, and yellowfin sole. Beluga whales are also known to feed on a wide variety of vertebrate and invertebrate prey species. However, the aforementioned fish species occupy a prominent role in their foraging and energetic budgets and are considered essential to the beluga whale's conservation.

NMFS research has considered the distribution of the Cook Inlet beluga whale and its correlations with behavior, habitat function, and physical parameters (Goetz *et al.*, 2007). While these whales are highly mobile and capable of ranging over a large portion of Cook Inlet on a daily basis, in fact they commonly occupy very discrete areas of the Inlet, particularly during summer months. These areas are important feeding habitats, whose value is due to the presence of certain species of prey within the site, the numbers of prey species within the site, and the physical aspects of the site which may act to concentrate prey or otherwise facilitate feeding strategy. In upper Cook Inlet, beluga whales concentrate offshore from several important salmon streams and appear to use a feeding strategy which takes advantage of the bathymetry in the area. The channels formed by the river mouths and the shallow waters act as a funnel for salmon as they move past waiting belugas. Dense concentrations of prey may be essential to beluga whale foraging. Hazard (1988) hypothesized that beluga whales were more successful feeding in rivers where prey were concentrated than in bays where prey were dispersed. Fried *et al.* (1979) noted that beluga whales in Bristol Bay fed at the mouth of the Snake River, where salmon runs are smaller than in other rivers in Bristol Bay. However, the mouth of the Snake River is shallower, and hence may concentrate prey. Research on beluga whales in Bristol Bay suggests these whales preferred certain streams for feeding based on the configuration of the stream channel (Frost *et al.*, 1983). This study theorized beluga whales' feeding efficiencies improve in relatively shallow channels where fish are confined or concentrated. Bathymetry and fish density may be more important than sheer numbers of fish in beluga feeding success. Although beluga whales do not always feed at the streams with the highest runs of fish, proximity to medium to high flow river systems is also an important descriptor in assigning importance to feeding habitats. Research has found beluga distribution in Cook Inlet is significantly greater near mudflats and medium and high flow accumulation rivers. (These waters were categorized in Goetz *et al.* (2007) using a digital elevation model, similar to drainage basins. A complete list of these waters may be found on the NMFS website *http://www.fakr.noaa.gov/*.) Beluga whales are seldom observed near small flow tributaries.

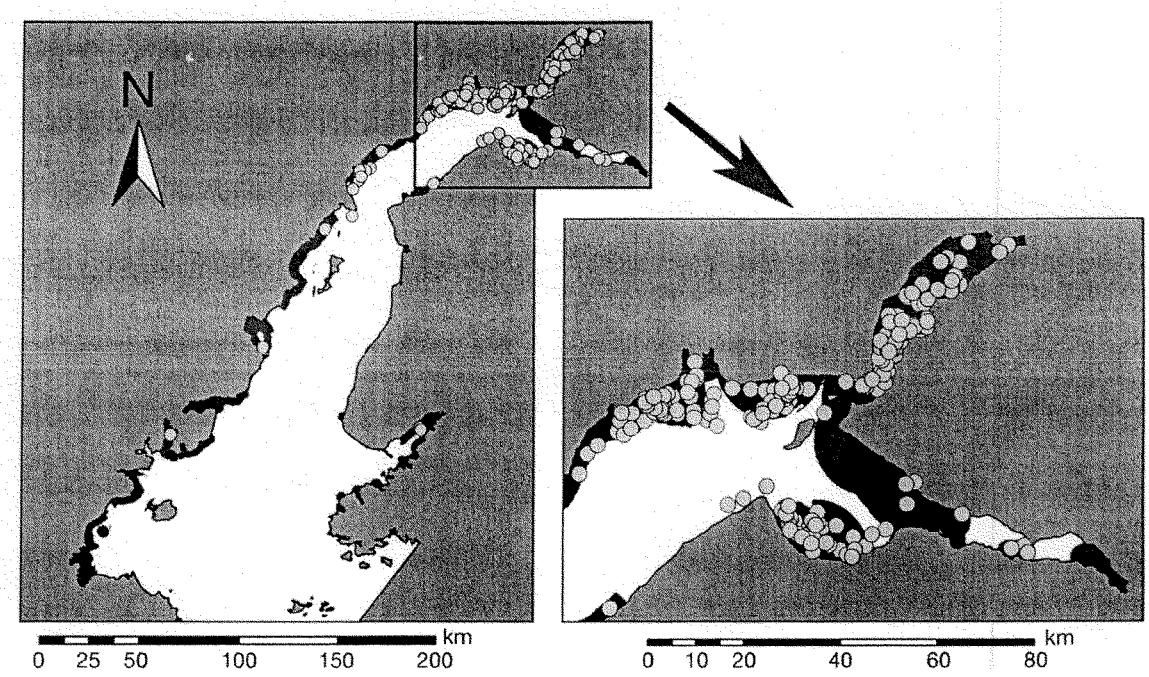
Cook Inlet beluga whales are preyed upon by killer whales, their only known natural predator. We have received reports of killer whales throughout Cook Inlet, and have responded to several instances of predation within Turnagain Arm, near Anchorage.

Given the small population size of the Cook Inlet beluga whales, predation may have a significant effect on beluga recovery. In addition to directly reducing the beluga population, the presence of killer whales in Cook Inlet may also increase stranding events. We consider killer whale predation to be a potentially significant threat to the conservation and recovery of these

whales. Beluga whales may employ several defense strategies against killer whale predation. One strategy is to retreat to shallow estuaries too shallow for the larger killer whales. These areas might also provide acoustical camouflage due to their shallow depths, silt loads, and multiple channels.

Because of their importance in the Cook Inlet beluga whale's feeding strategy, as predator escape terrain, and in providing other habitat values, we consider ''mudflats,'' identified here as shallow and nearshore waters proximate to certain tributary streams, to a be physical feature essential to the conservation of the Cook Inlet beluga whale. Figure 2 presents the location of this feature within Cook Inlet.

Figure 2. Cook Inlet beluga whale habitat use (black) as predicted by the proximity to mudflats and high and medium flow waters, with beluga sightings from summer aerial surveys (1993-2004) shown as dots (Goetz et al., 2007).



For purposes of describing and locating this feature, and after consultation with the author of the model presented in Goetz *et al.* (2007), we determined spatial extent of this feature may best be described as being within the 30–foot (9.1 m) depth contour and within 5 miles (8.0 km) of medium and high flow accumulation rivers.

It appears Cook Inlet beluga whales have lower levels of contaminants stored in their bodies than other populations of belugas. Because these whales occupy the most populated and developed region of the state, they must compete with various anthropogenic stressors, including pollution. These whales often occur in dense aggregations within small nearshore areas, where they are predisposed to adverse effects of pollution. Beluga whales are apex predators, occupying the upper levels of the food chain. This predisposes them to illness and injury by biomagnification of certain pollutants. Another population of beluga whales found in the Gulf of St. Lawrence in Canada is characterized by very high body burdens of contaminants. There, high levels of PCBs, DDT, Mirex, mercury, lead, and indicators of hydrocarbon exposure have been detected in belugas. These substances are well-known for their toxic effects on animal life and for interfering with reproduction and resistance to disease. Many of these contaminants are transferred from mother to calf through nursing.

Given present abundance levels, the impact of any additional mortalities to

the extinction risk for this DPS, the sensitivity of beluga whales to certain pollutants, their trophic position and biomagnifications, the fact that large numbers of Cook Inlet beluga whales typically occupy very small habitats, and that their range includes the most populated and industrialized area of the state, we consider water quality to be an important aspect of their ecology, and essential to their conservation within both areas 1 and 2.

Cook Inlet beluga whales do not occupy an extensive range, and are not known to undertake migrations. Within their occupied range, however, these whales move freely and continuously. The range of the Cook Inlet beluga whale is neither biologically nor physically uniform. It ranges between shallow mudflats, glacial fjords, deep waters with marine salinities, vegetated shallows of predominantly freshwaters, and areas of the upper Inlet in which heavy ice scour, extreme tidal fluctuations, high silt content, low temperatures, and high turbidity work to limit any intertidal or persistent nearshore organisms. Beluga whales have adapted here by utilizing certain areas over time and space to meet their ecological needs. While much remains to be understood of their ecology and basic life history, it is apparent a large part of their movement and distribution is associated with feeding. Feeding habitat occurs near the mouths of anadromous fish streams, coinciding with the spawning runs of returning adult salmon. These habitats may change quickly as each species of salmon, and often each particular river, is characterized as having its individual run timing. Calving habitat is poorly described, but may depend on such factors as temperatures, depths, and salinities. Predator avoidance may be a very important habitat attribute, and is likely to exist only in shallows within Turnagain and Knik Arms of the upper Inlet. Causeways, dams, and non-physical effects (e.g., noise) can interfere with whale movements. It is essential to the conservation of Cook Inlet beluga whales that they have unrestricted access within and between the critical habitat areas.

Beluga whales are known to be among the most adept users of sound of all marine mammals, using sound rather than sight for many important functions, especially in the highly turbid waters of upper Cook Inlet. Beluga whales use sound to communicate, locate prey, and navigate, and may make different sounds in response to different stimuli. Beluga whales produce high frequency sounds which they use as a type of sonar for finding and pursuing prey, and likely for navigating through ice-laden waters. In Cook Inlet, beluga whales must compete acoustically with natural and anthropogenic sounds. Man-made sources of noise in Cook Inlet include large and small vessels, aircraft, oil and gas drilling, marine seismic surveys, pile driving, and dredging. The effects of man-made noise on beluga whales and associated increased ''background'' noises may be analogous to a human's reduced visual acuity when confronted with heavy fog or darkness.

Anthropogenic noise above ambient levels may cause behavioral reactions in whales (harassment) or mask communication between these animals. The effects of harassment may also include abandonment of habitat. At louder levels, noise may result in temporary or permanent damage to the whales' hearing. Empirical data exist on the reaction of beluga whales to in-water noise (harassment and injury thresholds) but are lacking regarding levels that might elicit more subtle reactions such as avoiding certain areas. Noise capable of killing or injuring beluga whales, or that might cause the abandonment of important habitats, would be expected to have consequences to this DPS in terms of survival and recovery. We consider ''quiet'' areas in which noise levels do not interfere with important life history functions and behavior of these whales to be an essential feature of this critical habitat. This feature is found in both areas 1 and 2.

Based on the best scientific data available of the ecology and natural history of Cook Inlet beluga whales and their conservation needs, we have determined the following physical or biological features are essential to the conservation of this species:

1. Intertidal and subtidal waters of Cook Inlet with depths <30 feet (9.1 m) (MLLW) and within 5 miles (8.0 km) of high and medium flow accumulation anadromous fish streams;

2. Primary prey species consisting of four (4) species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole;

3. The absence of toxins or other agents of a type or amount harmful to beluga whales;

4. Unrestricted passage within or between the critical habitat areas; and

5. Absence of in-water noise at levels resulting in the abandonment of habitat by Cook Inlet beluga whales.

All of these features are found or identified within the areas proposed as critical habitat.

Critical Habitat Boundaries

NMFS' ESA regulations relevant to describing a geographical area and ''specific areas'' state that ''each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12). These regulations require that we also identify the state(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. However, the regulations note that such political units typically would not constitute the boundaries of critical habitat. In addition, the regulations state that ephemeral reference points (e.g., trees, sand bars) shall not be used in defining critical habitat.

We have limited information on the distribution and occurrence of Cook Inlet beluga whales within tributary waters of Cook Inlet. Traditional Knowledge of Alaska Native hunters tells us these whales have occurred several miles up the Susitna and Beluga Rivers in past years, and whales have been observed above tidewater in the Knik River at Turnagain Arm. We propose critical habitat be bounded on the upland by Mean Higher High Water (MHHW) datum, the lower reaches of certain important tributary waters entering the Inlet, and the following descriptions:

(1) Area 1. All marine waters of Cook Inlet north of a line connecting Point Possession (61.04° N., 150.37°. W) and the mouth of Threemile Creek (61.0855° N., 151.0440° W.), including waters of the Susitna River south of 61.33.33 N latitude, the Little Susitna River south of 61.30° N. latitude, and the Chikaloon River north of 60.8833° N. latitude.

(2) Area 2. All marine waters of Cook Inlet south of a line connecting Point Possession (61.04° N., 150.37° W.) and the mouth of Threemile Creek (61.0855° N., 151.0440° W.) and north of 60.25° N latitude, including waters within 2 nautical miles (3.2 km) of MHHW along the western shoreline of Cook Inlet between 60.25° N. latitude and the mouth of the Douglas River (59.04° N., 153.45° W.); all waters of Kachemak Bay east of 40.00 W longitude; and waters of the Kenai River below the Warren Ames bridge at Kenai, Alaska.

Special Management Considerations or Protection

An occupied area may be designated as critical habitat only if it contains physical and biological features that ''may require special management considerations or protection.'' It is important to note the term ''may require special management considerations or

protection'' refers to the physical or biological features, rather than the area proposed as critical habitat. Neither the ESA nor NMFS regulations define the ''may require'' standard. We interpret it to mean that a feature may presently or in the future require special management considerations or protection. 50 CFR 424.02(j) defines ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' We considered whether the PCEs identified for Cook Inlet beluga whales may require special management considerations or protection. In our initial determination, we considered whether there is:

(a) Presently a negative impact on the feature(s);

(b) A possible negative impact on the feature in the future;

(c) Presently a need to manage the feature(s); or

(d) A possible need to manage the feature(s) in the future.

Intertidal and subtidal waters of Cook Inlet with depths <30 feet (MLLW) and within 5 miles (8.0 km) of high and medium flow anadromous fish streams support important beluga feeding habitat because of their shallow depths and bottom structure, which act to concentrate prey and aid in feeding efficiency by belugas. The physical attributes of this PCE could be modified or lost through filling, dredging, channel re-alignment, dikes, and other structures. Within navigable waters, the Army Corps of Engineers has jurisdiction over these actions and structures and administers a permit program under the Rivers and Harbors Act and Clean Water Act. In establishing these laws, it was the intent of the U.S. Congress to regulate and manage these activities. The Clean Water Act (CWA) was created to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Section 404 of the CWA regulates the discharge of fill materials into these waters, noting concerns with regard to water supplies, shellfish beds, fishery areas, and spawning and breeding areas. The intent of Congress to protect these features indicates that they may require special management considerations or protection.

Four (4) species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole constitute the most important food sources for Cook Inlet beluga whales as identified through research and as held by the traditional wisdom and knowledge of Alaska Natives who have participated in the subsistence hunting of these whales. Stomach analysis of Cook Inlet beluga whales has found these species constitute the majority of consumed prey by weight during summer/ice free periods. All of these species are targeted by commercial fisheries, and some are prized by sport fishermen. The recognition of harm due to overexploitation and the need for continued management underlie the efforts of the state and Federal government to conserve these species. The fisheries in state waters of Cook Inlet are managed under various management plans. In addition to commercial fisheries, State plans manage subsistence, sport, guided sport, and personal use fisheries. Federal fisheries management plans provide for sustainable fishing in Federal waters of lower Cook Inlet. These regulatory efforts indicate that these four fish species may require special management considerations or protection.

Cook Inlet is the most populated and industrialized region of the state. Its waters receive various pollutant loads through activities that include urban runoff, oil and gas activities (discharges of drilling muds and cuttings, production waters, treated sewage effluent discharge, deck drainage), municipal sewage treatment effluents, oil and other chemical spills, fish processing, and other regulated discharges. The U.S. Environmental Protection Agency (EPA) regulates many of these pollutants, and may authorize certain discharges under their National Pollution Discharge Elimination System (section 402 of the CWA). Management of pollutants and toxins is necessary to protect and maintain the biological, ecological, and aesthetic integrity of Cook Inlet's waters. Accordingly, ensuring the absence of toxins or other agents of a type or amount harmful to beluga whales may require special management considerations or protection.

Certain actions may have the effect of reducing or preventing beluga whales from freely accessing the habitat area necessary for their survival. Dams and causeways may create physical barriers, while noise and other disturbance or harassment might cause a behavior barrier, whereby the whales reach these areas with difficulty or, in a worst case, abandon the affected habitat areas altogether due to such stressors. Most in-water structures would be managed under several on-going Federal regulatory programs (e.g., CWA). Regulation for behavior barriers is less clear. Any significant behavioral reaction with the potential to injure whales may be prohibited under the provisions of the ESA and MMPA. However, it is unclear whether these two acts could manage this proposed feature in the absence of designation of critical habitat and recognition of this PCE. The unrestricted passage within or between critical habitat areas may require special management considerations or protection.

We have discussed the importance of sound to beluga whales, and concern for man-made noise in their environment. There exists a large body of information on the effects of noise on beluga whales. Research on captive animals has found noise levels that result in temporary threshold shifts in beluga hearing. Based on this research and empirical data from belugas in the wild, we have established in-water noise levels that define when these animals are harassed or injured. We consider the threshold for acoustic harassment to be 160 dB re: 1 μPa for impulsive sounds (e.g., pile driving) and 120 dB re: 1 μPa for continuous noise.

No specific mechanisms presently exist to regulate in-water noise, other than secondarily through an associated authorization. Even then, there is some question whether the authorizing state, local, or Federal agency has the authority to regulate noise. Because of the importance of the ability to use sound to Cook Inlet beluga whales, the absence of in-water noise at levels harmful to the whales is an essential feature that may require special management considerations or protection.

While these PCEs are currently subject to the aforementioned regulatory management, there remain additional and unmet management needs owing to the fact that none of these management regimes is directed at the conservation and recovery needs of Cook Inlet beluga whales. This reinforces the finding that each of the identified PCEs ''may require special management considerations.''

Areas Outside the Geographical Area Occupied by the Species

Section 3(5)(A)(ii) of the ESA defines critical habitat to include specific areas outside the geographical area occupied by the species only if the Secretary determines them to be essential for the conservation of the species. Section 3(3) of the ESA defines conservation as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' NMFS' ESA regulations at 424.12(e) state that the

agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' We are not proposing to designate any areas not occupied at the time of listing because any such areas are presently unknown (if they exist), and the value of any such habitat in conserving this species cannot be determined.

Activities That May be Affected by This Action

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate, in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat, or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, require consultation under section 7 of the ESA. Such activities include: coastal development; pollutant discharge; navigational projects (dredging); bridge construction; marine tidal generation projects; marine geophysical research; oil and gas exploration, development, and production; Department of Defense activities; and hydroelectric development. We do not propose to include in critical habitat any manmade structures and the land on which they rest within the described boundaries that were in existence at the time of designation. While these areas would not be directly affected by designation, they may be affected if a Federal action associated with the area/structure (e.g., a discharge permit from the EPA) might have indirect impacts to critical habitat.

Consistent with recent agency guidance on conducting adverse modification analyses, we will apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed action might result in the destruction or adverse modification of critical habitat. These activities are discussed further in the following sections.

Impacts of Designation

ESA Section 4(b)(2) provides that ''the Secretary shall designate critical habitat . . . on the basis of the best scientific data available and after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat.'' The primary impact of a critical habitat designation comes from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the additional requirement that Federal agencies must ensure their actions are not likely to jeopardize the species' continued existence. The true impact of designation is the extent to which Federal agencies modify their actions to ensure their actions are not likely to adversely modify the critical habitat–beyond any modifications they would make because of the listing and requirement to avoid jeopardizing the continued existence of the listed species. Additional impacts of designation include state and local protections that may be triggered as a direct result of designation, and benefits that may arise from education of the public to the importance of an area for species conservation. We did not identify state or local protections that may be triggered by this proposed designation, but have identified educational benefits. We discuss educational benefits in the ''Benefits of Designation'' section below.

We have sought to predict the incremental change in Federal agency activities as a result of critical habitat designation and the adverse modification prohibition, beyond the changes predicted to occur as a result of the listing and the jeopardy prohibition, to the fullest extent practicable, given available information and scientific knowledge. We examined the types of activities that may be federally authorized, funded, or undertaken that have the potential to affect Cook Inlet beluga whale critical habitat. We identified several specific categories of activities and/or economic sectors that may affect Cook Inlet beluga critical habitat and, therefore, would be subject to ESA section 7's adverse modification requirements. These include: fishing (commercial, sport, personal-use, and subsistence), marine transportation (vessel traffic, port development, transshipment of goods, ferry and cruise ship activity), energy (oil and natural gas, coal, geothermal, wind, and tidal generation), tourism/recreation, cultural and social (Alaska Native access), large-scale infrastructure (Knik Arm crossing, highway and bridge retrofitting projects along Turnagain Arm), public education/science (environmental education, public policy development, and decision-making), national defense (Fort Richardson and Elmendorf AFB), and water quality management (waste water discharges, municipal treatment facilities, oil and other toxin spills).

We next considered the range of modifications we might recommend during consultation on these activities to avoid the destruction or adverse modification of Cook Inlet beluga whale critical habitat. A draft economic report describes in detail the actions that may be affected, the potential range of modifications we might recommend for those actions, and the estimate of economic impacts that might result from such changes (Entrix, 2009). The report describes the likelihood of an ESA section 7 consultation resulting in changes to each type of action. This report is available on the NMFS Alaska Region Web site at *http://www.akr.noaa.gov/*. We are soliciting comments on our analysis of impacts and their potential benefits and costs.

General Analytic Approach

To evaluate potential impacts of designation, we first identified activities or actions that may affect Cook Inlet beluga whale critical habitat and, therefore, be subject to ESA section 7 consultation. We then identified and assessed the costs of the critical habitat designation to each of these, as well as any substantial benefits to recreation, subsistence uses, education, and the other sectors identified above.

When there were sufficient empirical data and supporting information, we used an incremental approach in assessing the economic and other impacts of the critical habitat designation. When there was insufficient information with which to objectively disentangle impacts between those occurring from the listing and those occurring from the critical habitat designation, we identified the impacts as co-extensive. In other words, in those situations, we identified all potential costs and benefits resulting from section 7 consultation, regardless of whether they are wholly and uniquely attributable to ''adverse modification'' or whether they result from the ''jeopardy'' prohibition of section 7. Next, based upon an extensive national survey of U.S. Fish and Wildlife Service (USFWS) section 7 consultations, we apportioned the co-extensive impacts in such a way as to isolate only those costs attributable to critical habitat designation. (In 2002, Industrial Economics, Inc. (IEc.) reviewed the consultation records from several U.S. Fish & Wildlife Service field offices across the country and analyzed the administrative costs of such consultations, based on data from the Federal Government Schedule Rates, Office of Personnel Management, 2007. IEc. developed an algorithm to allocate co-extensive costs between those that

are attributable to the listing decision and those that are attributable to the critical habitat designation. NMFS relied on that algorithm to similarly apportion co-extensive impacts here.)

We allocated the impacts to each critical habitat area. In considering potential impacts for each area, we kept in mind certain analytical limitations. First, not all activity types are equally likely to incur changes as a result of ESA section 7 consultation within each activity type. Second, estimates are based on potential changes, so there is a wide range of estimated impacts. Third, in balancing the benefits of designation against the benefits of exclusion, we gave greater weight to changes we considered ''likely'' or ''potential,'' than to changes we considered ''unlikely.''

Benefits of Designation

The primary benefit of designation is that section 7 of the ESA requires all Federal agencies to ensure their actions are not likely to destroy or adversely modify critical habitat. This is in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. Another benefit of designation is that it provides notice of areas and features important to species conservation, and information about the types of activities that may reduce the conservation value of the habitat, which can be effective for education and outreach.

In addition to the direct benefits of critical habitat designation to the Cook Inlet beluga whales, there will be ancillary benefits. These other benefits may be economic in nature, or they may be expressed through beneficial changes in the ecological functioning of Cook Inlet. For example, an increase in the beluga whale population could induce growth of an active whale watching industry sector, with benefits flowing to a wide range of suppliers of support goods and services (e.g., lodging, restaurants, tourist services, marine services). Another example could be the resumption of traditional subsistence harvests of beluga whales in Cook Inlet, to the extent that designation of critical habitat may result in the recovery of this population to levels that would sustain a harvest. This consequence would have important social and cultural value. Yet another example could be reduced levels of pollution in Cook Inlet, with associated benefits accruing to a suite of ecological services, culminating in an improved quality of life for Cook Inlet residents and visitors, alike. With sufficient information, it is possible to monetize many of the benefits of critical habitat designation.

To determine the direct benefits of critical habitat designation, we would have to first quantify the ecological and biological benefits accruing to the Cook Inlet beluga whale population expected from ESA section 7 consultation (for example, the number of whales saved or the increase in their longevity, health, productivity, etc., deriving from protection of critical habitat), and then translate those benefit streams into dollars (for example, using information about society's willingness-to-pay to achieve these outcomes). For the ancillary benefits, monetizing impacts would require quantifying the effects of critical habitat protection to these other potential sources of benefits, and then translating these impacts into comparable (i.e., discounted present value) dollars, employing the appropriate rate of social time preference, and projecting the schedule at which benefits would accrue, over time.

While conceptually achievable, we are not aware of any such analysis having been completed for Cook Inlet beluga whales or their critical habitat. A research project that intends to address these specific issues for the Cook Inlet beluga whale has been initiated by researchers at NOAA's Alaska Fisheries Science Center. That research is in the very early design and development stage, with even preliminary results not anticipated for, perhaps, several years.

ESA section 4(b)(2) requires us also to consider impacts other than economic impacts. These can be equally difficult to monetize; for example, we lack information to monetize the benefits to national security from excluding certain areas from the critical habitat designation. Given the lack of information that would allow us either to quantify or monetize the benefits of designating critical habitat, we have determined the ''qualitative conservation benefits'' of designating each of the two particular areas identified as critical habitat for Cook Inlet beluga whales.

In determining the benefit of designation for each area, we considered a number of factors. We took into account the physical and biological features present in the area, the types of human activities that may threaten these features occurring in and/or adjacent to the area, and the likelihood that designation would lead to changes in those activities, either because of an ESA section 7 consultation or because of the educational effect of designation. We also considered that each area is unique and supports a distinct and critical aspect of the whales' life history. This consideration is described in the 4(b)(2) preparatory analysis supporting this proposed rule and summarized above (Proposed Critical Habitat).

Designation of critical habitat in Area 1 is likely to improve the ability of an ESA section 7 consultation to focus on Cook Inlet nearshore areas, beluga prey species, water quality, and passage conditions, as essential biological features of the whales' habitat. As the most industrialized and populated region of the State, Area 1 receives high volumes of waste discharge. Designation of this area as critical habitat is likely to improve the ability of a section 7 consultation to affect water quality management activities, though we have little information at this time to predict what those actions may be, or how such actions may be changed, as a result of section 7 consultation. We believe critical habitat designation will provide significant conservation benefits to beluga whales, particularly in Area 1, because of its educational value for all users of the upper Inlet. If we can publicly highlight that the area is ''critical habitat'' for the whales, it will strengthen the messages to all users, whether industrial, municipal, commercial, tribal, recreational, or residential of their impacts upon, and responsibility for, the upper-Inlet area. Because Area 1 contains most of what we consider high-value foraging habitat, designation is likely to increase awareness of this habitat value and the need for special attention to issues that might degrade, diminish, or otherwise adversely impact this habitat.

Area 2 contains areas known to provide foraging and overwintering areas for Cook Inlet belugas, and is generally more remote and less intensively developed than Area 1. Designation of critical habitat will heighten public awareness of the beluga's use of, and dependence upon, this habitat. It would also have many of the benefits described for Area 1.

ESA Section 4(a)(3)(B)(i) Analysis

Section 4(a)(3)(B)(i) of the ESA provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides benefit to the species for which critical habitat is proposed for designation.'' In response to the ANPR, we have received a request from the U.S. Air Force to

exempt Elmendorf Air Force Base (EAFB) from the designated critical habitat. The Air Force seeks this exemption based on the existence of an Integrated Natural Resource Management Plan (INRMP), consistent with Public Law 108–136. However, because this military property extends seaward to MHHW and we have not proposed to designate as critical habitat any tributary waters within the EAFB areas covered by the INRMP, no portions of the EAFB areas overlap with the proposed critical habitat. Section 4(a)(3)(B)(i)'s exemption is therefore unnecessary and inapplicable to those areas. In the event that the proposed critical habitat boundaries might change in the final rule, we will evaluate this request and the benefit of the Elmendorf INRMP in providing for the conservation of the Cook Inlet beluga whale.

We have also considered exclusion under ESA section 4(a)(3)(B)(i) for a military live-fire practice range on Fort Richardson, near Anchorage. The Eagle River Flats range (ERF) provides training in artillery such as mortars. While the boundaries for the ERF (i.e., the MHHW line) do not overlap with the proposed critical habitat, the firing range includes the lower reaches of Eagle River which could have been included in the designation (similar to the Susitna and Little Susitna Rivers). Research by Fort Richardson has documented beluga whale use, including feeding behavior, within this portion of Eagle River.

We have considered the INRMP for Fort Richardson and whether that plan provides benefit for the Cook Inlet beluga whale. Based on our consideration of these factors, we conclude the Fort Richardson INRMP provides benefits for the Cook Inlet beluga whale and the exclusion of the ERF is consistent with section 4(a)(3)(B)(i) of the ESA. Therefore, the proposed designation does not include any area within the ERF. However, areas outside the area covered by the INRMP, such as those areas outside of and surrounding the ERF range, are not subject to the exemption contained in section 4(a)(3)(B)(i).

ESA Section 4(b)(2) Analysis

We have described the specific areas that fall within the ESA section 3(5) definition of critical habitat and that are eligible for designation as critical habitat. Section 4(b)(2) of the ESA requires the Secretary to consider the economic impact, impact on national security, and any other relevant impact of designation. The Secretary has the discretion to exclude any particular area from designation if he determines the benefits of exclusion outweigh the benefits of designation of that particular area, based upon best scientific and commercial data. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. The authority to exclude any particular area from the critical habitat designation is discretionary.

To determine the ''benefits of excluding a particular area,'' we considered the previously-discussed Federal activities that have the potential to be changed, as a direct result of a section 7 consultation and application of the prohibition against destroying or adversely modifying critical habitat. We considered changes to those actions that could potentially be required to avoid destroying or adversely modifying critical habitat, regardless of whether the changes could also potentially be required to avoid jeopardizing the whales' continued existence. When both ''adverse modification'' and ''jeopardy'' considerations were present, we apportioned the respective shares of the impacts of consultation, as described above, in the discussion of our General Analytic Approach. We also considered economic benefits of excluding each ''particular'' area, and considered national security benefits of excluding particular areas, based on military ownership, interests, or control.

ESA section 4(b)(2) does not specify a method for the weighing process. Agencies are frequently required to balance benefits of regulations against impacts. Executive Order (E.O.) 12866 most recently established this requirement for Federal agency regulation. Executive branch guidance from the Office of Management and Budget (OMB) suggests that benefits should first be monetized (converted into dollars). Benefits that cannot be monetized should be quantified (converted into units). Where benefits can be neither monetized nor quantified, agencies are to describe the expected benefits (U.S. Office of Management and Budget, Circular A–4, September 17, 2003 (OMB, 2003)).

The draft economic report (Entrix, 2009) describes in detail, the actions that may be affected and the estimate of economic impacts that might result from critical habitat designation.

Section 4(b)(2) of the ESA requires that we balance the benefit of designation against the benefit of exclusion for each particular area. The benefit to the species of designation depends upon the conservation value of the area, the seriousness of the threats to that conservation value, and the extent to which an ESA section 7 consultation or the educational aspects of designation will address those threats. If a threat bears a closer relationship to the destruction or adverse modification prohibition of section 7, we can begin to understand and give weight to the incremental benefit of designation, beyond the protection provided by listing and the jeopardy prohibition. We have identified the anthropogenic threats that face each area, and the likelihood that the destruction or adverse modification prohibition will enhance our ability to address those threats. Based upon the best available science, and the Regulatory Impact Review (RIR)/4(b)(2) preparatory analysis/Initial Regulatory Flexibility Analysis (IRFA), we believe designation of critical habitat will enhance our ability to address many of these threats, either through an ESA section 7 consultation or through ongoing public outreach and education. Because some of these threats bear a stronger relationship to adverse modification than to jeopardy, we also believe there is an incremental benefit of designation beyond the protection afforded by the jeopardy prohibition.

The benefit of designation also depends on the conservation value of the area. The habitat areas for Cook Inlet beluga whales are unique and irreplaceable. Each of the proposed critical habitat areas supports a distinct aspect of the whales' life history, and the conservation function of each area complements the conservation function of the other. Therefore, designation of each critical habitat area benefits the conservation function of the other area. For all of the reasons discussed above, we consider the benefit of designation of each area (when taken in its entirety) to be high. The benefit of exclusion of an area depends on some of the same factors – the likelihood of an ESA section 7 consultation and the extent to which an activity is likely to change, either in response to critical habitat designation, or as a result of that consultation. As with the benefit of the designation-side of the equation, if a threat bears a closer relationship to the adverse modification prohibition of section 7, we can begin to understand and give weight to the incremental cost of designation (benefit of inclusion) beyond the cost associated with listing and the jeopardy prohibition. In balancing the potential costs of designation, we also considered the nature of the threats and the relevance of section 7's destruction or adverse modification prohibition to each threat. Because adverse modification and jeopardy bear an equally strong

relationship to many activities, we gave these costs of designation moderate weight. We recognize that we have not monetized (quantified) the costs that may be associated with the education benefit of designation.

Section 4(b)(2) requires consideration of national security interests, in addition to any economic factors. Possible impacts to national security due to designation of critical habitat include: preventing, restricting, or delaying training access to these sites; restricting or delaying training activities; and delaying response times for troop deployments and overall operations. The benefit of excluding these particular areas may include that the Department of Defense would only be required to comply with the jeopardy prohibition of ESA section 7(a)(2) and not the adverse modification prohibition. However, unless the areas excluded include areas outside and beyond the military properties, it is possible that consultation would continue to include impacts to critical habitat, because of the requirement to consider indirect, as well as direct impacts.

Two military installations may be affected by designation of critical habitat for Cook Inlet beluga whales. These are the Fort Richardson Army Base and Elmendorf Air Force Base, both located immediately adjacent to the critical habitat Area 1. Additionally, the Department of Defense has operational issues associated with the Port of Anchorage. The draft economic report presents economic costs associated with designation for the two installations.

In response to the ANPR, we received a request to delete the Port of Anchorage (POA) from the proposed critical habitat. The POA cites the designation of the Port as a Strategic Military Seaport by the Department of the Army's Military Surface and Distribution Command as justification for their request. We have requested additional information from the POA regarding this specific request for inclusion in the final 4(b)(2) analysis, but we do not propose this exclusion. Therefore, at present, no finding has been made on this request.

We did not identify other relevant impacts of designation beyond economic impacts and impacts on national security.

At present, we believe that the benefits of excluding any particular area do not outweigh the benefits of designating those areas as critical habitat, given the endangered status of the whales, the uniqueness of the habitat, the fact that threats to habitat were a primary concern leading to our endangered finding, and the fact that designation will enhance the ability of an ESA section 7 consultation to protect the critical elements of this habitat.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Such hearings provide the opportunity for interested individuals and parties to give opinions, exchange information, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in this matter. Based on the level of past interest in Federal actions concerning Cook Inlet beluga whales, we intend to conduct at least one public hearing. A notice of this and any additional hearings will appear in the **Federal Register**, local newspapers, and on our website at least 2 weeks prior to the meeting.

Classifications

Clarity of the Rule

E.O. 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) What else could we do to make this proposed rule easier to understand? You may send comments on how we could make this proposed rule easier to understand to one of the addresses identified in the **ADDRESSES** section.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule and has been reviewed by the OMB. As noted above, we have prepared several reports to support and assess the exclusion process under section 4(b)(2) of the ESA. The economic benefits and costs of the proposed critical habitat designations are described in our draft economic report (i.e. RIR/4(b)(2) preparatory analysis/IRFA).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must either certify that the action is not likely to result in significant adverse economic impacts on a substantial number of small entities; or it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). NMFS has prepared an initial regulatory flexibility analysis (IRFA) and this document is available upon request or see our web site (see **ADDRESSES**). This IRFA evaluates the potential effects of the proposed critical habitat designation on federally regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble. A summary of the analysis follows.

The small entities that may be directly regulated by this action are those that seek formal approval (e.g., a permit) from, or are otherwise authorized by, a Federal agency to undertake an action or activity that ''may affect'' critical habitat for the Cook Inlet beluga whale. Submission by a small entity of such a request for a Federal agency's approval would require that agency (i.e., the 'action agency') to consult with NMFS (i.e., the 'consulting agency').

Consultations vary from simple to highly complex, depending on the specific facts of each action or activity for which application is made. Attributable costs are directly proportionate to complexity. In the majority of instances projected to take place under the proposed critical habitat designation, these costs are expected to accrue solely to the Federal agencies that are party to the consultation. In only the most complex formal consultations, a private sector applicant might incur costs directly attributable to the designation consultation process. For example, if the formal consultation concludes that the proposed activity is likely to destroy or adversely modify critical habitat, the applicant will have to implement modifications to avoid such effects. These modifications have the potential to result in adverse economic impacts, although they need not necessarily do so.

An examination of the Federal agencies with management, enforcement, or other regulatory authority over activities or actions within, or immediately adjacent to, the proposed critical habitat area, resulted

in the following list: the Army Corps of Engineers (COE), EPA, Minerals Management Service (MMS), Maritime Administration (MARAD), U.S. Coast Guard (USCG), Department of Defense (DOD), NOAA Fisheries Service (NMFS), Federal Highway Administration (FHWA), Federal Energy Regulatory Commission (FERC), and Federal Aviation Administration (FAA). Activities or actions with a nexus to each, and which may be expected to require some level of consultation, include: COE permits for structures and work in waters of the United States; EPA permitting of discharges under the National Pollutant Discharge Elimination System; MMS oil and gas exploration and production permitting in Federal waters of Cook Inlet; MARAD permits for the Port of Anchorage expansion; USCG permits for spill response plans; DOD activities at the Army's Fort Richardson and Air Force's Elmendorf facilities; NMFS authorizations of commercial fisheries, and review of subsistence harvest allowances; FHWA funding of highway and bridge improvements along Turnagain Arm; FERC permits for turbine electrical generation projects (wind and tidal); FAA permitting of regional airport expansions and development.

A 10-year ''post-critical habitat designation'' analytical horizon was adopted, during which time NMFS may reasonably expect to consult on critical habitat-related actions with one or more of the action agencies identified above. The majority of the consultations are expected to be ''informal'' (we estimate ninety percent of all consultations would be informal). In each of these, no adverse impacts would accrue to the entity seeking a permit, authorization, etc. The more complex and costly ''formal'' consultations are projected to account for, perhaps, ten percent. Here, NMFS and the Federal action agency may develop alternatives that prevent the likelihood that critical habitat will be destroyed or adversely affected. The extent to which these ''formal'' consultations will result in more than de minimus third party costs, as well as whether such third parties constitute small entities for Regulatory Flexibility Act purposes, cannot be predicted, a priori. Often, no consultation will be necessary, as all questions can be resolved through the ''technical assistance'' process.

We lack sufficient information to estimate precisely the number of consultations that may result in a determination of destruction or adverse modification to critical habitat. However, on the basis of the underlying biological, oceanographic, and ecological science used to identify the PCEs that define critical habitat for the Cook Inlet beluga whale, as well as the foregoing assumptions, empirical data, historical information, and accumulated experience regarding human activity in Cook Inlet, we believe that various federally authorized activities have the potential to ''destroy or adversely modify'' Cook Inlet beluga whale critical habitat. While we are unable to predict in advance exactly which activities might result in the destruction of adverse modification of the proposed critical habitat, we note that such activities are restricted to those actions impacting the identified essential features, or PCEs. Importantly, however, an action that may adversely affect a PCE is not necessarily one that will result in the destruction or adverse modification of the proposed critical habitat.

Executive Order 13211

On May 18, 2001, the President issued an E.O. on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

NMFS has considered the potential impacts of this action on the supply, distribution, or use of energy and finds the designation of critical habitat will not have impacts that exceed the thresholds identified above.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.)

''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above to State governments.

(b) Due to the prohibition against the take of this species both within and outside of the designated areas, we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat

affects only Federal agency actions. Private lands do not exist within the proposed critical habitat and therefore would not be affected by this action.

Federalism

In accordance with E.O. 13132, this proposed rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of, this proposed critical habitat designation with appropriate state resource agencies in Alaska. The proposed designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the survival of Cook Inlet beluga whale are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988, the Department of Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Cook Inlet beluga whale.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

NMFS has determined that an environmental analysis as provided for under the National Environmental Policy Act of 1969 for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 - Consultation and Coordination with Indian Tribal Governments- outlines the responsibilities of the Federal Government in matters affecting tribal interests. Public Law 108–199 (2004), codified in notes to 25 U.S.C.A. § 450, requires all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under this Executive Order.

NMFS has determined the proposed designation of critical habitat for the Cook Inlet beluga whale in Cook Inlet, Alaska, would not have tribal implications, nor affect any tribal governments or Native corporations. Although the Cook Inlet beluga whale may be hunted by Alaska Natives for traditional use or subsistence purposes, none of the proposed critical habitat areas occurs on tribal lands, affects tribal trust resources, or the exercise of tribal rights.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: November 24, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 226, title 50 of the Code of Regulations, as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Add a new § 226.220 as follows:

§ 226.220 Critical habitat for the Cook Inlet beluga whale.

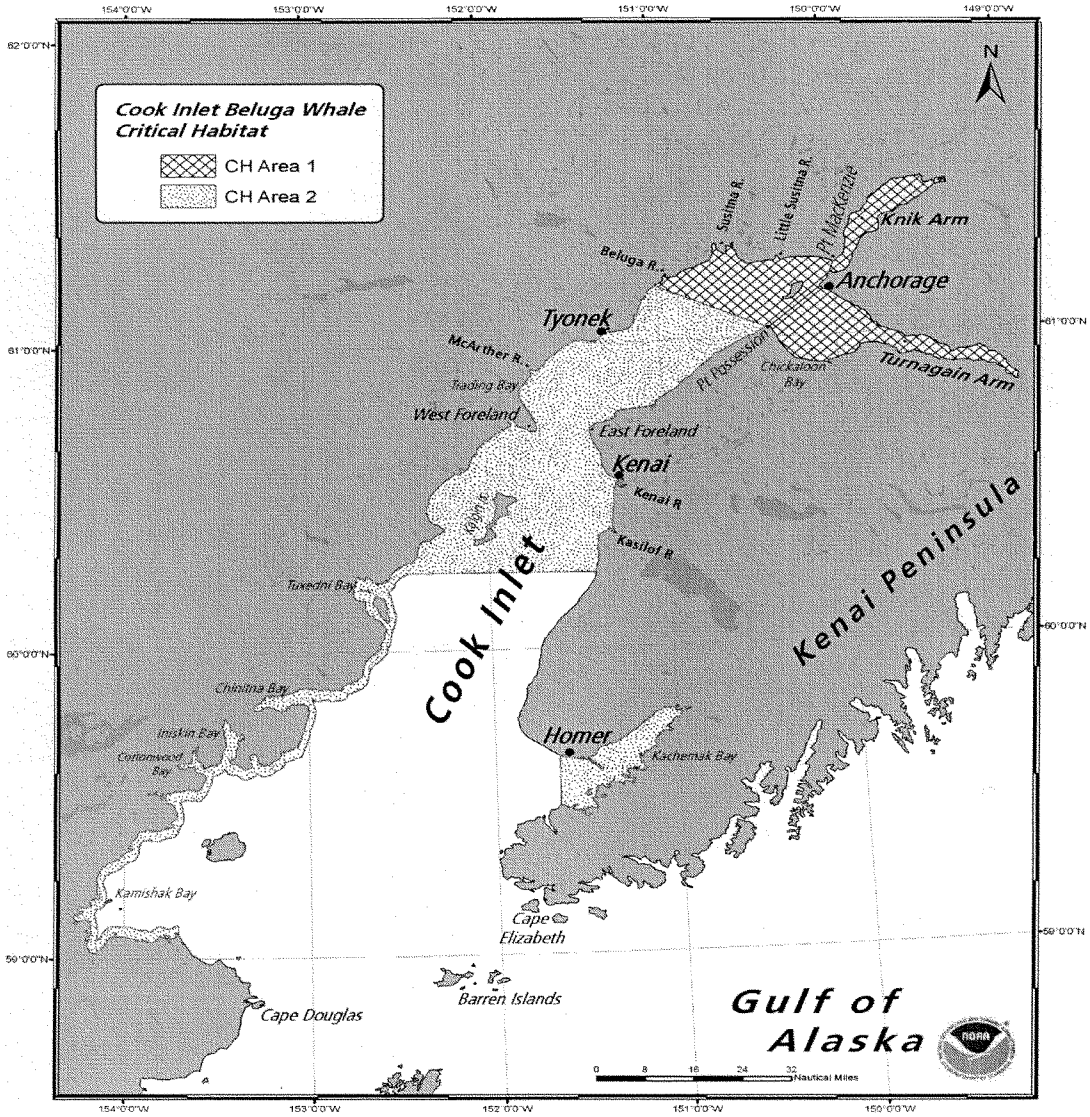
Critical habitat is designated in Cook Inlet, Alaska, for the Cook Inlet beluga whale as described in paragraphs (a) and (b) of this section. The textual description of this critical habitat is the definitive source for determining the critical habitat boundaries. General location maps are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries. Critical habitat does not include manmade structures and the land on which they rest within the designated boundaries described in (a) (1) and (a) (2) that were in existence as of [*Insert effective date of the FINAL RULE*].

(a) *Critical Habitat Boundaries.* Critical habitat includes two specific marine areas in Cook Inlet, Alaska. These areas are bounded on the upland by Mean Higher High Water (MHHW) datum, other than the lower reaches of three tributary rivers. Critical habitat shall not extend into the tidally-influenced channels of tributary waters of Cook Inlet, with the exceptions noted in the descriptions of each critical habitat area.

(1) *Area 1.* All marine waters of Cook Inlet north of a line from the mouth of Threemile Creek (61° 08.5' N., 151° 04.4' W.) connecting to Point Possession (61° 02.1' N., 150° 24.3' W.), including waters of the Susitna River south of 61° 20.0' N., the Little Susitna River south of 61° 18.0' N., and the Chikaloon River north of 60° 53.0' N.

(2) *Area 2.* All marine waters of Cook Inlet south of a line from the mouth of Threemile Creek (61° 08.5' N., 151° 04.4' W.) to Point Possession (61° 02.1' N., 150° 24.3' W.), including waters within 2 nautical miles seaward of MHHW along the western shoreline of Cook Inlet between 60° 25' N. and the mouth of the Douglas River (59° 04' N., 153° 46.0' W.); all waters of Kachemak Bay east of 151° 40.0' W.; and waters of the Kenai River below the Warren Ames bridge at Kenai, Alaska.

(b) A map of the proposed critical habitat for Cook Inlet beluga whale follows.



(c) *Primary constituent elements.* The primary constituent elements essential to the conservation of Cook Inlet beluga whales are:

(1) Intertidal and subtidal waters of Cook Inlet with depths <30 feet (MLLW) and within 5 miles of high and medium flow anadromous fish streams.

(2) Primary prey species consisting of four (4) species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole.

(3) The absence of toxins or other agents of a type or amount harmful to beluga whales.

(4) Unrestricted passage within or between the critical habitat areas.

(5) The absence of in-water noise at levels resulting in the abandonment of habitat by Cook Inlet beluga whales.

[FR Doc. E9–28760 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 0907171140–91141–01]

RIN 0648–XQ38

Atlantic Highly Migratory Species; 2010 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes 2010 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before January 4, 2010.

The public hearing dates are:

1. December 14, 2009, 3 p.m. to 5 p.m., Silver Spring, MD.

2. December 15, 2009, 3 p.m. to 5 p.m., Gloucester, MA.

ADDRESSES: You may submit comments, identified by ''0648–XQ38'', by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• Fax: 978–281–9340, Attn: Sarah McLaughlin

• Mail: Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930

Instructions: All comments received are a part of the public record and will generally be posted to the Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''n/a'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearing locations are:

1. Silver Spring - - NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

2. Gloucester - - NMFS, 55 Great Republic Drive, Gloucester, MA 01930.Supporting documents including the draft Supplemental Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis are available by sending your request to Sarah McLaughlin at the mailing address specified above.

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

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

I. Background

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

The 2010 annual specifications are necessary to implement the 2008 ICCAT quota recommendation (ICCAT Recommendation 08–04) for BFT, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. The proposed rule would establish quota specifications consistent with the ICCAT Western Atlantic BFT rebuilding program by adjusting the ICCAT-recommended U.S. quota as necessary for the 2010 fishing year (January-December 2010) and distributing the quota (adjusted for underharvest) among the domestic fishing categories.

NMFS has prepared a draft Supplemental Environmental Assessment (SEA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) for this action, which would implement minor changes to the quotas implemented in the 2009 BFT Quota Specifications and Effort Controls (74 FR 26110, June 1, 2009). These quotas were analyzed in the Environmental Analysis/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) that accompanied the June 2009 action. A copy of the draft SEA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

NMFS plans to make daily retention limit adjustments, if and as needed, for the 2010 fishing year via **Federal Register** notices separate from the final specifications. Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of General and Angling category retention limits via inseason actions, and NMFS has in the past used inseason actions for this purpose.

II. ICCAT Recommendation, Including Carryforward of Underharvest

At its 2008 meeting, ICCAT recommended the 2,100–mt western Atlantic BFT Total Allowable Catch (TAC) be reduced to 1,900 mt (including dead discards) for 2009, and to 1,800 mt (including dead discards) for 2010. These TACs are intended to achieve maximum sustainable yield, and would end overfishing as defined by the Magnuson-Stevens Act. From these TACs the following allocations were made: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 95 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and, for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED), 15 mt for Canada and 25 mt for the United States. These allocations are subtracted from the TAC (resulting in an 'adjusted TAC'), and the adjusted TAC is allocated to certain ICCAT contracting parties. The resulting U.S. share of the adjusted TAC is 57.48 percent, or 1,009.9 mt, for 2009 and 952.4 mt for 2010. Accounting for the 25–mt NED allocation, the total U.S. quota allocation was 1,034.9 mt for 2009 and is 977.4 mt for 2010 (i.e., a decrease of 57.5 mt or 5.6 percent from the 2009 total U.S. quota).

The current ICCAT recommendation also retains an earlier-enumerated provision allowing a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. For the United States, the 15–percent limit on TAC allocation transfer equals 146.6 mt. Consistent with 50 CFR 635.27(a)(8), NMFS would consider several factors in deciding whether the United States would enter into an arrangement with another contracting party with a TAC allocation. These factors include, but are not limited to, the amount of quota to be transferred; the projected ability of U.S. vessels to harvest the total U.S. BFT quota before the end of the fishing year; the potential benefits of the transfer to U.S. fishing participants; potential ecological impacts; and the contracting party's ICCAT compliance status. Should NMFS consider a transfer of U.S. quota to another qualified ICCAT contracting party, NMFS would publish a separate action in the **Federal Register**, in which NMFS would provide detail of the transaction considered, including information regarding the factors above.

Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT has recommended a tolerance limit for the annual harvest of BFT measuring less than 115 cm to no more than 10 percent by weight of the total BFT quota for each Contracting Party and Cooperating Contracting Party, Entity or Fishing Entity (CPC) over the 2009–2010 period. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches) as appropriate to not exceed the 10–percent limit over the 2–year period.

The 2008 ICCAT BFT Recommendation limits the amount of TAC allocation a CPC may carry over for 2010 to 50 percent of its initial TAC allocation (488.7 mt for the United

States). ICCAT Recommendation 08–04 also provides that, for 2010, Mexico will transfer a portion of its BFT underharvest to Canada, such that Canada's initial allocation is 480 mt, and that if such a transfer results in an initial Canadian allocation of less than 480 mt, then the United States would transfer sufficient BFT underharvest to Canada to bring Canada's initial 2010 allocation to 480 mt. At this time there is no indication that Mexico will not be able to provide the full transfer amount to Canada, and no U.S. quota transfer is currently under consideration.

Although landings estimates will not be complete until the end of the current calendar fishing year (December 31°, 2009), NMFS is planning to set quotas to be effective at the beginning of the fishing year, which reverted to a calendar year in 2008. This planning is possible because, based on commercial landings reports through October 21, 2009, and anticipated recreational landings estimates for 2009 (based on recent annual estimates), NMFS anticipates a large amount of 2009 quota underharvest, i.e., an amount that exceeds the ICCAT limitation on the carryforward of unharvested quota. Thus, for the purposes of this proposed rule and for the reasons described above, NMFS assumes that the United States will be able to carry forward the full 488.7 mt to 2010. Further information will be available later in the rulemaking, and adjustments may be made in the Final Rule.

III. Domestic Allocations and Quotas

The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP and continued in the Consolidated HMS FMP (effective since June 1, 1999), are as follows: General category 47.1 percent; Harpoon category 3.9 percent; Purse Seine category 18.6 percent; Angling category 19.7 percent; Longline category 8.1 percent; Trap category 0.1 percent; and Reserve category 2.5 percent. The proposed 2010 fishing year specifications would allocate the 2008 ICCAT-recommended quota allocation for the 2010 fishing year among these established domestic fishing categories, and would allocate 25 mt for bycatch related to directed longline fisheries in the NED.

Consistent with how NMFS implemented the 2009 BFT Quota Specifications, NMFS is proposing to establish the 2010 domestic baseline quota at the ICCAT-recommended level and to carry over the full amount of BFT underharvest allowed by ICCAT from the 2009 fishing year to the 2010 fishing year quota. The underharvest carryover would be distributed among the various categories as necessary to achieve the following goals: (1) ensure that the Longline category has sufficient quota to operate during the 2010 fishing year after the required accounting for BFT dead discards; (2) maintain 15 percent of the 2010 U.S. quota in Reserve for potential transfer to other ICCAT Contracting Parties and other domestic management objectives, if warranted; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP.

The United States must report dead discard estimates to ICCAT annually, and account for this mortality as part of the domestic specification calculation process. To be consistent with reports from the United States to the ICCAT Standing Committee on Research and Statistics for stock assessment purposes, NMFS reports dead discards as an estimate generated via extrapolation of pelagic longline vessel logbook tallies by pooled observer data, as warranted. Since dead discard estimates for 2009 are not yet available, the 2008 estimate of 172.8 mt is used as a proxy.

Per ICCAT Recommendation 08–04, which specifies a U.S. quota allocation that includes dead discards, and is consistent with the BFT quota regulations at 50 CFR § 635.27(a), NMFS proposes to subtract the 172.8 mt of estimated dead discards from the amount of quota available for the Longline category for the 2010 fishing year. NMFS proposes to apply 170.7 mt of the total underharvest to the pelagic longline fishery in anticipation of both landings (approximately 75 mt) and projected discards, and thus allow the fishery to plan for operations for the entire 2010 fishing year.

Additionally, NMFS proposes to place 146.6 mt (15 percent of the domestic baseline quota of 977.4 mt) of 2009 fishing year underharvest in the Reserve, and to distribute the remainder of the potential 2009 underharvest (171.4 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with allocations in the Consolidated HMS FMP.

IV. 2010 Quota Specifications

In accordance with the ICCAT Recommendation 08–04, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes domestic category quotas for the 2010 fishing year as follows (as shown in the table below): General category 538.9 mt; Harpoon category 44.6 mt; Purse Seine category 212.8 mt; Angling category 225.4 mt; Longline category 75 mt; and Trap category 1.1 mt. A total of 170.4 mt (146.6 mt 2009 underharvest plus the Consolidated HMS FMP quota share of 23.8 mt) would be allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers. Adjustments to these 2010 quotas and subquotas will be made, if necessary, based on year-end 2009 landings information, in the final rule.

The proposed General category quota of 538.9 mt would be divided into the time period allocations established in the Consolidated FMP. Thus, 28.6 mt (5.3 percent) would be allocated to the General Category for the period beginning January 1, 2010, and ending January 31, 2010; 269.4 mt (50 percent) for the period beginning June 1, 2010, and ending August 31, 2010; 142.8 mt (26.5 percent) for the period beginning September 1, 2010, and ending September 30, 2010; 70.1 mt (13 percent) for the period beginning October 1, 2010, and ending November 30, 2010; and 28 mt (5.2 percent) for the period beginning December 1, 2010, and ending December 31, 2010.

The Angling category quota of 225.4 mt would be further subdivided as follows: School BFT 97.7 mt, with 37.6 mt to the northern area (north of 39° 18' N. latitude), 42.1 mt to the southern area (south of 39° 18' N. latitude), plus 18.1 mt held in reserve; large school/small medium BFT 122.5 mt, with 57.8 mt to the northern area and 64.7 mt to the southern area; and large medium/giant BFT 5.2 mt, with 1.7 mt to the northern area and 3.5 mt to the southern area.

The Longline category would be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude) in the Consolidated HMS FMP. Thus, the proposed Longline category quota of 75 mt would be subdivided as follows: 30 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 45 mt to pelagic longline vessels landing BFT south of

31° N. latitude. NMFS would account for landings under the 25–mt NED allocation separately from other Longline category landings.

Table 1. Proposed Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2010 Fishing Year

(January 1-December 31, 2010)

Category (% share of baseline quota)	Baseline Allocations	Dead Discard Deduction	Proposed Adjustment to Baseline Quota[1]	Proposed 2010 Fishing Year Quota
Angling (19.7)	187.6 SUBQUOTAS: School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 85.6 North 40.4 South 45.2 Trophy 4.3 North 1.4 South 2.9		37.8	225.4 SUBQUOTAS: School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 122.5 North 57.8 South 64.7 Trophy 5.2 North 1.7 South 3.5
General (47.1)	Total: 448.6 SUBQUOTAS: Jan 23.8 Jun-Aug 224.3 Sept 118.9 Oct-Nov 58.3 Dec 23.3		90.3	538.9 SUBQUOTAS: Jan 28.6 Jun-Aug 269.4 Sept 142.8 Oct-Nov 70.1 Dec 28.0
Harpoon (3.9)	37.1		7.5	44.6
Purse Seine (18.6)	177.2		35.6	212.8
Longline (8.1)	77.1 SUBQUOTAS: North (-NED) 30.9 NED 25.0[3] South 46.2	-172.8	170.7[2]	75.0 SUBQUOTAS: North (-NED) 30.0 NED 25.0[3] South 45.0
Trap (0.1)	1.0		0.2	1.1
Reserve (2.5)	23.8		146.6[4]	170.4
Total (100)[5]	952.4	-172.8	488.7	1,268.3

(1) For the purposes of the proposed rule, NMFS assumes that the full amount of 2009 underharvest allowed to be carried forward to 2010 will be available at the end of the 2009 fishing year. The distribution of 488.7 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.

(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2010 fishing year. Longline category quota=77.1-172.8+170.7=75 mt. Dead discard deduction consistent with § 635.27(a)(10).

(3) 25 mt to account for bycatch of BFT in directed longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.

(4) Allocation of 15% of the U.S. quota (146.6 mt) to the Reserve for potential ICCAT transfer and other domestic management objectives.

(5) Totals are subject to rounding error.

V. Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS has prepared an IRFA to analyze the impacts on small entities of the alternatives considered for establishing 2010 fishing year BFT quotas for all domestic fishing categories. The IRFA assesses the impacts of the alternatives on the vessels that participate in the BFT fisheries, many of which are considered small entities. In order to do this, NMFS has estimated the average impact on individual categories and the vessels within those categories of the alternatives considered to establishing the 2010 BFT quota for all domestic fishing categories. As mentioned above, the 2008 ICCAT recommendation reduces the U.S. BFT quota allocation for 2010 to 977.4 mt. This quota allocation includes 25 mt to account for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the adjusted (baseline) quota of 952.4 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2008, the annual gross revenue for all participants in the BFT commercial fishery combined was approximately $5.0 million. Approximately 9,871 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2008 gross revenues are General ($4.0 million), Harpoon ($31°3,781), Purse Seine ($0), and Longline ($722,016). The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

NMFS lacks data on the net revenues of individual fishermen, so the economic impact of the alternatives is averaged across each category. NMFS considers this a reasonable approach for BFT fisheries. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. NMFS also cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether (and how) the economic impact of a regulation would vary between individual participants. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category. Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish), but for the purpose of estimating potential revenue loss per vessel, category-wide revenue losses can be divided by the number of permitted vessels in each category. Because HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, Charter/Headboat permitted vessels are considered along with General category vessels when estimating potential General category ex-vessel revenue changes. Resulting ex-vessel revenue losses [per vessel in each category] are estimated to be as follows: General category (including Charter/Headboat vessels): $63; Harpoon category: $1,402; Longline/Trap (incidental): $188; and Purse Seine category: $56,942. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

Public Hearings

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281–9279, at least 7 days prior to the meeting.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Management, Treaties.

Dated: November 25, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.27, paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(7)(i), and (a)(7)(ii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 952.4 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. The baseline annual U.S. BFT quota is divided among the categories as follows: General - 47.1 percent (448.6 mt); Angling - 19.7 percent (187.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (37.1 mt); Purse Seine - 18.6 percent (177.2 mt); Longline - 8.1 percent (77.1 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.0 mt). The remaining 2.5 percent (23.8 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10)

of this section. BFT quotas are specified in whole weight.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (448.6 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31° - 5.3 percent (23.8 mt);

(B) June 1 through August 31° - 50 percent (224.3 mt);

(C) September 1 through September 30 - 26.5 percent (118.9 mt);

(D) October 1 through November 30 - 13 percent (58.3 mt); and

(E) December 1 through December 31° - 5.2 percent (23.3 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (187.6 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2 consecutive-year period (starting in 2009, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (42.1 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39° 18' N. lat. The remaining school BFT Angling category quota (37.6 mt) may be caught, retained, possessed or landed north of 39° 18' N. lat.

(ii) An amount equal to 52.8 percent (45.2 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39° 18' N. lat. The remaining large school/small medium BFT Angling category quota (40.4 mt) may be caught, retained, possessed or landed north of 39° 18' N. lat.

(iii) An amount equal to 66.7 percent (2.9 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39° 18' N. lat. The remaining large medium and giant BFT Angling category quota (1.4 mt) may be caught, retained, possessed or landed north of 39° 18' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (77.1 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (46.3 mt) of the Longline category quota may be allocated for landing in the area south of 31° 00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (177.2 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register prior to July 1.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (37.1 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

* * * * *

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (23.8 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (18.1 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

[FR Doc. E9–28832 Filed 12–1–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–91412–01]

RIN 0648–XS44

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2010 and 2011 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2010 and 2011 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by January 4, 2010.

ADDRESSES: Send comment to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XS44, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Copies of the final 2008 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Bering Sea and Aleutian Islands, dated November 2008, are available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc.*

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

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2010 and 2011 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2009 meeting, and (3) considering new information presented in the final 2009 SAFE reports prepared for the 2010 and 2011 groundfish fisheries.

Other Actions Potentially Affecting the 2010 and 2011 Harvest Specifications

The Council is developing an amendment to the FMP to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures. That amendment may result in revisions to how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports, which in turn may affect the OFL, ABC, and TAC for certain groundfish species. NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFL, ABC, and TAC for certain groundfish species. These additional sources of mortality may include recreational fishing, subsistence fishing, catch of groundfish during the NMFS trawl and hook-and-line surveys, catch taken under experimental fishing permits issued by NMFS, discarded catch of groundfish in the commercial halibut fisheries, use of groundfish as bait in the crab fisheries, or other sources of mortality not yet identified.

At its October 2009 meeting the Council approved Amendment 95 to the FMP. This amendment would separate skates from the ''other species'' category so that individual OFLs, ABCs, and TACs may be established for skates. If the Secretary of Commerce approves the amendment, the change would be in effect for the 2011 fishing year.

At its April 2009 meeting the Council adopted Amendment 91 to the FMP. This amendment would establish new measures to minimize Chinook salmon bycatch in the Bering Sea pollock fisheries, including new Chinook salmon PSC limits that when reached would prohibit directed fishing for pollock. If approved, Amendment 91 could be effective by 2011.

Proposed ABC and TAC Harvest Specifications

The proposed ABC levels are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and OFLs involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers based on the level of reliable information available to fishery scientists. Tier one represents the highest level of information quality available while tier six represents the lowest level of information quality available.

Appendix A to the final 2008 SAFE report dated November 2008 (see **ADDRESSES**) sets forth the best information currently available. Information on the status of stocks, including the 2009 survey results, will be updated and considered by the Council's Groundfish Plan Team (Plan Team) in November 2009 for the 2009 SAFE report. The final 2010 and 2011 harvest specifications will be based on the 2009 SAFE report.

In October 2009, the Scientific and Statistical Committee (SSC), Advisory Panel, and the Council reviewed the Plan Team's recommended proposed 2010 and 2011 OFL and ABC amounts. The SSC concurred with the Plan Team's recommendations. The recommendations are based on rollovers of the current 2010 amounts, except for Bering Sea pollock. The Bering Sea pollock OFL and ABC amounts are based on 2009 amounts that are lower than the 2010 amounts. This recommendation uses the best

information available from the 2008 stock assessments.

The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council recommended that all the proposed 2010 and 2011 TAC amounts be set equal to the 2010 TAC amounts except for Bering Sea pollock that was set equal to the 2009 TAC amount. The Plan Team recommended and the SSC, AP, and Council approved the use of the lower amount used in 2009 as a notice to the public that the 2010 Bering Sea pollock spawning biomass is not expected to be as high as projected in 2008.

As in previous years, the Plan Team, Advisory Panel, SSC, and Council recommended that total removals of Pacific cod from the BSAI not exceed ABC recommendations. Accordingly, the Council recommended that the proposed 2010 and 2011 Pacific cod TACs be adjusted downward from the ABCs by amounts equal to 3 percent of the ABC. This adjustment is necessary to account for the guideline harvest level established for Pacific cod by the State of Alaska (State) for a State-managed fishery that occurs in State waters in the AI subarea.

Finally, the Council recommended using the 2010 PSC allowances for the proposed 2010 and 2011 PSC allowances. The Council will reconsider the OFL, ABC, TAC, and PSC amounts in December 2009 after the Plan Team incorporates new status of groundfish stocks information into a final 2009 SAFE report for the 2010 and 2011 BSAI groundfish fisheries. None of the Council's recommended proposed TACs for 2010 or 2011 exceeds the recommended 2010 or 2011 proposed ABCs for any species category. NMFS finds the Council's recommended proposed 2010 and 2011 OFL, ABC, and TAC amounts consistent with the best available information on the biological condition of the groundfish stocks.

The proposed amounts are subject to change pending the completion of the 2009 SAFE report and the Council's recommendations for final 2010 and 2011 harvest specifications during its December 2009 meeting. Table 1 lists the proposed 2010 and 2011 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2010 AND 2011 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

(Amounts are in metric tons)

Species	Area	Proposed 2010 and 2011				
		OFL	ABC	TAC	ITAC [2]	CDQ [3,4,5]
Pollock	BS	977,000	815,000	815,000	733,500	81,500
	AI	36,800	30,400	19,000	17,100	1,900
	Bogoslof	58,400	7,970	10	10	.....
Pacific cod [4]	BSAI	235,000	199,000	193,030	172,376	20,654
Sablefish [5]	BS	2,980	2,520	2,520	1,109	98
	AI	2,410	2,040	2,040	474	41
Atka mackerel	BSAI	84,400	71,100	71,100	63,492	7,608
	EAI/BS	.....	22,900	22,900	20,450	2,450
	CAI	.....	28,500	28,500	25,451	3,050
	WAI	.....	19,700	19,700	17,592	2,108
Yellowfin sole	BSAI	210,000	198,000	180,000	160,740	19,260
Rock sole	BSAI	314,000	310,000	75,000	66,975	8,025
Greenland tubot	BSAI	14,400	7,130	7,130	6,061	n/a
	BS	.....	4,920	4,920	4,182	526
	AI	.....	2,210	2,210	1,879	.....
Arrowtooth flounder	BSAI	196,000	161,000	60,000	51,000	6,420
Flathead sole	BSAI	81,800	69,800	50,000	44,650	5,350
Other flatfish [6]	BSAI	23,100	17,400	17,400	14,790	.....
Alaska plaice	BSAI	354,000	275,000	30,000	25,500	.....
Pacific ocean perch	BSAI	22,100	18,600	18,600	16,447	n/a
	BS	.....	3,780	3,780	3,213	.....
	EAI	.....	4,160	4,160	3,715	445
	CAI	.....	4,210	4,210	3,760	450
	WAI	.....	6,450	6,450	5,760	690
Northern rockfish	BSAI	8,580	7,190	6,000	5,100	.....
Shortraker rockfish	BSAI	516	387	387	329	.....
Rougheye rockfish	BSAI	640	552	552	469	.....
Other rockfish [7]	BSAI	1,380	1,040	1,040	884	.....
	BS	.....	485	485	412	.....
	AI	.....	555	555	472	.....
Squid	BSAI	2,620	1,970	1,970	1,675	.....
Other species [8]	BSAI	80,700	63,680	34,221	29,088	.....
Total	.....	2,706,826	2,259,779	1,585,000	1,411,768	152,968

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

[3] Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4 percent), is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by three percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, ''other rockfish,'' squid, and ''other species'' are not allocated to the CDQ program.

[6] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

[7] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] ''Other species'' includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the ''other species'' category. Pending approval of amendment 95 from the Secretary, skates will be broken out from the ''other species'' category in the 2011 fishing year. The OFL, ABC, and TAC for ''other species'' will be 42,507, 31,680, and 31,680 mt, respectively. The OFL, ABC, and TAC for skates will be 38,200, 32,000, and 30,000 mt, respectively.

Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or ''other species'' category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of Bering Sea Greenland turbot and arrowtooth flounder be allocated to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Section 679.21(e)(3)(i)(A) requires withholding 7.5 percent of the Chinook salmon PSC limit, 10.7 percent of the crab and non-Chinook salmon PSC limits, and 343 mt of halibut PSC as PSQ reserves for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS proposes a pollock ICA of 4 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2009. During this 11-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with an 11-year average of 3.2 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS proposes a pollock ICA of 1,600 mt for the AI subarea after subtraction of the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2009. During this 7-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 7-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 5,500 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 50 mt each of Western and Central Aleutian District Pacific ocean perch, 100 mt of Eastern Aleutian District Pacific ocean perch, 50 mt for Western Aleutian District Atka mackerel, 75 mt for Central Aleutian District Atka mackerel, and 75 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2009.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve and the ''other species'' category during the year, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(i)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of 10 percent for the CDQ program and 4 percent for the ICA, be allocated as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20 to June 10) and 60 percent of the DFA is allocated to the B season (June 10 to November 1) § 679.20(a)(5)(i)(B). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA § 679.20(a)(5)(iii)(B)(*2*)(*ii*). In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these proposed 2010 and 2011 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding Bering Sea subarea pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2010 and 2011 allocations of pollock TAC. Tables 9 through 12 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. In past years, the proposed harvest specifications included text and tables describing pollock allocations to the Bering Sea subarea inshore pollock cooperatives and open access sector. These allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2010 have not been submitted to NMFS, thereby

preventing NMFS from calculating 2010 allocations, NMFS has not included inshore cooperative text and tables in these proposed harvest specifications. NMFS will post 2010 AFA inshore cooperative allocations on the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov* when they become available in December 2009.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until April 1 § 679.20(a)(5)(i)(C) . The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists by sector these proposed 2010 and 2011 amounts.

TABLE 2—PROPOSED 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2010 and 2011 allocations	2010 and 2011 A season		2010 and 2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC	815,000	n/a	n/a	n/a
CDQ DFA	81,500	32,600	22,820	48,900
ICA [1]	29,340	n/a	n/a	n/a
AFA Inshore	352,080	140,832	98,582	211,248
AFA Catcher/Processors [3]	281,664	112,666	78,866	168,998
Catch by C/Ps	257,723	103,089	n/a	154,634
Catch by C/Vs [3]	23,941	9,577	n/a	14,365
Unlisted C/P Limit [4]	1,408	563	n/a	845
AFA Motherships	70,416	28,166	19,716	42,250
Excessive Harvesting Limit [5]	123,228	n/a	n/a	n/a
Excessive Processing Limit [6]	211,248	n/a	n/a	n/a
Total Bering Sea DFA (non-CDQ)	704,160	281,664	197,165	422,496
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800
Aleut Corporation	15,500	10,600	n/a	4,900
Bogoslof District ICA [7]	10	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtraction for the CDQ DFA (10 percent) and the ICA (4 percent), is allocated as a DFA as follows: inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20 to June 10) and 60 percent of the DFA is allocated to the B season (June 10 to November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs not including CDQ.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs not including CDQ.

[7] The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2010 and 2011 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtraction of the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear (Table 3). The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2010, when eligible participants apply for participation in the program.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes a 0.5 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2010 and 2011. Based on the proposed 2010 and 2011 TAC of 20,250 mt after subtractions of the CDQ reserve and ICA, the jig gear

allocation would be 102 mt for 2010 and 2011.

Section 679.20(a)(8)(iv) apportions the Atka mackerel ITAC into two equal seasonal allowances. The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts.

NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ fishery categories: the BSAI trawl limited access sector, the Amendment 80 limited access fishery, and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of the three non-CDQ fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply (see § 679.20(a)(8)(iii)). There is no allocation of Atka mackerel to the BSAI trawl limited access sector in the Western Aleutian District. Therefore, no vessels in the BSAI trawl limited access sector will be assigned to the Western Aleutian District HLA fishery.

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives: a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery: A first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. NMFS will initially open fishing for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea allocation for any one of the three non-CDQ fishery categories allocated Atka mackerel TAC.

TABLE 3—PROPOSED 2010 AND 2011 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector[2]	Season[1 3 4]	2010 allocation by area			2011 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	22,900	28,500	19,700	22,900	28,500	19,700
CDQ reserve	Total	2,450	3,050	2,108	2,450	3,050	2,108
	HLA[5]	n/a	1,830	1,265	n/a	1,830	1,265
ICA	Total	75	75	50	75	75	50
Jig[6]	Total	102	0	0	102	0	0
BSAI trawl limited access	Total	1,216	1,523	0	1,622	2,030	0
	A	608	761	0	811	1,015	0
	HLA	n/a	457	0	n/a	609	0
	B	608	761	0	811	1,015	0
	HLA	n/a	457	0	n/a	609	0
Amendment 80 limited access	Total	10,129	14,358	10,814	n/a	n/a	n/a
	A	5,065	7,179	5,407	n/a	n/a	n/a
	HLA	n/a	4,308	3,244	n/a	n/a	n/a
	B	5,065	7,179	5,407	n/a	n/a	n/a
	HLA	n/a	4,308	3,244	n/a	n/a	n/a
Amendment 80 cooperatives	Total	8,927	9,495	6,728	n/a	n/a	n/a
	A	4,464	4,747	3,364	n/a	n/a	n/a
	HLA	n/a	2,848	2,018	n/a	n/a	n/a
	B	4,464	4,747	3,364	n/a	n/a	n/a
	HLA	n/a	2,848	2,018	n/a	n/a	n/a

[1] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[2] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1.

[5] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2010 and 2011, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Sections 679.20(a)(7)(i) and (ii) require that the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ program, be allocated as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2010 and 2011 the Regional Administrator proposes an ICA of 500 mt based on anticipated incidental catch in these fisheries. The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the proposed 2010 and 2011 Pacific cod TACs are listed in Table 4 based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

TABLE 4—PROPOSED 2010 AND 2011 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2010 and 2011 share of gear sector total	2010 and 2011 share of sector total	2010 and 2011 seasonal apportionment	
				Season	Amount
Total TAC	100	193,030	n/a	n/a	n/a
CDQ	10.7	20,654	n/a	See § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	104,804	n/a	n/a	n/a
Hook-and-line/pot ICA [1]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	104,304	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	83,547	Jan 1–Jun 10	42,609
				Jun 10–Dec 31	40,938
Hook-and-line catcher vessels ≥ 60 ft LOA	0.2	n/a	343	Jan 1–Jun 10	175
				Jun 10–Dec 31	168
Pot catcher/processors	1.5	n/a	2,573	Jan 1–Jun 10	1,312
				Sept 1–Dec 31	1,261
Pot catcher vessels≥ 60 ft LOA	8.4	n/a	14,410	Jan 1–Jun 10	7,349
				Sept-1–Dec 31	7,061
Catcher vessels < 60 ft LOA using hook-and-line or pot gear.	2	n/a	3,431	n/a	n/a
Trawl catcher vessels	22.1	38,095	n/a	Jan 20–Apr 1	28,190
				Apr 1–Jun 10	4,190
				Jun 10–Nov 1	5,714
AFA trawl catcher processors	2.3	3,965	n/a	Jan 20–Apr 1	2,973
				Apr 1–Jun 10	991
				Jun 10–Nov 1	0
Amendment 80	13.4	23,098	n/a	Jan 20–Apr 1	17,324
				Apr 1–Jun 10	5,775
				Jun 10–Nov 1	0
Amendment 80 limited access for 2010 only [2]	n/a	3,795	n/a	Jan 20–Apr 1	2,847
				Apr 1–Jun 10	949
				Jun 10–Nov 1	0
Amendment 80 cooperative for 2010 only [2]	n/a	19,303	n/a	Jan 20–Apr 1	14,477
				Apr 1–Jun 10	4,826
				Jun 10–Nov 1	0
Jig	1.4	2,413	n/a	Jan 1–Apr 30	1,448
				Apr 30–Aug 31	483
				Aug 31–Dec 31	483

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2010 and 2011 based on anticipated incidental catch in these fisheries.

[2] The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

Sablefish Gear Allocation

Section 679.20(a)(4)(iii) and (iv) requires the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl gear and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportionment of 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2010 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries would reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2010 and 2011 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2010 AND 2011 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2010 Share of TAC	2010 ITAC [1]	2010 CDQ reserve	2011 Share of TAC	2011 ITAC	2011 CDQ reserve
Bering Sea:							
Trawl	50	1,260	1,071	95	1,260	1,071	95
Hook-and-line gear [2]	50	1,260	n/a	252	n/a	n/a	n/a
Total	100	2,520	1,071	347	2,520	1,071	95
Aleutian Islands:							
Trawl	25	510	434	38	510	434	38
Hook-and-line gear [2]	75	1,530	n/a	306	n/a	n/a	n/a
Total	100	2,040	434	344	2,040	434	38

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of the Aleutian Islands Pacific Ocean Perch, Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require the allocation between the Amendment 80 and BSAI trawl limited access sectors for Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs in the BSAI, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and § 679.91. The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2010, when eligible participants apply for participation in the program. Table 6 lists the proposed 2010 and 2011 allocations and seasonal apportionments of the Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2010 AND 2011 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	2010 and 2011 allocations					
	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	4,160	4,210	6,450	50,000	75,000	180,000
CDQ	445	450	690	5,350	8,025	19,260
ICA	100	50	50	5,000	10,000	2,000
BSAI trawl limited access	361	371	114	0	0	28,438
Amendment 80	3,253	3,339	5,596	39,650	56,975	130,302
Amendment 80 limited access for 2010 only [1]	1,725	1,770	2,967	4,658	14,174	52,109
Amendment 80 cooperatives for 2010 only [1]	1,528	1,568	2,629	34,992	42,801	78,193

[1] The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2010 and 2011 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i)(A)(*2*) and (e)(4)(i)(A) allocate 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the prohibited species quota (PSQ) reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(vi) specifies 29,000 fish as the 2010 and 2011 Chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 2,175 Chinook salmon, as the PSQ reserve for the CDQ program and allocates the remaining 26,825 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(viii) specifies 700 fish as the 2010 and 2011 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2010 and 2011 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries. The regulations and allocations of Chinook salmon are subject to change in 2011 pending approval of amendment 91 to the FMP.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2009 regarding PSC limits and apportionments, the Council recommended and NMFS proposes using the crab and herring 2010 and 2011 PSC limits and apportionments for the proposed 2010 and 2011 limits and apportionments. The Council will reconsider these amounts in December 2009. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent of each PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2008 survey data at 35 million red king crabs, and the effective spawning biomass is estimated at 75 million lb (34,020 mt). Based on the criteria set out at § 679.21(e)(1)(i), the proposed 2010 and 2011 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million king crab and the effective spawning biomass estimate of more than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC allowance based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC allowance within the RKCSS (Table 7b).

Based on 2008 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 435 million animals. Given the criteria set out at § 679.21(e)(1)(ii), the calculated 2010 and 2011 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits derive from the *C. bairdi* crab abundance estimate being in excess of the 400 million animal threshold specified in § 679.21(e)(1)(ii).

Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2008 survey estimate of 2.6 billion animals, the calculated limit is 4,350,000 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2010 and 2011 herring biomass is 169,675 mt. This amount was derived using 2008 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit proposed for 2010 and 2011 is 1,697 mt for all trawl gear as presented in Tables 7a and 7b.

Section 679.21(e)(3) requires, after subtraction of PSQ reserves, that crab and halibut trawl PSC be apportioned between the BSAI trawl limited access and Amendment 80 sectors as presented in Table 7a. The amount of the 2010 PSC limits assigned to the Amendment 80 sector is specified in Table 35 to part 679. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then sub-allocated to Amendment 80 cooperatives as PSC cooperative quota and to the Amendment 80 limited access fishery as presented in Tables 7d and e. PSC cooperative quota assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. The 2011 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2010, when eligible participants apply to participate in the program. Section 679.21(e)(3)(i)(B) requires apportionment of each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(4)(i) authorizes the apportionment of the non-trawl halibut PSC limits into PSC bycatch allowances among six fishery categories. Table 7c lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Section 679.21(e)(4)(ii) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years after consultation with the Council, NMFS proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) The pot gear fisheries have low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet is assumed to be negligible, and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2009, total groundfish catch for the pot gear fishery in the BSAI was approximately 15,000 mt, with an associated halibut bycatch mortality of about 1 mt. The 2009 jig gear fishery harvested about 33 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. NMFS proposes the Council's recommendation of the seasonal PSC apportionments in Tables 7c and 7e to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7a—PROPOSED 2010 AND 2011 APPORTIONMENT OF PROHIBITED SPECIES CATCH (PSC) ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector		BSAI trawl limited access fishery
						2010	2011	
Halibut mortality (mt)								
BSAI	900	832	3,675	3,349	393	2,425	2,375	875
Herring (mt) BSAI	n/a	n/a	1,697	n/a	n/a	n/a	n/a	n/a
Red king crab (animals)								
Zone 1 [1]	n/a	n/a	197,000	175,921	21,079	98,920	93,432	53,797
C. opilio (animals)								
COBLZ [2]	n/a	n/a	4,350,000	3,884,550	465,450	2,148,156	2,028,512	1,248,494
C. bairdi crab (animals)								
Zone 1 [2]	n/a	n/a	980,000	875,140	104,860	414,641	391,538	411,228
C. bairdi crab (animals)								
Zone 2	n/a	n/a	2,970,000	2,652,210	317,790	706,284	667,031	1,241,500

[1] Section 679.21(e)(3)(i)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[2] Refer to § 679.2 for definitions of zones.

TABLE 7b—PROPOSED 2010 AND 2011 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH (PSC) ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	146	n/a
Rock sole/flathead sole/other flatfish [1]	25	n/a
Greenland turbot/arrowtooth flounder/sablefish	12	n/a
Rockfish	9	n/a
Pacific cod	25	n/a
Midwater trawl pollock	1,296	n/a
Pollock/Atka mackerel/other species [2]	184	n/a
Red king crab savings subarea non-pelagic trawl gear [3]	n/a	49,250
Total trawl PSC	1,697	197,000

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[2] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[3] In October 2009 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(*2*)).

TABLE 7c—PROPOSED 2010 AND 2011 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	162	47,397	1,176,494	346,228	1,185,500
Rock sole/flathead sole/other flatfish[2]	0	0	0	0	0
Turbot/arrowtooth/sablefish [3]	0	0	0	0	0
Rockfish, April 15	3	0	2,000	0	1,000
Pacific cod	585	6,000	50,000	60,000	50,000
Pollock/Atka mackerel/other species	125	400	20,000	5,000	5,000
Total BSAI trawl limited access PSC	875	53,797	1,248,494	411,228	1,241,500

Non-trawl fisheries	Catcher processor	Catcher vessel
Pacific cod-Total	760	15
January 1–June 10	314	10
June 10–August 15	0	3
August 15–December 31	446	2
Other non-trawl-Total		58
May 1–December 31		58
Groundfish pot and jig		Exempt
Sablefish hook-and-line		Exempt
Total non-trawl PSC		833

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

TABLE 7d—PROPOSED 2010 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Year	Prohibited species and zones [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
2010	1754	70,237	1,461,309	304,290	518,898

[1] Refer to § 679.2 for definitions of zones.

TABLE 7e—PROPOSED 2010 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES

Amendment 80 trawl limited access fisheries	Prohibited species and zone [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	353	5,594	601,032	58,002	142,335
Jan 20–Jul 1	208	5,410	591,926	53,727	114,843
Jul 1–Dec 31	146	184	9,106	4,274	27,492
Rock sole/other flat/flathead sole [2]	218	22,921	85,051	52,053	44,231
Jan 20–Apr 1	174	22,585	82,173	45,921	38,635
Apr 1–Jul 1	20	168	1,511	3,214	2,798
Jul 1–Dec 31	24	168	1,366	2,918	2,798
Turbot/arrowtooth/ sablefish [3]	n/a	n/a	n/a	n/a	n/a
Rockfish	49	n/a	n/a	n/a	n/a
Pacific cod	1	168	765	297	819
Pollock/Atka mackerel/other species [4]	49	0	0	0	0
Total Amendment 80 trawl limited access PSC	671	28,683	686,848	110,351	187,385

[1] Refer to § 679.2 for definitions of zones.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information included in the annual SAFE report. NMFS proposes the Council's recommendation that the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) for the 2009 BSAI groundfish fisheries be used for monitoring the proposed 2010 and 2011 halibut bycatch allowances (see Tables 7a–e). The IPHC developed the DMRs for the 2009 BSAI non-CDQ groundfish fisheries using the 10-year mean DMRs for those fisheries. The IPHC developed the DMRs for the 2009 BSAI CDQ groundfish fisheries using the 1998 to 2006 DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A copy of the document justifying these DMRs is available from the Council (see **ADDRESSES**) and the DMRs are discussed in the Economic Status Report of the final 2008 SAFE report dated November 2008. Table 8 lists the proposed 2010 and 2011 DMRs.

The proposed DMRs listed in Table 8 are subject to change pending the results of an updated analysis on halibut DMRs in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2009 meeting.

TABLE 8—PROPOSED 2010 AND 2011 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	13
	Other species	11
	Pacific cod	11
	Rockfish	17
Non-CDQ trawl	Arrowtooth flounder	75
	Atka mackerel	76
	Flathead sole	70
	Greenland turbot	70
	Non-pelagic pollock	74
	Pelagic pollock	88
	Other flatfish	74
	Other species	70
	Pacific cod	70
	Rockfish	76
	Rock sole	80
	Sablefish	75
	Yellowfin sole	80
Non-CDQ pot	Other species	7
	Pacific cod	7
CDQ trawl	Atka mackerel	85
	Flathead sole	84
	Non-pelagic pollock	85
	Pelagic pollock	90
	Rockfish	82
	Rock sole	88
	Yellowfin sole	84
CDQ hook-and-line	Greenland turbot	4
	Pacific cod	10
CDQ pot	Pacific cod	7
	Sablefish	34

Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program)

On June 6, 2005, the Council adopted the Rockfish Program to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The basis for the BSAI fishing prohibitions and the catcher vessel BSAI Pacific cod sideboard limits of the Rockfish Program are discussed in detail in the final rule for Amendment 68 to the FMP for Groundfish of the GOA (71 FR 67210, November 20, 2006). Pursuant to § 679.82(d)(6)(i), the catcher vessel BSAI Pacific cod sideboard limit is 0.0 mt and in the final 2010 and 2011 harvest specifications this would effectively close directed fishing for BSAI Pacific cod in July for catcher vessels under the Rockfish Program sideboard limitations.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Table 9 lists the proposed 2010

and 2011 catcher/processor sideboard limits. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

All harvests of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 9. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the proposed 2010 and 2011 sideboard limits for the listed AFA catcher/processors.

TABLE 9—PROPOSED 2010 AND 2011 BSAI GROUNDFISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/PS)

[Amounts are in metric tons]

Target species	Area	1995–1997			2010 and 2011 ITAC available to all trawl C/Ps [1]	2010 and 2011 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch of total catch		
Sablefish trawl	BS	8	497	0.016	1,071	17
	AI	0	145	0	474	0
Atka mackerel	Central AI					
	A season [2]	n/a	n/a	0.115	12,688	1,459
	HLA limit	n/a	n/a	n/a	7,613	875
	B season [2]	n/a	n/a	0.115	12,688	1,459
	HLA limit [3]	n/a	n/a	n/a	7,613	875
	Western AI					
	A season [2]	n/a	n/a	0.2	8,771	1,754
	HLA limit	n/a	n/a	n/a	5,263	1,053
	B season [2]	n/a	n/a	0.2	8,771	1,754
	HLA limit [3]	n/a	n/a	n/a	5,263	1,053
Yellowfin sole [4]	BSAI	100,192	435,788	0.23	160,740	36,970
Rock sole	BSAI	6,317	169,362	0.037	66,975	2,478
Greenland turbot	BS	121	17,305	0.007	4,182	29
	AI	23	4,987	0.005	1879	9
Arrowtooth flounder	BSAI	76	33,987	0.002	51,000	102
Flathead sole	BSAI	1,925	52,755	0.036	44,650	1,607
Alaska plaice	BSAI	14	9,438	0.001	25,500	26
Other flatfish	BSAI	3,058	52,298	0.058	14,790	858
Pacific ocean perch	BS	12	4,879	0.002	3,213	6
	Eastern AI	125	6,179	0.02	3,715	74
	Central AI	3	5,698	0.001	3,760	4
	Western AI	54	13,598	0.004	5,760	23
Northern rockfish	BSAI	91	13,040	0.007	5,100	36
Shortraker rockfish	BSAI	50	2,811	0.018	329	6
Rougheye rockfish	BSAI	50	2,811	0.018	469	8
Other rockfish	BS	18	621	0.029	412	12
	AI	22	806	0.027	472	13
Squid	BSAI	73	3,328	0.022	1,675	37
Other species	BSAI	553	68,672	0.008	29,088	233

[1] Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[3] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2010 and 2011, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[4] Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2010 and 2011 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (158,740 mt) is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to part 679 establish a formula for PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 10 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the proposed 2010 and 2011 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a proposed 2010 or 2011 PSC sideboard limit listed in Table 10 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories according to regulations at § 679.21(e)(3)(iv).

TABLE 10—PROPOSED 2010 AND 2011 BSAI PROHIBITED SPECIES SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSORS

PSC species and area	Ratio of PSC catch to total PSC	Proposed 2010 and 2011 PSC available to trawl vessels after subtraction of PSQ[1]	Proposed 2010 and 2011 C/P sideboard limit[1]
Halibut mortality	n/a	n/a	286
Red king crab Zone 1[2]	0.007	175,921	1,231
C. opilio (COBLZ)[2]	0.153	3,884,550	594,336
C. bairdi	n/a	n/a	n/a
Zone 1[2]	0.14	875,140	122,520
Zone 2[2]	0.05	2,652,210	132,611

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Refer to § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

Tables 11 and 12 list the proposed 2010 and 2011 AFA catcher vessel sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the proposed 2010 and 2011 sideboard limits listed in Table 11.

TABLE 11—PROPOSED 2010 AND 2011 BSAI GROUNDFISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2010–2011 initial TAC[1]	2010 and 2011 AFA catcher vessel sideboard limits
Pacific cod	BSAI			
	Jig gear	0	2,413	0
	Hook-and-line CV			
	Jan 1–Jun 10	0.0006	175	0
	Jun 10–Dec 31	0.0006	168	0
	Pot gear CV			
	Jan 1–Jun 10	0.0006	7,349	4
	Sept 1–Dec 31	0.0006	7,061	4
	CV< 60 ft LOA using hook-and-line or pot gear	0.0006	3,431	2
	Trawl gear CV			
	Jan 20–Apr 1	0.8609	28,190	24,269
	Apr 1–Jun 10	0.8609	4,190	3,608
	Jun 10–Nov 1	0.8609	5,714	4,919
Sablefish	BS trawl gear	0.0906	1,071	97
	AI trawl gear	0.0645	474	31
Atka mackerel	Eastern AI/BS			
	Jan 1–Apr 15	0.0032	10,187	33
	Sept 1–Nov 1	0.0032	10,187	33
	Central AI			
	Jan–Apr 15	0.0001	12,688	1
	HLA limit	0.0001	7,613	1
	Sept 1–Nov 1	0.0001	12,688	1
	HLA limit	0.0001	7,613	1
	Western AI			
	Jan–Apr 15	0	8,771	0
	HLA limit	n/a	5,263	0
	Sept 1–Nov 1	0	8,771	0
	HLA limit	n/a	5,263	0
Yellowfin sole[2]	BSAI	0.0647	160,740	n/a
Rock sole	BSAI	0.0341	66,975	2,284
Greenland turbot	BS	0.0645	4,182	270

TABLE 11—PROPOSED 2010 AND 2011 BSAI GROUNDFISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)—Continued

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2010–2011 initial TAC [1]	2010 and 2011 AFA catcher vessel sideboard limits
	AI	0.0205	1,879	39
Arrowtooth flounder	BSAI	0.069	51,000	3,519
Alaska plaice	BSAI	0.0441	25,500	1,125
Other flatfish	BSAI	0.0441	14,790	652
Pacific ocean perch	BS	0.1	3,213	321
	Eastern AI	0.0077	3,715	29
	Central AI	0.0025	3,760	9
	Western AI	0	5,760	0
Northern rockfish	BSAI	0.0084	5,100	43
Shortraker rockfish	BSAI	0.0037	329	1
Rougheye rockfish	BSAI	0.0037	469	2
Other rockfish	BS	0.0048	412	2
	AI	0.0095	472	4
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	29,880	1,617
Flathead sole	BS trawl gear	0.0505	44,650	2,255

[1] Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2010 and 2011 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (158,740 mt) is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 12 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the proposed 2010 and 2011 PSC sideboard limits for the AFA catcher vessels. Section 679.21(d)(8) and (e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2010 and 2011 PSC sideboard limit listed in Table 12 is reached. The PSC caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 12—PROPOSED 2010 AND 2011 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD (PSC) LIMITS FOR THE BSAI

[Amounts are in metric tons]

PSC species	Target fishery category [1]	AFA catcher vessel PSC sideboard limit ratio	Proposed 2010 and 2011 PSC limit after subtraction of PSQ reserves [2]	Proposed 2010 and 2011 AFA catcher vessel PSC sideboard limit [2]
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish [3]	n/a	n/a	228
	Turbot/arrowtooth/sablefish	n/a	n/a	0
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species	n/a	n/a	5
Red king crab Zone 1	n/a	0.299	175,921	52,600
C. opilio COBLZ [4]	n/a	0.168	3,884,550	652,604
C. bairdi Zone 1 [4]	n/a	0.33	875,140	288,796
C. bairdi Zone 2 [4]	n/a	0.186	2,652,210	493,311

[1] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[3] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[4] Refer to § 679.2 for definitions of areas.

Classification

NMFS has determined that the proposed specifications are consistent with the FMP and preliminarily determined that the proposed specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision for the Final EIS. Copies of the Final EIS and Record of Decision for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental consequences of the proposed groundfish harvest specifications and its alternatives on resources in the action area. The Final EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA evaluates the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the exclusive economic zone off of Alaska. While the specification numbers may change from year to year, the harvest strategy for establishing those numbers remains the same. NMFS therefore is using the same IRFA prepared in connection with the Final EIS. NMFS published notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 15, 2006 (71 FR 75460). The comment period on the BSAI proposed harvest specifications and IRFA ended on January 16, 2007. NMFS did not receive any comments on the IRFA or the economic impacts of the rule generally.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble above. This IRFA meets the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 810 small catcher vessels, fewer than 20 small catcher/processors, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if their annual gross receipts from all economic activities, including the revenue of their affiliated operations, totaled $4 million per year or less. Data from 2005 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the BSAI non-CDQ and CDQ sectors were used as indices of the potential impacts of the alternative harvest strategies on small entities. Revenues were projected to decline from 2006 levels in 2007 and 2008 under the preferred alternative due to declines in ABCs for economically key groundfish species.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI optimum yield, in which case TACs would have been limited to the optimum yield. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs equal to the lower limit of the BSAI optimum yield range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the ''no action'' alternative.

Alternatives 3, 4, and 5 produced smaller first wholesale revenue indices for both non-CDQ and CDQ sectors than Alternative 2. Alternative 1 revenues were the same as Alternative 2 revenues in the BSAI for both sectors. Moreover, higher Alternative 1 TACs are associated with maximum permissible ABCs, while Alternative 2 TACs are associated with the ABCs that have been recommended to the Council by the Plan Team and the SSC, and more fully consider other potential biological issues. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* Public Law 108–447.

Dated: November 25, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–28831 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 74, No. 230
Wednesday, December 2, 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

Farm Service Agency

Commodity Credit Corporation

Information Collection Request: Web Based Supply Chain Management Commodity Offer Forms

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) are seeking comments from all interested individuals and organizations on a revision of a currently approved information collection request. This information collection is necessary to support the procurement of agricultural commodities for domestic and export food donation programs. FSA and CCC issue invitations to purchase or process commodities for food assistance programs on monthly, multiple monthly, quarterly, and yearly basis. Special invitations, however, are issued throughout the month. The revision to the information collection request is to support the implementation of a new system named Web Based Supply Chain Management (WBSCM) that will allow respondents to submit information electronically. This new system will replace some of the existing paper forms in this information collection and reduce the burden on respondents. WBSCM will eventually replace all other existing forms in this information collection.

DATES: Comments on this notice must be received on or before February 1, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comment, include the date and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-mail:* Send comments to: *khristy.baughman@kcc.usda.gov.*
- *Fax:* (816) 926–1648.
- *Mail:* Khristy Baughman, Chief, Business Operations Support Division, Kansas City Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141–0205.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Khristy Baughman, Chief, Business Operations Support Division, phone (816) 926–1200.

SUPPLEMENTARY INFORMATION:

Title: WBSCM Offer Forms.

OMB Number: 0560–0177.

Expiration Date: December 23, 2011.

Type of Request: Revision of a currently approved information collection.

Abstract: The United States donates agricultural commodities domestically and overseas to relieve famine, provide other emergency assistance and combat malnutrition. It also sells or donates commodities to promote economic development. FSA and CCC issue invitations to purchase or sell agricultural commodities and services for use in domestic and export programs. Vendors respond by making offers using various FSA and CCC commodity offer forms.

The revision to the information collection request is due to the new WBSCM system that respondents will use to submit information electronically. This new system will replace some of the existing paper forms currently approved in this information collection and reduce the burden on respondents. WBSCM will eventually replace all other existing forms in this information collection.

The export offer information and the annual certification information will be entered and received electronically in WBSCM. Most of the domestic offer information will also be entered and received electronically in WBSCM. Vendors will be able to access WBSCM to see the date and time shown in the system for receipt of bid, bid modification, or bid cancellation information. At bid opening date and time, the bid information will be evaluated through the system. Acceptances will be sent to the successful offerors electronically. Awarded contracts will be posted on the FSA Web site.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 15 to 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for-profit organizations.

Estimated Number of Respondents: 829.

Estimated Average Number of Report Filed Per Respondent: 48.

Estimated Total Annual Responses: 9921.

Estimated Total Annual Burden on Respondents: 1,066 hours.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington DC on November 20, 2009.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–28669 Filed 12–1–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Los Padres National Forest; California; Environmental Impact Statement for the Continued Operation of the Winchester Canyon Gun Club

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Los Padres National Forest, gives notice of intent to conduct an analysis and to prepare an Environmental Impact Statement (EIS) for reissue of a 20-year special use permit for the Winchester Canyon Gun Club. This notice announces the beginning of scoping, describes the proposed action, describes the decision to be made, and estimates the dates for filing the draft and final EIS. This notice also provides information concerning public participation, and the names and addresses of the Agency officials who can provide information.

DATES: Comments concerning the scope of the analysis must be received by January 19, 2010. The draft environmental impact statement is expected May 2010, and the final environmental impact statement is expected October 2010.

ADDRESSES: Send written comments to Los Padres National Forest, 6755 Hollister Avenue, Suite 150, Goleta, CA 93117, attention: Jeff Bensen. Comments may also be sent via e-mail to: *comments-pacificsouthwest-los-padres-santa-barbara@fs.fed.us,* or via facsimile to (805) 561–5729.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action may be directed to Project Team Leader, Jeff Bensen, Los Padres National Forest, 6755 Hollister Avenue, Suite 150, Goleta, CA 93117; or by telephone: (805) 961–5744. E-mail: *comments-pacificsouthwest-los-padres-santa-barbara@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Winchester Canyon Gun Club has been authorized to operate on the Los Padres National Forest by special use permit since the late 1960s. The last term permit expired in 1995 and from that time on, the WCGC has been authorized by annual special use permits. In 2007, an environmental assessment was completed for issuing a 20-year special use permit and a Decision Notice/Finding of No Significant Impact was issued. The decision was appealed and the R5 Regional Forester sent the decision back to the Los Padres National Forest for further analysis. The purpose of this action is to reinitiate the proposed action in an environmental impact statement.

Proposed Action

The proposed action is to reissue a 20-year special use permit to the Winchester Canyon Gun Club (WCGC). The proposed action requires changes to the historic activities and a reduction of the number of shooting facilities, as well as a reduction in the number of acres under special use permit from what has been previously authorized. A 200, 300, and 600-yard range and associated shooting contaminants will be removed from the San Jose basin area, and the site will be restored. The removal of these facilities physically removes the WCGC shooting activities from areas of significant cultural resources in the San Jose basin. The other existing facilities will remain and the permit boundary will be adjusted to include all areas impacted by shooting activities to be administered under Forest Service target range policy.

Possible Alternatives

A full range of alternatives will be considered: Non-renewal of the permit, renewal of the permit, and renewal of the permit with modifications. In addition, alternatives responding to issues generated during the scoping process will be considered. All alternatives would comply with the Los Padres National Forest Land Management Plan.

Responsible Official

Peggy Hernandez, Forest Supervisor, Los Padres National Forest, Goleta, California, is the responsible official for this EIS and its Record of Decision. As the Responsible Official, the Forest Supervisor will document the decision and reason for the decision in the Record of Decision. The decision will be subject to Forest Service Appeals Regulations (36 CFR Part 215).

Nature of Decision To Be Made

The Responsible Official will make a decision considering the following:

1. Whether the proposed action will proceed as proposed, with modifications, or not at all.

2. What associated mitigation measures and monitoring requirements will be required.

Preliminary Issues

Preliminary issues identified during the earlier public involvement include the following:

1. Potential impacts of lead and other shooting contaminants on-site:

a. At impacted areas of San Jose basin from long bore ranges.

b. From continued operation of existing facilities, which are proposed to remain.

2. Potential for offsite migration of lead and other shooting contaminants.

3. Impacts to cultural sites in the San Jose basin area.

4. Target range safety.

5. Target range potential for starting wildfire.

6. Need for a controlled regulated shooting facility.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Supervisor is seeking public and agency comment on the proposed action to identify issues that arise from the proposed action. These issues may lead to other alternatives, or additional mitigation measures and monitoring requirements. In addition to this notice, public scoping letters will be mailed to interested parties and a project scoping open house will be held on December 9, 2009, from 5–7 p.m. at the Los Padres Supervisor's Office at 6755 Hollister Avenue, Suite 150, Goleta, CA 93117.

It is important reviewers provide their comments at such times and in such a way they are useful to the Agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: November 17, 2009.

Peggy Hernandez,

Forest Supervisor.

[FR Doc. E9–28817 Filed 12–1–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110343) the Lassen County Resource Advisory Committee will meet December 10, 2009 in Susanville, California for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on December 10, 2009 will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. This meeting will be dedicated to review and approve agenda, hear public comments, review October meeting minutes, review concept papers and develop a process to invite back for full proposals. Finish with another public comment period.

FOR FURTHER INFORMATION CONTACT: Contact Terri Frolli, Designated Federal Official, at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6604.

Lorene T. Guffey,

Acting Forest Supervisor.

[FR Doc. E9–28735 Filed 12–1–09; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 2, 2009, 8 a.m.–9 a.m.

PLACE: Cohen Building, Room 3360, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in a special session to review and discuss budgetary issues relating to U.S. Government-funded non-military international broadcasting. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. E9–28898 Filed 11–30–09; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures.

Form Number(s): PTO/SB/93.

Agency Approval Number: 0651–0024.

Type of Request: Revision of a currently approved collection.

Burden: 103,750 hours annually.

Number of Respondents: 19,750 responses per year.

Average Hours Per Response: The USPTO estimates that it will take the public approximately six minutes (0.10 hours) to six hours to gather the necessary information, prepare the form or sequence listing, and submit it to the USPTO.

Needs and Uses: Patent applications that contain nucleotide and/or amino acid sequence disclosures must include a copy of the sequence listing in accordance with the requirements in 37 CFR 1.821–1.825. Applicants may submit sequence listings for both U.S. and international patent applications. The USPTO uses the sequence listings during the examination process to determine the patentability of the associated patent application. Sequence listings are also disclosed as part of the published patent application or issued patent. Applicants use sequence data when preparing biotechnology patent applications and may also search sequence listings after publication.

Under 37 CFR 1.821(e)–(f), applicants must also submit a copy of the sequence listing in ''computer readable form'' (CRF). If the CRF sequence listing in a new application is identical to the CRF sequence listing of another application that the applicant already has on file at the USPTO, the applicant may submit a statement identifying the application and CRF sequence listing that is already on file rather than having to submit a duplicate copy of the CRF listing for the new application. The USPTO is proposing to add a new form to this collection, Request for Transfer of a Computer Readable Form Under 37 CFR 1.821(e) (PTO/SB/93), in order to assist customers in submitting this statement.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

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

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0024 Sequence Disclosures copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or January 4, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 25, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. E9–28810 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for January 2010

The following Sunset Reviews are scheduled for initiation in January 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Frozen Warmwater Shrimp from Brazil (A–351–838)	Brandon Farlander (202) 482–0182.
Frozen Warmwater Shrimp from India (A–533–840)	Brandon Farlander (202) 482–0182.
Frozen Warmwater Shrimp from the People's Republic of China (A–570–893)	Brandon Farlander (202) 482–0182.
Frozen Warmwater Shrimp from Thailand (A–549–822)	Brandon Farlander (202) 482–0182.
Frozen Warmwater Shrimp from Vietnam (A–552–802)	Brandon Farlander (202) 482–0182.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders are scheduled for initiation in January 2010.

Suspended Investigations

No Sunset Review of suspended investigations are scheduled for initiation in January 2010.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28772 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT15

Marine Mammals; File No. 15014

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 9205 South Park Circle, Suite 400, Orlando, FL 32819, has applied in due form for a permit to import one pilot whale (*Globicephala macrorhynchus*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 4, 2010.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

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

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

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. 15014 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to import one male nonreleasable stranded pilot whale from Kamogawa SeaWorld 1404–18 Higashi-cho, Kamogawa, Chiba, Japan to Sea World of California. The applicant requests this import for the purpose of public display. The receiving facility, Sea World of California, 1720 South Shores Road, San Diego, CA 92109–7995 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the AZA and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number

93–C–0069, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 - 59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 24, 2009.

P. Michael Payne,

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

[FR Doc. E9–28835 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT16

Marine Mammals; File No. 15153

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dolphin Quest Hawaii, 69–425 Waikoloa Beach Drive, Waikoloa, HI 96738, has applied in due form for a permit to import two bottlenose dolphins (*Tursiops truncatus*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 4, 2010.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

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

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. 15153 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to import two male adult captive-born bottlenose dolphins from Dolphin Quest in Hamilton, HM FX, Bermuda to Dolphin Quest Hawaii, Waikoloa, HI. The applicant requests this import for the purpose of public display. The receiving facility, Dolphin Quest Hawaii, is: (1) open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 95–C–0037, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 – 59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 24, 2009.

P. Michael Payne,

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

[FR Doc. E9–28833 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0911201414–91414-01]

Public Telecommunications Facilities Program: Closing Date; Catalog of Federal Domestic Assistance

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Closing Date for Solicitation of Applications.

SUMMARY: Pursuant to the *Further Continuing Appropriations, 2010*, Division B of Pub. L. No. 111–88, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP) for fiscal year (FY) 2010.

DATES: NTIA announces two Closing Dates for the FY 2010 grant round.

All television and nonbroadcast applications must be received at the PTFP office no later than 5:00 p.m., Eastern Standard Time, on February 4, 2010. With the exception of applications for new FM stations filed during the February 2010 Federal Communications Commission (FCC) FM Window, discussed in the next paragraph, all

radio applications also must be received at the PTFP office no later than 5:00 p.m., Eastern Standard Time, on February 4, 2010.

Because the FCC will accept applications for new FM facilities only during the period February 19–26, 2010 (''FM Window''), NTIA will provide sufficient time for FM applicants participating in the FM Window to file their PTFP and FCC applications. Completed PTFP applications for projects filed at the FCC during this FM Window must be received at the PTFP office no later than 5:00 p.m., Eastern Standard Time, on February 26, 2010.

Applications submitted by facsimile are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after these deadlines.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to PTFP at the following address: NTIA/PTFP, Room H–4812, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230. Application materials may be obtained electronically via the Internet at www.ntia.doc.gov/ptfp or www.Grants.gov.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP also can be obtained electronically via the Internet at www.ntia.doc.gov/ptfp.

SUPPLEMENTARY INFORMATION:

Electronic Access

The Federal Funding Opportunity (FFO) announcement for the PTFP FY 2010 grant cycle is available through www.Grants.gov or by viewing the PTFP Internet site at www.ntia.doc.gov/ptfp. Applicants are strongly encouraged to read the FFO and the programmatic regulations at 15 CFR Part 2301 to obtain further information and instructions on the application requirements for the program.

Statutory and Regulatory Authority

The PTFP is authorized by the Communications Act of 1934, as amended, 47 U.S.C. §§ 390–393, 397–399(b). The PTFP operates pursuant to rules (1996 Rules), which were published on November 8, 1996 (61 FR 57966). Copies of the 1996 Rules (15 CFR pt. 2301) are posted on the NTIA Internet site at www.ntia.doc.gov/ptfp/Rules/currentrules.htm, and NTIA will make printed copies available to applicants upon request.

Program Information

The PTFP assists, through matching grants, in the planning and construction of public telecommunications facilities in order to: (1) extend delivery of services to as many citizens as possible by the most cost-effective means, including use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and controlled by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The PTFP funds the construction of new public radio and television stations and new nonbroadcast public telecommunications facilities; the digital conversion of public radio and television stations; and the replacement of equipment at public radio and television stations. A description of the 112 projects awarded during the FY 2009 PTFP grant round may be found on the Internet at www.ntia.doc.gov/ptfp/Projects/2009/index.htm.

Funding Availability

Issuance of grants is subject to the availability of FY 2010 funds. At this time, the Congress has passed the *Further Continuing Appropriations, 2010*, to fund operations of the PTFP through December 18, 2009. Further notice will be made in the **Federal Register** about the final status of funding for this program at the appropriate time. For FY 2009, NTIA awarded $19.4 million in PTFP funds to 111 projects, including 63 radio awards, 47 television awards, and one nonbroadcast award. The radio awards ranged from $7,556 to $322,364. The television awards ranged from $5,122 to $731,924. One nonbroadcast award was made for $50,142.

Supplemental Policies

The following supplemental policies are discussed in the FFO and will be in effect during the FY 2010 grant cycle:

A) Section 2301.10 of the PTFP Final Rules provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision. For FY 2010 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time.

B) For FY 2010 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, applicants may submit applications to the FCC for Ku-band satellite uplinks after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds. NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant.

C) PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. Many distance learning applications propose projects that are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application to every state telecommunications agency in a potential service area is unduly burdensome to applicants. PTFP applicants for distance learning projects must notify the state telecommunications agencies in the states in which they are located, but they are not required to notify every state telecommunications agency in a potential service area.

D) For digital television conversion projects, NTIA has created two new Subpriorities — Subpriority A (Transmission Equipment) and Subpriority B, (Master Control and Production Equipment; Translators) in the Broadcast Other category.

E) For digital radio conversion projects, NTIA has created a new Subpriority — Subpriority C, Radio Digital Conversion, in the Broadcast Other category.

Catalog of Domestic Federal Assistance

11.550, Public Telecommunications Facilities Program.

Eligibility

To apply for and receive a PTFP Construction Grant or Planning Grant, an applicant must be: (a) a public or noncommercial educational broadcast

station; (b) a noncommercial telecommunications entity; (c) a system of public telecommunications entities; (d) a non-profit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (e) a state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

Evaluation and Selection Process

See 15 CFR § 2301.16 for a description of the Technical Evaluation and 15 CFR § 2301.18 for the Selection Process.

Evaluation Criteria

See 15 CFR § 2301.17 for a full description of the Evaluation Criteria. The six evaluation criteria are: 1) Applicant Qualifications; 2) Financial Qualifications; 3) Project Objectives; 4) Urgency; 5) Technical Qualifications (construction applicants only) or Planning Qualifications (planning applicants only); and 6) Special Consideration.

Funding Priorities and Selection Factors

See 15 CFR § 2301.4 and the supplemental policies above for a description of the PTFP Priorities and 15 CFR § 2301.18 for the Selection Factors.

Cost Sharing Requirements

PTFP requires cost sharing. By statute, PTFP cannot fund a construction project for more than 75 percent of the eligible project costs. NTIA has established a policy of funding most new public broadcasting station activation projects at a 75 percent Federal share, and most other television, radio and nonbroadcast projects at a 50 percent Federal share. NTIA can fund planning applications up to 100 percent of the eligible project costs, but has established a policy of funding planning applications at a 75 percent Federal share. Any applicant can request Federal funding greater than PTFP's policy, up to the statutory maximum, and provide justification for the request.

Intergovernmental Review

PTFP applications are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' if the state in which the applicant organization is located participates in the process. Usually, submission to the State Single Point of Contact (SPOC) needs to be only the SF 424 and PTFP–2 pages of the application, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The PTFP Internet site has a link to the Office of Management and Budget (OMB) home page that has the names and addresses of the SPOC offices. Applicants may directly access the OMB Internet site at www.whitehouse.gov/omb/grants/spoc.html.

Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177), and April 8, 2003 (68 FR 17000), **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet at www.fedgov.dnb.com/webform.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not obligate the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. The PTFP application form has been cleared under OMB Control No. 0660–0003.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits, and contracts (5 U.S.C. § 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: November 24, 2009.

Anthony G. Wilhelm,

Acting Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. E9–28738 Filed 12–1–09; 8:45 am]

BILLING CODE 3510–60–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information Collection 3038–0031, Procurement Contracts.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before January 4, 2010.

FOR FURTHER INFORMATION OR A COPY CONTACT: Steven A. Grossman at CFTC, (202) 418–5192; FAX: (202) 418–5529; e-mail: *sgrossman@cftc.gov*; mailto: *gwalker@cftc.gov* and refer to OMB Control No. 3038–0031.

SUPPLEMENTARY INFORMATION: *Title:* Procurement Contracts, OMB Control No. 3038–0031. This is a request for extension of a currently approved information collection.

Abstract: This information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2009 (74 FR 50957).

Burden statement: The respondent burden for this collection is estimated to average 1 hour per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information. The numbers contained in this justification differ from those in the 60-day notice because of a revised estimate of the number of respondents.

Respondents/Affected Entities: 214.

Estimated number of responses: 214.

Estimated total annual burden on respondents: 548 hours.

Frequency of collection: Annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0031 in any correspondence.

Steven A. Grossman, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, Washington, DC 20503.

Issued in Washington, DC on November 27, 2009.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–28846 Filed 12–1–09; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–65 and 09–66]

36(b)(1) Arms Sales Notifications

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of two section 36(b)(1) arms sales notifications. They are published to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION:

Transmittal No. 09–65

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–65 with attached transmittal, and policy justification.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 20 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-65, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Peru for defense articles and services estimated to cost $82 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 09-65

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Peru

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$82 million
TOTAL	$82 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment of two NEWPORT Class Tank Landing Ships (Ex-Fresno (LST-1182) and Ex-Racine (LST-1191) being provided as Excess Defense Articles (grant EDA notification is being submitted separately) with rigid inflatable boats, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SBP)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None.

(viii) Date Report Delivered to Congress: 20NOV09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Peru – Refurbishment of Two NEWPORT Class Landing Ship Tanks

The Government of Peru has requested a possible sale for the refurbishment of two NEWPORT Class Tank Landing Ships, Ex-Fresno (LST-1182) and Ex-Racine (LST-1191) being provided as Excess Defense Articles (grant EDA notification is being submitted separately) with rigid inflatable boats, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $82 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for economic progress in South America.

This proposed sale will enable the Peruvian Navy to be interoperable with U.S. forces conducting maritime interdiction operations, improve its ability to execute counter narcotics, and counterterrorism capabilities, and ensure Peru's overall ability to maintain integrity of its borders. Peru will have no difficulty absorbing the ships into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be VSE Corporation of Alexandria, Virginia, and Fairbanks Morse of San Diego, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of contractor representatives to provide technical and logistics support in Peru for a period of three years. U.S. Government and contractor representatives will also be required to participate in program management and technical reviews for one week intervals, semi-annually.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09–66

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–66 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 20 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $700 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$700 million
TOTAL	$700 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Design and construction of facilities and infrastructure for the Al Mubarak Air Base Upgrade and the Kuwait Air Force Headquarters Complex. The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the administrative, operational, storage, support facilities and utility infrastructure of the Kuwait Air Force. The scope of the program includes provision of technical assistance for facilities that include administrative, operations, passenger processing, air crew, billeting, community support, maintenance and air control, perimeter security, supply and storage, and utility infrastructure.

(iv) Military Department: USACE (HAV and HAW)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 20NOV09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Technical Assistance for Construction of Facilities and Infrastructure

The Government of Kuwait has requested a possible sale for the design and construction of facilities and infrastructure for the Al Mubarak Air Base Upgrade and the Kuwait Air Force Headquarters Complex. The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the administrative, operational, storage, support facilities and utility infrastructure of the Kuwait Air Force. The scope of the program includes provision of technical assistance for facilities that include administrative, operations, passenger processing, air crew, billeting, community support, maintenance and air control, perimeter security, supply and storage, and utility infrastructure. The estimated cost is $700 million.

This proposed sale would contribute to the foreign policy and national security of the U.S. by enhancing Kuwait's capacity to support USG efforts.

This proposed sale would enable Kuwait to support the operational effectiveness of its military, to establish security and stability throughout Kuwait, and to promote the stability and development of a friendly, democratic central government.

The proposed sale of this infrastructure and support will not alter the basic military balance in the region.

The USACE is the principal organization that will direct and manage this program. The USACE will provide services through both in-house personnel and contract services. Contracts will be procured in accordance with Federal Government contracting law and regulations. There are no known offset agreements proposed in connection with this potential sale.

The estimated number of U.S. Government and contractor representatives to be assigned to Kuwait to implement the provisions of this proposed sale will be determined during program execution.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Dated: November 27, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28811 Filed 12–1–09; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0176]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on January 4, 2010, unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: November 27, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S340.10

SYSTEM NAME:

DLA Civilian Time and Attendance, Project and Workload Records. (December 11, 2006; 71 FR 71532).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' also apply to this system of records.''

STORAGE:

Delete entry and replace with ''Records may be stored on paper and on electronic storage media.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Privacy Act Office in the DLA Primary Level Field Activity where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Privacy Act Office in the DLA Primary Level Field Activity where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S340.10

SYSTEM NAME:

DLA Civilian Time and Attendance, Project and Workload Records.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and each Defense Logistics Agency (DLA) Primary Level Field Activity.

Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA civilian employees and certain former DLA civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained include individual's name, Social Security Number (SSN), User ID, citizenship; pay; educational level; emergency data; employee's status, position, supervisor, timekeeper, project manager, system access level, accounting codes, organization and office location, e-mail address and office telephone numbers; telework location and phone number, rate, leave balances; work and shift schedule, project and workload records, regular and overtime work hours and leave hours, time and attendance records (timesheet), and information on temporary duty and special assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Travel, Transportation, and Subsistence; and Chapter 63, Leave; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 31 U.S.C., Chapter 35, Accounting and Collection; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used to prepare time and attendance records, to record employee pay rates and status, including overtime, the use of leave, and work absences; to track workload, project activity for analysis and reporting purposes; for statistical reporting on leave and overtime use/usage patterns, number of employees teleworking, etc.; and to answer employee queries on leave, overtime, and pay.

Information from this system of records is provided to the Defense Finance and Accounting Service for issuing payroll to DLA civilian employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by employee's name, Social Security Number (SSN), or User ID.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is restricted by passwords, which are changed periodically. Access to record is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. All individuals granted access to this system of records are required to have Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Initialed Leave Application Files (LAF) are destroyed at end of following pay period, un-initialed LAFs are destroyed after GAO audit or when 3 years old, whichever is sooner. Time and Attendance Source Records and Input Records are destroyed after GAO audit or when 6 years old, whichever is sooner. Leave Records are destroyed when 3 years old. Payroll system reports and data used for personnel management purposes are destroyed when 2 years old.

Disposition is pending for project and workload records. Until the National Archives and Records Administration approves the retention, treat ''project and workload records'' as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

EAGLE Project Manager, J6–UT Tailored Logistics Division, Defense

Logistics Agency, 2001 Mission Drive, Suite 2, New Cumberland, PA 17070–5004. For a list of system managers at the DLA Primary Level Field Activities, write to the EAGLE Project Manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Privacy Act Office in the DLA Primary Level Field Activity where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or to the Privacy Act Office in the DLA Primary Level Field Activity where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors, timekeepers, leave slips, payroll office and payroll records, including automated payroll systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–28812 Filed 12–1–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 1, 2010.

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

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

Dated: November 25, 2009.

Stephanie Valentine,

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

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Mathematics and Science Partnerships Program: Annual Performance Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 600.

Burden Hours: 8,400.

Abstract: Sections 2201–2203 of the Elementary and Secondary Education Act describe information to be included in the annual performance report required of the Mathematics and Science Partnerships Grant program. Submission of the annual performance report (APR) via the data collection site has taken place since 2006 and will continue to occur between October 30 and November 30 of each year. If APR data submitted during this time frame are incomplete or inaccurate and/or if re-submission of data is requested by the state education agencies (SEAs), additional data collection may occur at other times throughout the year. The Government Performance and Results Act (GPRA) report provides national-level achievement data for all: (1) The percentage of MSP teachers who significantly increase their content knowledge, as reflected in project-level pre- and post-assessments; (2) the percentage of students in classrooms of MSP teachers who score at the basic level or above in State assessments of mathematics or science; (3) the percentage of students in classrooms of MSP teachers who score at the proficient level or above in State assessments of mathematics or science measures. The national-level information includes an average of the percentage of proficient students in SEAs administering annual state performance examinations from the previous year to the current year. All projects are included in the GPRA report, regardless of when the project began implementation of their MSP grant.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4178. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should

be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–28819 Filed 12–1–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–022]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting the Application for Interim Waiver of Hallowell International From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure

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

ACTION: Notice of Petition for Waiver, Granting an Application for Interim Waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Hallowell International (Hallowell) Petition for Waiver (hereafter, ''Petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential central air conditioners and heat pumps for certain specified equipment. The waiver request pertains to Hallowell's Boosted Compression heat pumps, a product line that uses three-stage technology to enable efficient heating at very low outdoor temperatures. The existing test procedure accounts for two-capacity compressors, but not three-capacity operation. Therefore, Hallowell has suggested an alternate test procedure to calculate the heating performance of its three-stage Boosted Compression products. DOE is soliciting comments, data, and information concerning Hallowell's Petition and the suggested alternate test procedure. DOE is also granting an interim waiver to Hallowell.

DATES: DOE will accept comments, data, and information with respect to the Hallowell Petition until, but no later than January 4, 2010.

ADDRESSES: You may submit comments, identified by case number [CAC–022], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–022], and/or ''Hallowell Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. RF–008, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format, and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Mr. Joseph M. Gross, Design Engineer, Hallowell International, 110 Hildreth Street, Bangor, ME 04401. *Telephone:* (207) 990–5600 x121. *E-mail: jgross@gotohallowell.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Francine Pinto or Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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II. Petition for Waiver
III. Application for Interim Waiver
IV. Alternate Test Procedure
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I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III establishes the Energy Conservation Program for Consumer Products Other Than Automobiles.[1] (42 U.S.C. 6291–6309) This notice involves residential products under Part A, and EPCA specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers.

With respect to test procedures, Part A generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

[1] These two parts were originally titled Parts B and C, but were redesignated as Parts A and A–1 in the United States Code for editorial reasons.

Relevant to the current Petition for Waiver, the test procedures for residential central air conditioners and central air conditioning heat pumps are set forth in 10 CFR Part 430, subpart B, appendix M. Section 323 of EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use or estimated annual operating costs, and are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A) and (b)(3))

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered products, for which the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Within 1 year of granting the waiver, DOE must publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy must publish in the **Federal Register** a final rule. The waiver will terminate on the effective date of such final rule. 10 CFR 430.27(m).

The waiver process also permits parties petitioning DOE for a waiver to apply for an Interim Waiver from the prescribed test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

II. Petition for Waiver

On July 29, 2008, Hallowell filed a Petition for Waiver from the test procedures applicable to residential air conditioning and heating equipment and an Application for Interim Waiver. The applicable test procedure for Hallowell's residential Boosted Compression products is the DOE residential test procedure found in 10 CFR Part 430, Subpart B, Appendix M. Hallowell included an alternate test procedure in its July 29, 2008, submittal, but the alternate procedure was incomplete. On April 25, 2009, Hallowell submitted the revised petition and alternate test procedure included in this **Federal Register** notice.

Hallowell seeks a waiver from the DOE test procedures on the grounds that its Boosted Compression heat pump systems contain design characteristics that prevent testing according to the current DOE test procedure. The DOE test procedure covers systems with a single speed, with two steps or stages of modulation, and with continuous modulation over a finite range through the incorporation of a variable-speed or digital compressor. Hallowell's product deviates from the anticipated form—a system whose performance falls between that of a two-capacity system and a conventional variable-capacity system—because the three-capacity capability is limited to heating mode operation. Moreover, the additional stage of heating capacity is specifically used at the lowest outdoor temperatures with the aim of maximizing the total heating contributed by the heat pump relative to the total heating supplied by the auxiliary heat source (usually electric resistance). Another unique feature of Hallowell's low-temperature heat pump system is that for any given outdoor temperature, only two-stages of heating are permitted; one stage is always locked out.

Rating Hallowell's Boosted Compression products will require modified calculation algorithms and testing at an additional, lower temperature to capture the effect on both capacity and power of the additional stage/level of heating operation. The building load assigned within

HSPF calculations requires evaluation based on the case where high-stage compressor capacity for heating exceeds the high-stage compressor capacity for cooling. Finally, the control feature that limits the number of heating mode capacity levels to two for any given outdoor temperature must be accounted for.

Accordingly, Hallowell requests that DOE grant a test procedure waiver for its Boosted Compression product designs, until a suitable test method can be prescribed. Furthermore, Hallowell states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its Boosted Compression products.

III. Application for Interim Waiver

In addition to its Petition for Waiver, submitted on July 29, 2008 and revised on April 25, 2009, Hallowell submitted to DOE an Application for Interim Waiver. On May 29, 2009, Hallowell submitted a revised Petition for Waiver and Application for Interim Waiver containing information concerning the financial hardship and competitive disadvantage Hallowell is facing. Hallowell states that it is difficult to build sales volume and gain credibility when there are no standards to provide performance ratings for the equipment, which would entitle its customers to rebates, tax credits, and other incentives. Since the release of the Recovery Act with new criteria for energy efficiency tax rebates, business growth at Hallowell has diminished. Many of Hallowell's dealers and distributors have submitted letters concerning the lack of sales of the Acadia system due lack of AHRI listing, and therefore no rebates available. Hallowell submitted an attachment of many dealer/distributor letters claiming these hardships. With sales down, Hallowell International has cut back on all research and development, development of new products and new manufacturing production that would enable the company to grow.

In those instances where it appears likely the Petition for Waiver will be granted, based upon a product design that has characteristics which prevent testing according to the prescribed test procedure, it is in the public interest to allow products to be marketed that DOE believes are exceptionally energy-efficient. Hallowell's three-speed Boosted Compression heat pumps are capable of efficient operation at much lower temperatures than two-speed heat pumps (Hallowell measured a coefficient of performance of 2.1 at -15 °F), making them potentially very desirable for heating in cold climates. The alternate test procedure submitted by Hallowell is not radically different from the current DOE test procedure, which has provisions for heat pumps having a two-capacity compressor. The Hallowell alternate test procedure is a

logical extension of DOE's two-capacity test method to cover Hallowell's three-capacity compressor. The two (of three potential) active stages of heating capacity available for each bin temperature calculation will be based on Hallowell's control logic. The HSPF algorithm will follow the algorithm in the DOE test procedure used for two-capacity heat pumps. Thus, DOE has determined that it is likely that Hallowell's Petition for Waiver will be granted for its new Boosted Compression three-speed models.

Therefore, DOE grants Hallowell's application for Interim Waiver from testing of its Boosted Compression heat pump models. This granting of Interim Waiver may be modified at any time upon a determination that the factual basis underlying the application is incorrect.

IV. Alternate Test Procedure

DOE plans to consider inclusion of the following waiver language in the Decision and Order for Hallowell's Boosted Compression central air conditioning heat pumps models:

(1) The ''Petition for Waiver'' filed by Hallowell is hereby granted as set forth in the paragraphs below.

(2) Hallowell shall not be required to test or rate its Boosted Compression central air conditioning heat pumps products listed above in section III, on the basis of the currently applicable DOE test procedure, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) Add section 3.6.6 to address the heating mode tests conducted on units having a triple-capacity compressor.

3.6.6 Tests for a heat pump having a triple-capacity compressor. Test triple-capacity, northern heat pumps for the heating mode as follows:

a. Conduct one Maximum Temperature Test (*H0$_1$*), two High Temperature Tests (*H1$_2$* and *H1$_1$*), two Frost Accumulation Tests (*H2$_2$* and *H2$_1$*), three Low Temperature Tests (*H3$_1$*, H3$_2$, and *H3$_3$*), and one Minimum Temperature Test (*H4$_3$*). An alternative to conducting the *H2$_1$* Frost Accumulation Test to determine $\dot{Q}_h^{k=1}$ (35) and $\dot{E}_h^{k=1}$ (35) is to use the following equations to approximate this capacity and electrical power:

$$\dot{Q}_h^{k=1}(35) = 0.90 \cdot \left\{\dot{Q}_h^{k=1}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right]\right\}$$

$$\dot{E}_h^{k=1}(35) = 0.985 \cdot \left\{\dot{E}_h^{k=1}(17) + 0.6 \cdot \left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right]\right\}$$

In evaluating the above equations, determine the quantities $\dot{Q}_h^{k=1}$ (47) and $\dot{E}_h^{k=1}$ (47) from the *H1$_1$* Test and evaluate them according to Section 3.7. Determine the quantities $\dot{Q}_h^{k=1}$ (17) and $\dot{E}_h^{k=1}$ (17) from the *H3$_1$* Test and evaluate them according to Section 3.10. If the manufacturer conducts the *H2$_1$* Test, the option of using the above default equations is not forfeited. Use the paired values of $\dot{Q}_h^{k=1}$ (35) and $\dot{E}_h^{k=1}$ (35) derived from conducting the *H2$_1$* Frost Accumulation Test and evaluated as specified in section 3.9.1 or use the paired values calculated using the above default equations, whichever paired values contribute to a higher Region IV HSPF based on the $DHR_{min.}$

Conducting a Frost Accumulation Test (*H2$_3$*) with the heat pump operating at its booster capacity is optional. If this optional test is not conducted, determine $\dot{Q}_h^{k=3}$ (35) and $\dot{E}_h^{k=3}$ (35) using the following equations to approximate this capacity and electrical power:

$$\dot{Q}_h^{k=3}(35) = QR_h^{k=2}(35) \cdot \left\{\dot{Q}_h^{k=3}(17) + 1.20 \cdot \left[\dot{Q}_h^{k=3}(17) - \dot{Q}_h^{k=3}(2)\right]\right\}$$

$$\dot{E}_h^{k=3}(35) = PR_h^{k=2}(35) \cdot \left\{\dot{E}_h^{k=3}(17) + 1.20 \cdot \left[\dot{E}_h^{k=3}(17) - \dot{E}_h^{k=3}(2)\right]\right\}$$

Where,

$$QR_h^{k=2}(35) = \frac{\dot{Q}_h^{k=2}(35)}{\dot{Q}_h^{k=2}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]}$$

$$PR_h^{k=2}(35) = \frac{\dot{E}_h^{k=2}(35)}{\dot{E}_h^{k=2}(17) + 0.6 \cdot \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]}$$

Determine the quantities $\dot{Q}_h^{k=2}$ (47) and $\dot{E}_h^{k=2}$ (47) from the *H1$_2$* Test and evaluate them according to Section 3.7. Determine the quantities $\dot{Q}_h^{k=2}$ (35) and $\dot{E}_h^{k=2}$ (35) from the *H2$_2$* Test and evaluate them according to Section 3.9.1. Determine the quantities $\dot{Q}_h^{k=2}$ (17) and $\dot{E}_h^{k=2}$ (17) from the *H3$_2$* Test, determine the quantities $\dot{Q}_h^{k=3}$ (17) and $\dot{E}_h^{k=3}$ (17) from the *H3$_3$* Test, and determine the quantities $\dot{Q}_h^{k=3}$ (2) and $\dot{E}_h^{k=3}$ (2) from the *H4$_3$* Test. Evaluate all six quantities according to Section 3.10. If the manufacturer conducts the *H2$_3$* Test, the option of using the above default equations is not forfeited. Use the paired values of $\dot{Q}_h^{k=3}$ (35) and $\dot{E}_h^{k=3}$ (35) derived from conducting the *H2$_3$* Frost Accumulation Test and calculated as specified in section 3.9.1 or use the paired values calculated using the above default equations, whichever paired values contribute to a higher Region IV HSPF based on the $DHR_{min.}$

Table A specifies test conditions for all thirteen tests.

TABLE A—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TRIPLE-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Booster	Heating air volume rate
	Dry bulb	Wet bulb (max)	Dry bulb	Wet bulb			
$H0_1$ Test (required, steady).	70	60	62	56.5	Low	Off	Heating Minimum [1]
$H1_2$ Test (required, steady).	70	60	47	43	High	Off	Heating Full-Load [2]
$H1C_2$ Test (optional, cyclic).	70	60	47	43	High	Off	([3])
$H1_1$ Test (required)	70	60	47	43	Low	Off	Heating Minimum([1])
$H1C_1$ Test (optional, cyclic).	70	60	47	43	Low	Off	([4])
$H2_3$ Test (optional, steady).	70	60	35	33	High	On	Heating Full-Load [2]
$H2_2$ Test (required)	70	60	35	33	High	Off	Heating Full-Load [2]
$H2_1$ Test [5 6] (required).	70	60	35	33	Low	Off	Heating Minimum [1]
$H3_2$ Test (required, steady).	70	60	17	15	High	On	Heating Full-Load [2]
$H3C_3$ Test (optional, cyclic).	70	60	17	15	High	On	([7])
$H3_2$ Test (required, steady).	70	60	17	15	High	Off	Heating Full-Load [2]
$H3_1$ Test [5] (required, steady).	70	60	17	15	Low	Off	Heating Minimum [1]
$H4_3$ Test (required, steady).	70	60	0	−2	High	On	Heating Full-Load [2]

[1] Defined in section 3.1.4.5.
[2] Defined in section 3.1.4.4.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_2$ Test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_1$ Test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.6 HSPF calculations.
[6] If table note #5 applies, the section 3.6.3 equations for $\dot{Q}_h^{k=1}$ (35) and $\dot{E}_h^{k=1}$ (17) may be used in lieu of conducting the $H2_1$ Test.
[7] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity measured during the $H3_3$ Test.

Section 4.2.3 of Appendix M shall be revised to read as follows:

4.2.3. Additional steps for calculating the HSPF of a heat pump having a triple-capacity compressor. * * *

a. Evaluate the space heating capacity and electrical power consumption of the heat pump at outdoor temperature T_j and with a first stage call from the thermostat (k=1), and with a second stage call from the thermostat (k=2) using:

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$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j > 41°F \\ \dot{Q}_h^{k=1}(17) + \dfrac{[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)] \cdot (T_j - 17)}{35 - 17}, & \text{if } 15°F < T_j \leq 41°F \\ \dot{Q}_h^{k=2}(0) + \dfrac{[\dot{Q}_h^{k=2}(17) - \dot{Q}_h^{k=2}(0)] \cdot (T_j - 0)}{17 - 0}, & \text{if } -30°F < T_j \leq 15°F \end{cases}$$

$$\dot{Q}_h^{k=2}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j > 62°F \\ \dot{Q}_h^{k=1}(17) + \dfrac{[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)] \cdot (T_j - 17)}{35 - 17}, & \text{if } 25°F < T_j \leq 62°F \\ \dot{Q}_h^{k=2}(0) + \dfrac{[\dot{Q}_h^{k=2}(17) - \dot{Q}_h^{k=2}(0)] \cdot (T_j - 0)}{17 - 0}, & \text{if } -30°F < T_j \leq 25°F \end{cases}$$

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \dfrac{[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j > 41°F \\ \dot{E}_h^{k=1}(17) + \dfrac{[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)] \cdot (T_j - 17)}{35 - 17}, & \text{if } 15°F < T_j \leq 41°F \\ \dot{E}_h^{k=2}(0) + \dfrac{[\dot{E}_h^{k=2}(17) - \dot{E}_h^{k=2}(0)] \cdot (T_j - 0)}{17 - 0}, & \text{if } -30°F < T_j \leq 15°F \end{cases}$$

$$\dot{E}_h^{k=2}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \dfrac{[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j > 62°F \\ \dot{E}_h^{k=1}(17) + \dfrac{[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)] \cdot (T_j - 17)}{35 - 17}, & \text{if } 25°F < T_j \leq 62°F \\ \dot{E}_h^{k=2}(0) + \dfrac{[\dot{E}_h^{k=2}(17) - \dot{E}_h^{k=2}(0)] \cdot (T_j - 0)}{17 - 0}, & \text{if } -30°F < T_j \leq 25°F \end{cases}$$

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V. Summary and Request for Comments

Through today's notice, DOE grants Hallowell's Petition for Interim Waiver and announces receipt of Hallowell's Petition for Waiver from the test procedures applicable to Hallowell's Boosted Compression there-speed heat

pump products. As part of this notice, DOE is publishing Hallowell's Petition for Waiver in its entirety. The Petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Hallowell's specified heat pumps with Boosted Compression technology. The Petition contains no confidential information.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on November 23, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

To: Michael Raymond, Department of Energy

From: Joseph M Gross, Hallowell International

Subject: Petition to waive CFR (Code of Federal Regulations) Part 430 performance ratings for ACADIA Combined Heating and Cooling System.

Date: April 25, 2009

CC: American Heating and Refrigeration Institute Assistant Secretary for Energy Efficiency and Renewable Energy

To whom it may concern,

Hallowell International manufactures and markets air source heat pump equipment featuring a patented technology known as Boosted Compression. This technology greatly enhances the cold temperature performance of an air source heat pump, enabling the equipment to remain effective in heating operation at temperatures as cold as –30°F without the need for any form of supplemental heat.

The physical nature of this technology, as well as the control by which it is operated, eliminates the possibility of testing under the existing 210/240–2008 standard for unitary air source heat pump equipment, following Appendix M to Subpart B of CFR Part 430, as has been confirmed by engineering at ETL Semko, and engineering at AHRI. The current standard covers 1 and 2 speed systems. Boosted Compression effectively introduces 3 speed technologies to the marketplace, yet operates similar to a 1 or 2 stage system at any given temperature condition.

This letter will discuss the mechanical and functional details of the equipment, define how the normal operation makes testing under current standards irrelevant, and describe what operating specifics should be validated to show the true operating benefits of the equipment. A suggestion for modifications to existing standards is also included, as well as an interim request for a temporary test waiver.

Because of the large amount of effort and financial resources that have been expended on testing under current standards, Hallowell International requests to be considered in two stages. The first and most immediate stage is for consideration is to be given for a waiver, declaring the equipment outside of any test standard and relieving the equipment temporarily from the requirement. The second stage is to consider Hallowell International's suggestions for small modifications to the existing CFR Part 430 standard, or for a waiver offering an alternate test method to AHRI. The recommended test method will define the addition of 3 speed systems to the standard, and suggest how these systems may be modeled similarly to 1 and 2 speed systems.

Affected Models

The Hallowell International model group has seven specific models that are currently, or were previously, available on the market:

1. ACADIA024
2. ACADIA036
3. ACADIA048
4. 36C35H
5. 42C46H
6. ACHP03642
7. ACHP02431

The model group is covered under the following trade names:

1. All Climate Heat Pump
2. ACHP
3. Acadia Combined Heating and Cooling System
4. Acadia System
5. Acadia Heat Pump
6. Acadia
7. Hallowell ACADIA
8. Hallowell All Climate Heat Pump
9. Hallowell ACHP
10. Hallowell Acadia Combined Heating and Cooling System
11. Hallowell Heat Pump
12. Boosted Compression Heat Pump
13. Opti-Cycle Heat Pump

Mechanical and Functional Details of Boosted Compression

The model group to be considered for a Department of Energy waiver falls under the system classification HRCU–A–CB, where a heat pump system is comprised of two primary components; the outdoor condensing unit with an outdoor coil and compressors which is mated to an indoor coil with a fan. The model was designed as a ''Two Speed'' system whereby the definitions of ''Two Speed'' systems from section 3.16 of the 210/240–2008 Standard were considered within the scope of the design.

Boosted Compression equipment is comprised of two compressors paired in series. The first compressor, the Primary compressor, is able to modulate between half capacity and full capacity by reversing rotation of the crank shaft and mechanically eliminating the motion of one of the two internal pistons for half capacity operation. The Primary compressor functions for heating operation and for cooling operation. A second compressor, the Booster compressor, is a fixed speed, fixed capacity compressor that is used at cold ambient outdoor conditions to increase the mass flow rate of refrigerant through the system and increase the low temperature performance by a process of supercharging the refrigeration cycle. This compressor is used exclusively in heating operation at and below 25 °F, and does not operate during, or affect air conditioning operation or performance.

The following covers the definition from the 210/240–2008 Standard (CFR Part 430, Appendix M, section 1.43), at a very basic level, how this system was thought to be acceptable for ''Two Speed'' testing.

3.16 Two-capacity (or Two-stage) Compressor. An air conditioner or heat pump that has one of the following:

c. Two compressors where one compressor (Compressor #1) operates at low loads and both compressors (Compressors #1 and #2) operate at high loads but Compressor #2 never operates alone

For such systems, low capacity means:

c. Operating Compressor #1, or

d. Operating with the compressor unloading (e.g., operating one piston of a two-piston reciprocating compressor, using a fixed fractional volume of the full scroll, etc.).

For such systems, high capacity means:

c. Operating Compressors #1 and #2.

A Boosted Compression system stages between a high and a low capacity throughout the systems' operating envelope much like traditional 2 speed systems. The system brings on higher capacities to satisfy larger loads, typically as a function of a call for higher capacity from a thermostat. In this system there are 4 heating capacities and 2 cooling capacities. At any given temperature point of operation, there are only 2 capacities available from the system, which stage based on outdoor air temperature and the heating or cooling call from the thermostat. The table below illustrates the algorithm of staging as utilized in the control for Boosted Compression equipment.

Heating call at thermostat	BIN A ODT − 30	BIN B −30 ≤ ODT < 15	BIN C 15 ≤ ODT < 25	BIN D 25 ≤ ODT < 34	BIN E 34 ≤ ODT < 41	BIN F 41 ≤ ODT < 62	BIN G 62 ≤ ODT
Y1	W1	M3	M2	M2	M2	M1	M1
Y2	W1	M4	M3	M2+W1	M2	M2	M1

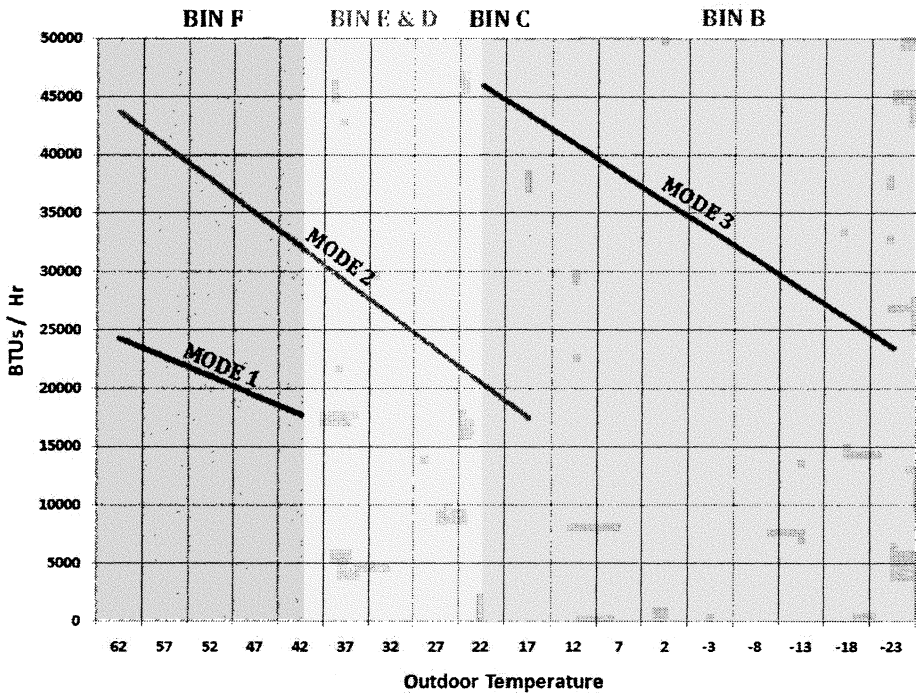
Where:

W1: Auxiliary heat control output

M1: Single cylinder operation, half capacity

of Primary Compressor, heating and cooling
M2: Two cylinder operation, Full capacity of Primary Compressor, heating and cooling
M3: M2 + Booster Compressor + Economizer operation, heating only
M4: M3 + W1

As the table above illustrates, at any given outdoor temperature condition, a Boosted Compression system operates with a maximum of two capacities, using 2 of the 3 modes of heating (4 modes including 1st stage resistance) depending on what the ambient temperature is at the current time of operation. The graph below shows more accurately how a Boosted Compression system can be used as a two stage system, but how the outdoor temperature conditions affect which of the two out of four modes of operation will make up the two capacities for said condition. The graph only shows Modes 1–3, showing vapor cycle operation only.



The graph shows how at any given temperature BIN, the Acadia only utilizes a maximum of 2 out of its 3 stages of vapor cycle. In fact, in BINs G (not shown), E, D, and B, the Acadia acts like a single stage system, utilizing only one mode in these BINs.

A typical two speed heat pump would, if using the Boosted Compression terminology to define operation, only have M1, M2, and M2 + W1 available for system operation. Boosted Compression adds a 3rd stage of compression to the vapor cycle with the Booster Compressor and an Economizer. This third stage effectively doubles the capacity of the heat pump without a degradation of the Coefficient of Performance at lower ambient conditions. The System is further able to add supplemental or auxiliary heat much like conventional 1 and 2 speed systems for occasions where the vapor cycle alone is unable to maintain the conditioned space.

The following charts illustrate and provide distinction for the differences in Boosted Compression 3 speed systems and standard two speed systems. The charts reflect vapor cycle performance only. From these it is clear that Boosted Compression is effectively a 3 speed, or 3 capacity system, and as such will be the foundation for our recommendation to create a standard for 3 speed equipment as a modification to the existing 210/240–2008 Standard.

Important characteristics to note when comparing the two systems:

1. Capacities at low ambient outdoor conditions
2. Capacity as a function of outdoor temperature
3. Coefficient of performance at low ambient conditions
4. Coefficient of performance relative to system capacity
5. Linear performance of standard systems relative to outdoor temperature
6. Staged performance of 3 speed technology relative to outdoor temperature
7. Charts reflect Maximum Vapor Cycle Capacity and do not include lower speeds at similar outdoor temperatures

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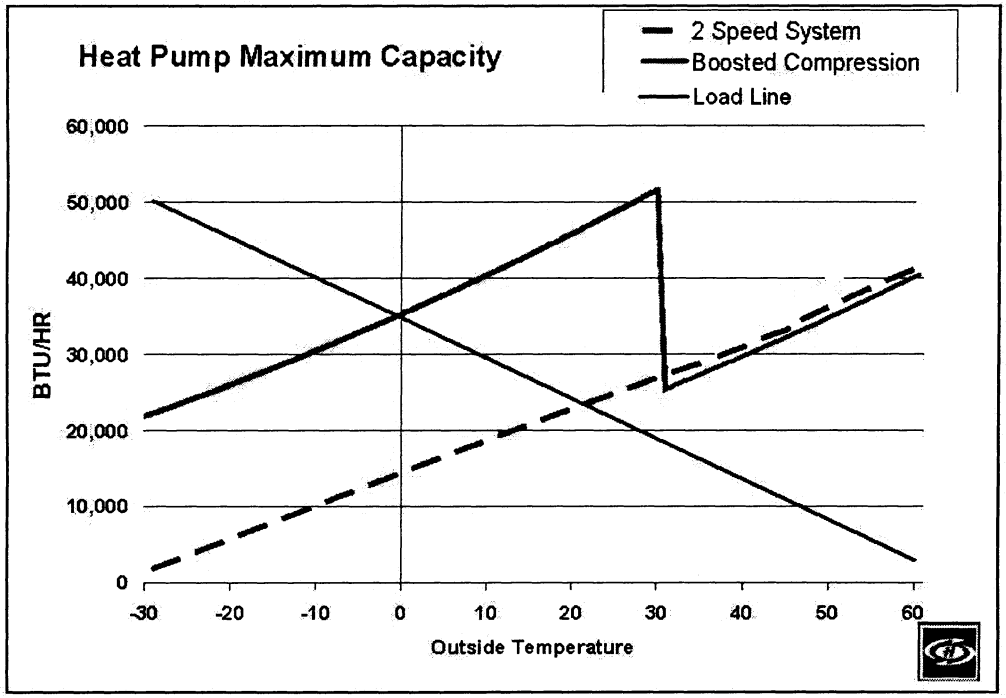
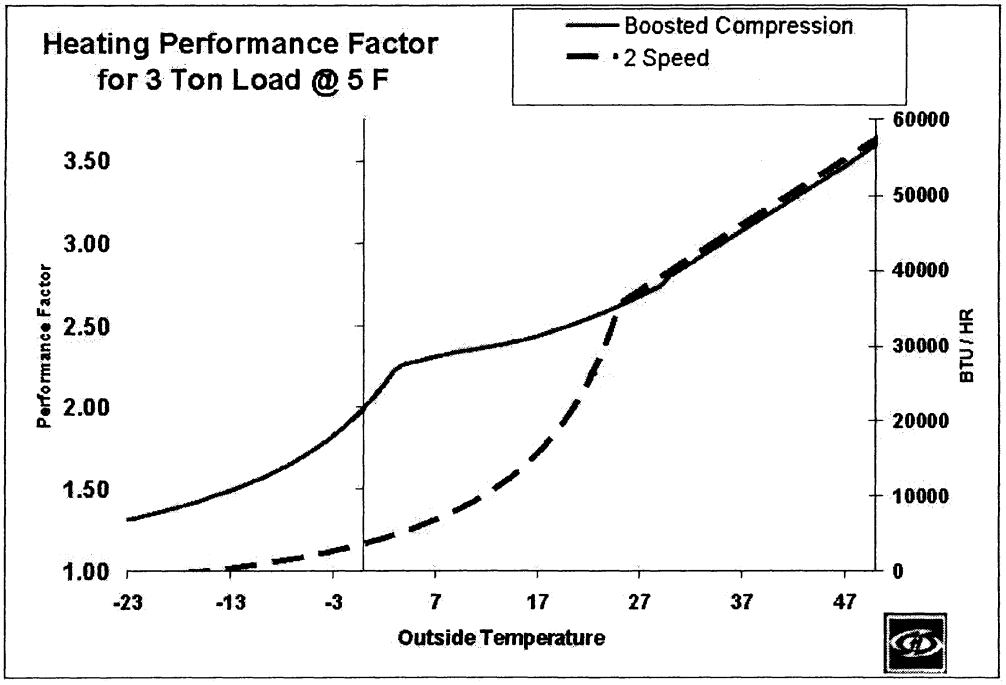
Comparison of Standard 2 Speed and 3 Speed Heat Pumps:





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Restrictions of Current 210/240–2008 Standard

The current 210/240 standard provides an excellent template for the evolution of a 3 speed standard. The restrictions of 2 speed testing for the 3 speed unit are comprised of the following:

1. The expectation that the equipment will follow a linear performance trend and as such can be modeled linearly

2. Operating condition tests are restricted to 62 °F, 47 °F, 35 °F, and 17 °F. This will not collect enough operating characteristics to create an accurate trend, and does not consider advantages of 3 speed equipment at cold temperatures.

3. If the 3 speed system provides 3 speeds of heating, or cooling, how will equipment with different numbers of speeds for both, such as 3 for heating and 2 for cooling be considered?

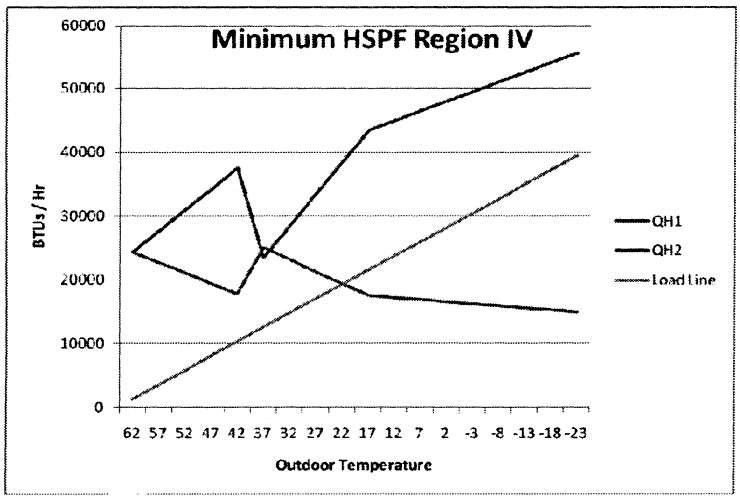
4. Heating Seasonal Performance Factor is calculated from a linear interpolation of system performance along with other factors considering defrosts and cycling penalties. A linear trend cannot be created based on Boosted Compression performance characteristics and erroneous HSPF numbers result. This is easily identified as interpolated capacities trend towards infinite values as outdoor temperature bins get colder, and moderate temperature operation is very low where the two trends meet at an

apex. Note the quotation from AHRI representatives below:

Quote from an e-mail dated 7/18/08 from Ms. Sarah Medepalli, the Certification Engineer assigned to Hallowell International at AHRI.

''The main problem is that 210/240 linearly interpolates to capture the effect of varying outdoor temperature. As such, the lab testing is set up so that the unit's configuration is exactly the same for multiple outdoor conditions. The Hallowell unit, for example, appears to use a different system configuration for the high compressor capacity tests at 47 °F and 17 °F (and maybe 35 °F too). The Hallowell unit would require extra test points and the algorithm used to calculate HSPF would have to be modified to create a more accurate performance map as opposed to the approach of just blindly applying the current 210/240 algorithm for two-capacity heat pumps.''

The following graph illustrates how a Boosted Compression system cannot be modeled correctly using the 210/240 (CFR Part 430, Appendix M) 2 speed standard for calculating Qh^{k-1}, Qh^{k-2}, Eh^{k-1} and Eh^{k-2}, covered in section 4.2.3.a (Qh^{k-1}, Qh^{k-2} and the BL(Tj) are graphed on the chart below).



The graph shows a Boosted Compression system's Qh^{k-1}, Qh^{k-2} and the load line for Minimum HSPF in region IV, where QH1 = Qh^{k-1} and QH2 = Qh^{k-2}. As can be seen in this Illustration, when a Boosted Compression system's heating capacities are interpolated with the 210/240 (CFR Part 430, Appendix M) algorithm, the stages do not represent how any heat pump system can physically operate, showing Qh^{k-2} increasing infinitely as the outdoor temperature conditions drop. The data taken to create this graph was taken directly from ETL's HSPF calculation tables for our 3 Ton system, ARI document # USHP–08315–Q–1.

The 210/240–2008 Standard currently accurately covers the 2 speed air conditioning performance of Boosted Compression, since the Booster Compressor is not allowed to operate in cooling mode, effectively making the system a standard two speed air conditioner.

Recommendations for Modification of Current CFR Part 430 Standard, or Interim Alternate Testing Method for Immediate Consideration

The following recommendations for testing of a ''3 Speed Heat Pump'' are hereby submitted:

1. Additional test points of heating performance, in addition to 62 °F, 47 °F, 35 °F and 17 °F, should be added to account for increased cold temperature performance. The following table illustrates current tests and new tests required to interpolate a 3 stage heat pump under AHRI 210/240 2 speed system standard, where the $H6_2$ test would be a new test condition requirement.

Heating test	IDU entering air °Fdb	IDU entering air °Fwb	ODU entering air °Fdb	ODU entering air °Fwb	System speed
$H0_1$	70	60	62	56.5	Low
$H1_1$	70	60	47	43	Low
$H2_1$	70	60	35	33	Low
$H3_1$	70	60	17	15	Low
$H3_2$	70	60	17	15	High
$H6_2$	70	60	0	−2	High

2. From the CFR Part 430 standard the following equation is defined for HSPF,

$$HSPF = \frac{\sum_{j}^{J} n_j \cdot BL(T_j)}{\sum_{j}^{J} e_h(T_j) + \sum_{j}^{J} RH(T_j)} \cdot F_{def} = \frac{\sum_{j}^{J} \left[\frac{n_j}{N} \cdot BL(T_j)\right]}{\sum_{j}^{J} \frac{e_h(T_j)}{N} + \sum_{j}^{J} \frac{RH(T_j)}{N}} \cdot F_{def} \qquad (4.2\text{-}1)$$

where the design heating requirement, DHR, as defined in section 4.2, is calculated from the 47° test point. This equation will continue to hold true for 3 speed HSPF calculation.

The following equations are compatible with Boosted Compression and continue with a similar methodology to the current standards.

In section 4.2.3, the evaluation of heating capacity (Qh^k) and electrical energy consumption (Eh^k) could be defined by the following performance slope equations:

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$$Qh^{k-1}(Tj) = \begin{cases} Qh^{k-1}(47) + \dfrac{[Qh^{k-1}(62) - Qh^{k-1}(47)]*(Tj - 47)}{(62-47)} & \text{if } Tj > 41°F \\ Qh^{k-1}(17) + \dfrac{[Qh^{k-1}(35) - Qh^{k-1}(17)]*(Tj - 17)}{(35-17)} & \text{if } 15°F < Tj <= 41°F \\ Qh^{k-2}(0) + \dfrac{[Qh^{k-2}(17) - Qh^{k-2}(0)]*(Tj - 0)}{(17-0)} & \text{if } -30°F < Tj <= 15°F \end{cases}$$

$$Qh^{k-2}(Tj) = \begin{cases} Qh^{k-1}(47) + \dfrac{[Qh^{k-1}(62) - Qh^{k-1}(47)]*(Tj - 47)}{(62-47)} & \text{if } Tj > 62°F \\ Qh^{k-1}(17) + \dfrac{[Qh^{k-1}(35) - Qh^{k-1}(17)]*(Tj - 17)}{(35-17)} & \text{if } 25°F < Tj <= 62°F \\ Qh^{k-2}(0) + \dfrac{[Qh^{k-2}(17) - Qh^{k-2}(0)]*(Tj - 0)}{(17-0)} & \text{if } -30°F < Tj <= 25°F \end{cases}$$

$$Eh^{k-1}(Tj) = \begin{cases} Eh^{k-1}(47) + \dfrac{[Eh^{k-1}(62) - Eh^{k-1}(47)]*(Tj - 47)}{(62-47)} & \text{if } Tj > 41°F \\ Eh^{k-1}(17) + \dfrac{[Eh^{k-1}(35) - Eh^{k-1}(17)]*(Tj - 17)}{(35-17)} & \text{if } 15°F < Tj <= 41°F \\ Eh^{k-2}(0) + \dfrac{[Eh^{k-2}(17) - Eh^{k-2}(0)]*(Tj - 0)}{(17-0)} & \text{if } -30°F < Tj <= 15°F \end{cases}$$

$$Eh^{k-1}(Tj) = \begin{cases} Eh^{k-1}(47) + \dfrac{[Eh^{k-1}(62) - Eh^{k-1}(47)]*(Tj - 47)}{(62-47)} & \text{if } Tj > 62°F \\ Eh^{k-1}(17) + \dfrac{[Eh^{k-1}(35) - Eh^{k-1}(17)]*(Tj - 17)}{(35-17)} & \text{if } 25°F < Tj <= 62°F \\ Eh^{k-2}(0) + \dfrac{[Eh^{k-2}(17) - Eh^{k-2}(0)]*(Tj - 0)}{(17-0)} & \text{if } -30°F < Tj <= 25°F \end{cases}$$

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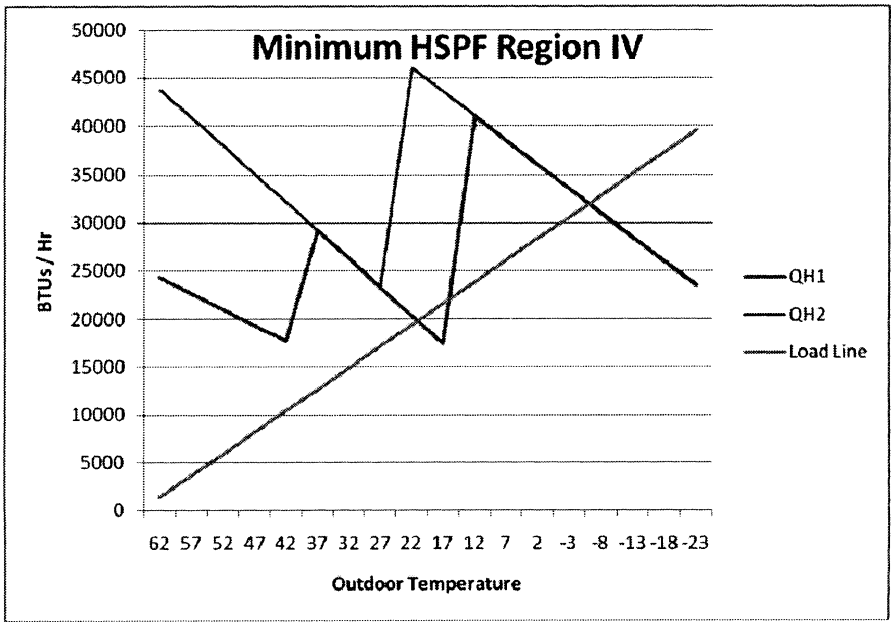
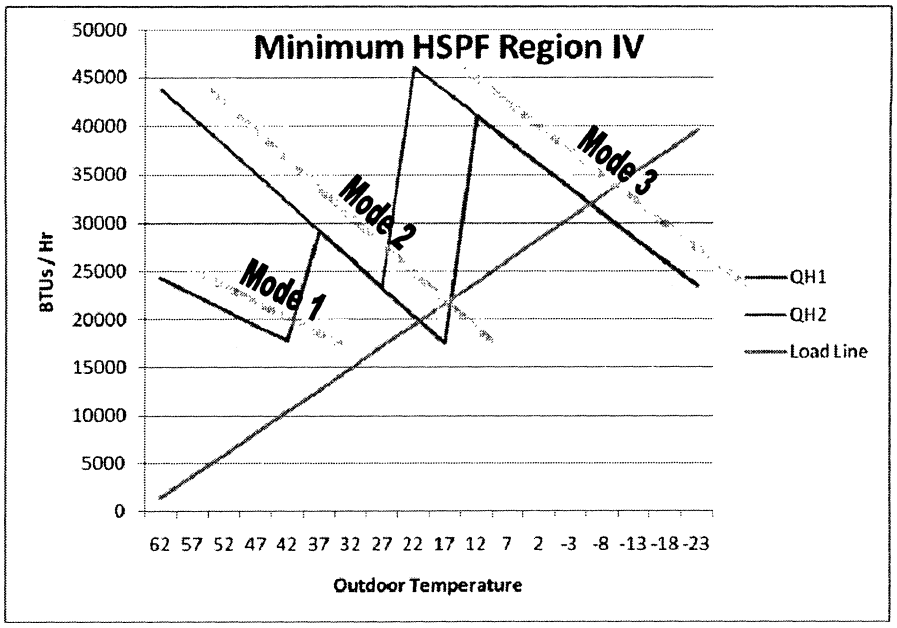
With these algorithms used to interpolate capacity (Qh^k) and electrical energy consumption (Eh^k), the following graph can be achieved from entering data into the CFR Part 430 standard for calculating HSPF on a 2 speed heat pump system, and plotting $Qh^{k=1}$, $Qh^{k=2}$ and the BL(Tj) vs. the temperature BIN temperature (Tj), where QH1 = Qh^{k-1} and QH2 = Qh^{k-2}.



It can easily be seen, when comparing this graph to the one outlining the modes of operation in different temperature BINs that these new algorithms accurately portray a Boosted Compression system's vapor cycle. The graph below highlights the modes of operation from the graph above for clarity.



We, the representatives of Hallowell International, wish to encourage the Department of Energy to consider quick action in amending the current CFR Part 430 testing specifications to include 3-speed equipment. Hallowell, as a manufacturer, relies on third party performance testing and verification of performance from AHRI against competitive equipment to gain traction in the marketplace. Since AHRI adopts their 210/240 standard from CFR Part 430, changes made to the CFR will carry through to AHRI, allowing Hallowell systems to be fairly listed on the directory with other competitive heat pump systems.

We believe that our equipment brings great advancement to the HVAC industry and provides a unique alternative to fossil fuels in today's changing energy climate. It is difficult to build sales volume and gain the credibility, required as an OEM, when there are no standards to provide performance ratings for the equipment, which would entitle our customers to rebates, tax credits, or other incentives.

We hope that a temporary waiver will be granted acknowledging that our three speed product is not covered by a current standard. We further hope that an amendment to the existing standards will be considered, or an alternate test procedure waiver will be considered, as 3-speed equipment does not need to have an entirely new process to be considered and implemented.

If there are any questions or concerns about the equipment please do not hesitate to contact us directly. We will freely share information about Boosted Compression such that your requirements and due diligence will be satisfied in this matter.

Please direct all correspondence with Hallowell International to:

Joseph M Gross
Design Engineer
Hallowell International

Phone: 207 990 5600 Extension 121
Fax: 207 990 5602
E-mail: *JGross@gotohallowell.com*

Signed,
Duane A. Hallowell,
President and CEO
Date:

Joseph M Gross,
Design Engineer
Date:

[FR Doc. E9–28694 Filed 12–1–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–715–001]

Commission Information Collection Activities (FERC–715); Comment Request; Submitted for OMB Review

November 23, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received one comment in response to the **Federal Register** notice (74FR47566, 9/16/2009). FERC has summarized and addressed the commenter's suggestions below and in its submission to OMB.

DATES: Comments on the collection of information are due by January 4, 2010.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira__submission@omb.eop.gov* and include OMB Control Number 1902–0171 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638. A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–715–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing *(http://www.ferc.gov/docs-filing/efiling.asp),* and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–715–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: The FERC–715 (''Annual Transmission Planning and Evaluation Report,'' OMB Control No. 1902–0171) is a mandatory filing described at 18 CFR 141.300. The FERC–715 must be submitted by each transmitting utility that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts. [An overview and current instructions for filing the FERC–715 are posted on the FERC Web site at: *http://www.ferc.gov/docs-filing/eforms/form-715/instructions.asp.*]

Section 213 (b) of the Federal Power Act (FPA), as amended by the Energy Policy Act of 1992, requires FERC to collect, annually from transmitting utilities, sufficient information about their transmission systems to inform potential transmission customers, state regulatory authorities, and the public, of available transmission capacity and constraints. FERC–715 also supports the Commission's expanded responsibilities under Sections 211, 212, 213(a), 304, 307(a), 309, and 311 of the FPA, as amended, for reviewing reliability issues, market structure relationships, and in rate and other regulatory proceedings.

A summary of the comment filed, FERC's response, and proposed changes to the requirements follow.

a. *Comment:* FERC Order No. 890 now requires regional transmission planning processes. We suggest that respondents be allowed to refer to Attachment K information already available on Regional Planning Web sites.

FERC response: Respondents are already encouraged to incorporate references to readily available information when preparing their FERC–715 submissions. External information is most often used in Part IV, Transmission Planning Reliability Criteria. However, Order No. 890 does not require utilities to file power flow data or maps with the Commission or otherwise make this data available. Therefore, FERC–715 is the only source for these items.

b. *Comment:* The commenter suggests FERC should allow filing via the Internet, as well as on CDs, DVDs, diskettes, or in hard copy.

FERC response: The Commission agrees that Internet filing has the potential to reduce the burden to industry. Respondents are already given the option of filing via the Internet (through eFiling), if the submission can be completed using acceptable file formats. Filings may also be made on CD or DVD. The option of using diskettes is being eliminated, however, due to advances in technology and file sizes being too large for the medium.

c. *Comment:* The commenter suggests that a list of changes be provided when the FERC–715 instructions are updated.

FERC response: FERC agrees and will provide this information to respondents beginning with the 2010 filing.

d. *Comment:* Certain parts of FERC–715 need only be updated when information changes from previous filings. The commenter suggests that respondents be required to report the last filing date of information that is unchanged.

FERC response: FERC agrees and will incorporate this requirement into the FERC–715 instructions. To reduce the burden on industry, if this date is prior to the 2010 filing deadline, Respondents need only state that the previous filing was ''prior to the 2010 filing.''

e. *Comment:* FERC–715 responses are considered Critical Energy Infrastructure Information (CEII), and parties requesting access to this data must be vetted and approved by FERC. These parties may also request CEII directly from FERC–715 respondents.

We suggest that FERC attempt to confirm to Respondents that parties requesting access to this data have passed the necessary background checks.

FERC response: The process for requesting CEII from the Commission is detailed in Order Nos. 702, 683, 662, 649, 643, 630, and PL02–01–000, and on *http://www.ferc.gov.* FERC–715 is not an appropriate venue to address the CEII request process, but the FERC offices responsible for handling CEII requests have been made aware of the suggestion.

A copy of the proposed, revised instructions is attached and part of this document, but the instructions are not being printed in the **Federal Register**. The Attachment is available on the FERC's eLibrary *(http://www.ferc.gov/docs-filing/elibrary.asp)* by searching Docket No. IC09–715–001, and through the FERC Public Reference Room.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–715, with the changes noted above and in the attached draft instructions.

Burden Statement: Public reporting burden for this collection is estimated as follows.

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–715	120	1	160	19,200

[**Note:** These figures may not be exact, due to rounding.]

The total estimated annual cost burden [1] to respondents is $1,184,279.90 [(19,200 hrs.)/(2,080 hrs./yr.)] × ($128,297 per yr.).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

Note: The Attachment (proposed, revised instructions) will not be printed in the **Federal Register**. The Attachment is available on the FERC's eLibrary *(http://www.ferc.gov/docs-filing/elibrary.asp)* by searching Docket No. IC09–715–001, and through the FERC Public Reference Room.

Attachment

FERC–715—Annual Transmission Planning and Evaluation Report Instructions

Revised November 2009.
Approved OMB Control No. 1902–0171.
Expires: (MM/DD/YY).

This report is mandatory under Sections 213(b), 307(a) and 311 of the Federal Power Act and 18 CFR Section 141.300 of the Commission's regulations.

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report

Who must file: Any transmitting utility, as defined in § 3(23) of the Federal Power Act, that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts must complete FERC Form No. 715;

When to file: FERC Form No. 715 must be filed on or before each April 1st;

What to file: FERC Form No. 715 must be filed with the Office of the Secretary of the Federal Energy Regulatory Commission in accordance with the instructions on that form.

The Commission considers the information collected by this report to be Critical Energy Infrastructure Information (CEII) and will treat it as such. The public reporting burden for this collection of information is estimated to average 160 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

Federal Energy Regulatory Commission, Office of the Deputy Chief Information Officer, ATTN: Information Clearance Officer (ED–32), 888 First Street, NE., Washington, DC 20426.

and to:

Office of Management and Budget, Office of Information and Regulatory Affairs. ATTN: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503.

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I. General Information

A. Purpose of Report

The FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is required pursuant to Sections 213(b), 307(a) and 311 of the Federal Power Act to provide information adequate to inform potential transmission customers, State regulatory authorities and the public of potential transmission capacity and known constraints, to support the Commission's expanded responsibilities under §§ 211, 212 and 213(a) of the Federal Power Act (as amended by the Energy Policy Act), and to assist in rate or other regulatory proceedings.

B. Who Must Submit

Each transmitting utility, as defined in section 3(23) of the Federal Power Act, that operates network (that is, non-radial) transmission facilities at or above 100 kilovolts must report the information requested under the listed items in the prescribed manner. In the case of joint ownership, only the operator of the facilities must report.

A designated agent, such as a regional transmission group, regional reliability organization, formal power pool, or other group, may submit part or all of the required information on behalf of the transmitting utility. The transmitting utility is responsible for submitting all data not submitted on its behalf by a designated agent. Designated agents must specify the transmitting utility (or transmitting utilities) for which they are submitting information. The Commission prefers that all power flow data submitted for Part 2 of FERC–715 be submitted by designated agents outlined above.

C. Waiver Request

The final rule requires that an entity requesting waiver of FERC–715 must either: (1) Indicate the entity that performs transmission planning for it, or (2) state that it does not use power flow analyses in performing transmission planning. Once granted, a waiver request in subsequent years is unnecessary, provided the party's status does not change; that is, as long as the party does not begin to perform transmission planning or to use power flow analyses in its planning. Requests for waivers must be submitted prior to the required submission date, April 1st of the filing year.

D. Blank or N/A (Not Applicable) Responses

All parts of the FERC–715 must be completed. Blank or N/A (Not Applicable) responses are not acceptable. For example; for Parts 4 and 5, respondent transmitting utilities should state the reasons why they have not developed specific transmission reliability criteria or assessment practices for their own system in addition to that of the regional entities if that should be the case.

E. Checklist and Where To Submit

Respondents may send their responses via FERC *eFiling,* if all the files comprising the submission are on the list of FERC acceptable file formats.

Respondents who are unable or unwilling to use the FERC eFiling system must submit one original, either in hardcopy or electronically on CDs or DVDs, including all six Parts of FERC–715 to: Federal Energy Regulatory Commission, Form No. 715, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

F. When To Submit

File the report annually by April 1st of the filing year.

G. Contact Information

Direct technical questions concerning the FERC–715, Annual Transmission Planning and Evaluation Report, to email *form715@ferc.gov*.

H. Sanctions and Confidentiality Statements

The FERC–715, Annual Transmission Planning and Evaluation Report, is mandatory under the Federal Power Act. The information reported in FERC–715 is classified as *CEII.* Late filing or failure to file, keep records, or comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law.

II. General Instructions

The Federal Energy Regulatory Commission (Commission) has determined that to satisfy section 213(b) of the Federal Power Act (FPA) it is necessary for potential customers to be able to reasonably anticipate the outcome of technical studies that a transmitting utility would perform in assessing the availability of transmission capacity to satisfy a request for transmission service. Therefore, the Commission requires each transmitting utility, or its designated agent, to:

A. Submit

The Commission requires each transmitting utility, or its designated agent, to submit an annual report that includes:

1. Power flow base cases for its transmission system, or if the transmitting utility belongs to a regional or subregional transmission planning or reliability organization, power flow base cases for that region or subregion;
2. System maps and one-line diagrams;
3. A description of their reliability criteria and transmission planning assessment practices; and
4. An evaluation under the reliability criteria of the current and future performance of their transmission system.

B. Designate Entity To Submit Power Flow Cases

The Commission requires each transmitting utility, or its agent, to designate any regional or subregional transmission planning or reliability organizations to which it belongs or any other single entity to submit to the Commission any regional or subregional power flow base cases developed for the purposes of members' transmission planning.

C. Fee Schedule

If Respondents make CEII directly available to the requesting public and desire to impose copying charges for this service, they shall provide a fee schedule.

D. The Importance of Power Flow Cases in the Evaluation of System Performance

The Commission assumes that most transmitting utilities participate in the development, by a regional or subregional organization to which they belong, of regional or subregional power flow base cases. The purpose of this process is to ensure consistency of assumptions and accuracy of data.

Individual members of regional or subregional organizations use these power flow cases as the starting place for their own transmission planning studies. A detailed description of a transmitting utility's reliability criteria and planning practices and an evaluation of system performance are essential to perform planning studies, to assess the availability of transmission, to identify potential constraints, and to anticipate the outcome of transmitting utility technical studies made in response to an actual request for service.

III. Terms and Definitions

A. Transmission Planning Reliability Criteria

The measuring systems and performance standards that are used for assessing the actual or projected ability of the bulk electric transmission system to deliver power to load reliably. Failure to attain a specified performance standard indicates the need to consider adding or rearranging facilities, changing operating modes, or other responses.

Examples of criteria that might apply to simulated testing of the bulk electric transmission system are:

1. No cascading outage following any specified set of contingencies.
2. No overloaded facilities following a specified contingency.
3. All voltages within prescribed limits.

B. Transmitting Utility

Any electric utility, qualifying cogeneration facility (section 3(18)(B), FPA), qualifying small power production facility (section 3(17)(C), FPA), or Federal power marketing agency (section 3(19), FPA) that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale. (section 3(23), FPA)

IV. Specific Instructions

A. Part 1: Identification and Certification

Provide the following information:

1. Transmitting Utility Name
2. Transmitting Utility Mailing Address
3. Contact Person Name
4. Contact Person Title
5. Contact Person Telephone Number
6. Contact Person Facsimile Number
7. Certification by an authorized official of the Transmitting Utility regarding the accuracy of the information submitted.
8. Certifying Official Signature

9. Certifying Official Name
10. Certifying Official Title

B. Part 2: Power Flow Base Cases

A Respondent participating in a regional or subregional process (for consolidating and ensuring the consistency and accuracy of the power flow information used by the Respondent for transmission planning) must submit the most current regional or subregional input data to solved power flow base cases that the transmitting utility would ordinarily use as the starting point for its transmission planning studies or, where these data are unavailable from a regional organization, submit such data itself.

If the Respondent participates in such a regional or subregional process, it must submit the following items:

1. Regional or subregional organization name;
2. Regional or subregional organization mailing address;
3. Regional or subregional organization contact person;
4. Regional or subregional organization contact person title;
5. Regional or subregional organization contact person telephone number;
6. Regional or subregional organization contact person facsimile number;
7. Description of process for public access to regional or subregional power flow information; and
8. Description of power flow cases currently available from regional or subregional organization, including time frame, conditions, format, media and the fees, if any, for copying data for the public.

If a Respondent does not participate in the development of regional or subregional transmission planning power flow base cases, the Respondent must submit its own equivalent power flow base cases directly to the Commission.

Each Respondent must submit for each solved power flow base case: the input data file (in formats described below) and the corresponding output data file (in ASCII format) showing the solved real and reactive power flows, voltages, real and reactive generation and loads, solution parameters, and other relevant output information; or, in the alternative, at a minimum, a one-line diagram showing real and reactive power flows, bus voltages and angles, generator outputs, transformer tap settings and loads.

Regional and subregional organizations authorized by their members to provide access to solved power flow cases should make them available electronically on CDs or DVDs, or via a computer bulletin board, when practical, in the input data format associated with the power flow program that the regional or subregional organizations use in their transmission studies. The Commission expects that, in nearly all cases, the format will be one of the following:

1. The Raw Data File format of the PTI (Power Technologies, Inc.) PSS/E Power flow program;
2. The Card Deck Image format of the Philadelphia Electric Power flow program;
3. The Card Deck format of the WSCC Power flow program;
4. The Raw Data File format of the General Electric PSLF power flow program;
5. The IEEE Common Format for Exchange of Solved Power Flows; or
6. The Binary or Project File format of the PowerWorld simulator.

Respondents submitting their own cases must supply the input data to the solved base cases and associated ASCII output data on CDs or DVDs in the format associated with the power flow program used by the Respondents in the course of their transmission studies, as described above.

The power flow cases may also be submitted via eFiling, if they are available in an acceptable file format. A list of acceptable file formats is available on the FERC eFiling website.

The input data to the solved power flow base cases must be forward-looking. For example, the power flow base cases submitted and made available might include:

1. One, two, five and ten-year forecasts under summer and winter peak conditions and
2. A one-year forecast under light load/heavy transfers condition.

This example is similar to a schedule of base cases proposed by North American Electric Reliability Corporation's (NERC) Multiregional Modeling Working Group for development at the time this form was created. A regional or subregional organization may develop, depending on its needs, a different number of power flow base cases than those described above.

The power flow base cases must be in sufficient detail that network equivalents, if used, extend sufficiently beyond the electrical borders of the transmitting utility that potential transmission users could simulate power transfers within a reasonable market area without significant loss of accuracy.

The power flow base cases should include all branch circuit ratings (that is, normal, long-term and short-term emergency, or other relevant ratings) that a Respondent uses. Each Respondent must also submit or make available a data-dictionary that cross-references the bus or line terminal names. Energy Information Administration (EIA) codes must be included for each generating plant referenced. | *EIA Plant Codes*

C. Part 3: Transmitting Utility Maps and Diagrams

1. Each Respondent must submit general transmission maps and single-line schematic diagrams. The maps and diagrams should be those prepared in the general course of business for planning and operating purposes. The guidelines provided below indicate the type of information and the level of detail desired; however, the Commission is not requiring the Respondent to specifically prepare new maps and diagrams to satisfy this requirement. If the Respondent has readily available more than one set of maps and/or diagrams, the Commission requests that the set submitted best provide the level of detail described below.

2. The transmitting utility's general maps should show the geographic locations and names of:

a. Generating plants;
b. Switching stations;
c. Substations;
d. Service areas; and
e. Interconnections with other utilities.

3. The transmitting utility's single-line schematic diagrams should show and identify:

a. AC and DC transmission lines and facilities, including their nominal operating and design voltages;
b. Electrical connections;
c. Generating plants;
d. Transformation facilities;
e. Phase angle transformers; and
f. VAR control equipment; (*i.e.,* shunt and series capacitors and inductors, *etc.*).

4. On the maps or in separate documentation, each Respondent should provide a legend that shows the symbols used on the map or diagram to represent generators, transmission lines, transformers, capacitors, reactors, buses, *etc.*

5. Respondents must submit new maps or diagrams each year regardless of its revision.

6. The FERC prefers all maps and diagrams be submitted electronically in a format such that any text is searchable. For example, these maps typically list many substations, and FERC prefers that the format support a search for specific substation names. The Adobe PDF format is an example of a common file type that provides this feature.

D. Part 4: Transmission Planning Reliability Criteria

Each Respondent is to provide the transmission planning reliability criteria used to assess and test the strength and limits of its transmission system to meet its load responsibility as well as to move bulk power between and among other electric systems.

If a transmitting utility subscribes, through its interconnection or pooling agreements with others, to criteria that are more detailed than the NERC and regional entity standards, then it must also submit these additional criteria.

The Commission expects that each transmitting utility will have additional detailed criteria. For example, each utility generally sets its own voltage limit criteria on its bulk system as well as its lower voltage system, since NERC and the regional entities generally do not. Each transmitting utility must submit all such additional criteria.

The above criteria will be those which the transmitting utility uses to determine available transmission capacity needed to meet potential transmission requests as well as its own native load. A transmitting utility must describe the criteria that it uses in sufficient detail to allow others to use the criteria when performing their own planning or screening studies and to better understand the process of determining available transmission capacity.

In subsequent years, Respondents need only identify and file changed criteria. If the criteria are unchanged from a previous filing, please provide the date of that filing. If this date is prior to the 2010 filing deadline, Respondents need only state that the previous filing was ''prior to the 2010 filing.''

E. Part 5: Transmission Planning Assessment Practices

The criteria submitted under Part 4 of this form set the limits of transmission use.

However, assessment practices that a transmitting utility uses in applying these criteria are as important as the criteria themselves. These practices, developed through experience and study, include consideration of detailed factors that a transmitting utility may not list in the criteria that it submits under Part 4. For example, a utility might have certain operating restrictions and limitations that must be met by appropriate modeling within a simulation study.

Also, through experience and study, each transmitting utility may have developed a list of various contingencies it typically tests against in the application of its transmission planning reliability criteria. For example, before testing for the limits of transmission capability that could be used for firm power transfers on its system, a transmitting utility will assume, based on experience or realistic expectation, that certain facilities will be unavailable for some period of time. Each transmitting utility must identify these contingencies and submit them under this Part.

A description of the Respondent's practices when applying the transmission planning reliability criteria submitted in Part 4 must be submitted under this part. The description must include the substantive planning assessment practices that a Respondent follows in the normal course of business. The information filed should help requesters to perform planning or screening studies and to better understand the process of determining available transmission capacity and known constraints.

In subsequent years, Respondents need only identify and file changed assessment practices. If the practices are unchanged from a previous filing, please provide the date of that filing. If this date is prior to the 2010 filing deadline, Respondents need only state that the previous filing was ''prior to the 2010 filing.''

F. Part 6: Evaluation of Transmission System Performance

The transmitting utility must provide a narrative evaluation or assessment of the performance of its transmission system in future time periods based on the application of its reliability criteria. It must provide a clear understanding of existing and likely future transmission constraints, their sources, how it identified these constraints, and a description of any plans to mitigate the constraints. The evaluation must provide a clear understanding of the existing and expected system performance of the Respondent's transmission system. The evaluation should include a description of all existing transmission stability limits that the transmitting utility has uncovered through dynamic system simulation studies. If, in their studies, Respondents identify stability as a regional transmission limiting factor, Respondents must, on request, provide the results of their studies.

The required evaluation is to be drawn from existing utility transmission planning studies and the experience and judgment of the Respondents' transmission system planners. Respondents may base the required evaluation, in part, on recently performed operating studies that determine transfer capabilities for the upcoming peak load season.

[FR Doc. E9–28791 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–13590–000]

Lockhart Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

November 23, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13590–000.

c. *Date Filed:* September 28, 2009.

d. *Submitted By:* Lockhart Power Company (Lockhart Power).

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

f. *Location:* On the Enoree River in Spartanburg and Laurens Counties, South Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's Regulations

h. *Potential Applicant Contact:* Bryan Stone, Lockhart Power Company, Chief Operating Officer, 420 River Street, P.O. Box 10, Lockhart, South Carolina 29364; 1–800–368–1289.

i. *FERC Contact:* Bryan Roden-Reynolds at (202) 502–6618; or e-mail at *bryan.roden-reynolds@ferc.gov.*

j. Lockhart Power filed its request to use the Traditional Licensing Process on September 28, 2009. Lockhart Power provided public notice of its request on September 29 and 30, 2009. In a letter dated November 20, 2009, the Director of the Office of Energy Projects approved Lockhart Power's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the South Carolina State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lockhart Power as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act, Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the National Historic Preservation Act.

m. Lockhart Power filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov*, or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28793 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–010]

Independent Energy Producers Association v. California Independent System Operator Corporation; Notice of Compliance Filing

November 24, 2009.

Take notice that on November 20, 2009, Mirant Energy Trading, LLC filed an amendment to their compliance refund report submitted on October 2, 2009, pursuant to the Commission's order issued on August 18, 2009, 128 FERC ¶ 61,165 (2009) (Order on Remand).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28796 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF86–36–004; EL10–18–000]

PowerSmith Cogeneration Project Limited Partnership; Notice of Filing

November 24, 2009.

Take notice that on November 20, 2009, PowerSmith Cogeneration Project Limited Partnership filed a petition for temporary waiver of 5 percent operating efficiency standards for its 110 MW topping-cycle cogeneration facility, located in Oklahoma City, Oklahoma, pursuant to the Federal Energy Regulatory Commission's regulations 292.205(c) and 385.207, 18 CFR 292.205(c) and 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 4, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28789 Filed 12–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ID–3398–002]

Burke, Kevin; Notice of Filing

November 23, 2009.

Take notice that on November 19, 2009, Kevin Burke filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), and Part 45 of the regulations of the Federal Energy Regulatory commission, 18 CFR 45 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 10, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28792 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–149–000]

Elk City Wind, LLC; Notice of Filing

November 24, 2009.

Take notice that, on November 18, 2009, Elk City Wind, LLC filed to supplement, its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 9, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28790 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2621–009]

Lockhart Power Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 24, 2009.

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

a. *Type of Application:* New Major License.

b. *Project No.:* 2621–009.

c. *Date Filed:* November 16, 2009.

d. *Applicant:* Lockhart Power Company.

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

f. *Location:* The existing project is located on the Pacolet River in Spartanburg County, South Carolina. 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:* Brian D. Stone, Chief Operating Officer, Lockhart Power Company, P.O. Box 10, 420 River Street, Lockhart, SC 29364; Telephone (864) 545–2211.

i. *FERC Contact:* Lee Emery, (202) 502–8379, or via e-mail at *Lee.Emery@ferc.gov.*

j. *Cooperating Agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted to form an adequate factual basis for complete analysis of the application on its merit, the resource, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 15, 2010.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-Filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. This application is not ready for environmental analysis at this time.

n. *Project Description:* The proposed Pacolet Hydroelectric Project would consist of two developments with a total installed capacity of 1,900 kilowatts (kW). The project would produce an estimated 8,100,000 kilowatt-hours annually. The electricity produced by the project would be sold to Lockhart Power Company's customers.

The upper development would include the following existing and proposed facilities: (1) An existing 18-foot high, 315-foot-long concrete gravity dam with proposed three-foot-high flashboards; (2) an existing 30-acre reservoir, with a useable storage capacity of 90 acre-feet; (3) a proposed 36-foot-wide intake that would be equipped with trashracks having a 1.375-inch clear bar spacing; (4) a proposed 24- by 40-foot concrete powerhouse, containing a vertical Kaplan turbine with an estimated hydraulic capacity of 550 cubic feet per second (cfs) and an estimated generating capacity of 1,100 kW; (5) a proposed tailrace; (6) a proposed 1,000-foot-long, 34.5 kilovolt (kV) transmission line; (7) a proposed switchyard with storage warehouse; and (8) appurtenant facilities.

The lower development includes the following constructed facilities: (1) A 24-foot-high, 347-foot-long, concrete gravity dam with 4-foot-high flashboards; (2) an 11-acre impoundment, with a useable storage capacity of 44 acre-feet; (3) an intake structure, equipped with trashracks having 1.375-inch clear bar spacing; (4) a 67-foot-long by 32-foot-wide concrete powerhouse, containing two vertical turbines with each having a maximum hydraulic capacity of 225 cfs and being directly connected to a 400-kW generator unit; (5) a tailrace with training wall; (6) an approximately 450-foot-long bypassed reach; (7) a 250-foot-long, 34.5-kV transmission line; (8) a switchyard containing a storage warehouse and three transformers; and (9) appurtenant facilities.

Both developments would be operated in a modified run-of-river mode, where water levels in each reservoir would be maintained within 0.1-inch from the top of the flash boards, except during peak generation periods when water levels could drop 3 to 4 feet below the crest of the dam, depending on the development. The

applicant proposes to release a minimum flow from the lower development that equals leakage from the dam (seasonally ranging from 22 to 49 cfs). Since the tailrace of the upper development discharges directly into the lower development's reservoir, no minimum flow is proposed for the upper development.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the South Carolina State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter	December 18, 2009.
Issue Scoping Document.	December 18, 2009.
Request Additional Information.	January 22, 2010.
Notice of Acceptance	March 26, 2010.
Notice of Application Ready for Environmental Analysis.	March 26, 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	May 25, 2010.
Commission issues Non-Draft EA or EIS.	September 22, 2010.
Comments on EA or EIS.	October 22, 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28794 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR08–30–000, PR08–30–001, PR07–12–003, PR07–12–004]

Enterprise Texas Pipeline, LLC Notice of Offer of Settlement

November 24, 2009.

Take notice that on November 23, 2009, Enterprise Texas Pipeline, LLC (Enterprise Texas) filed an Offer of Settlement in the above-docketed proceedings. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Settlement. We are shortening the date for filing initial comments to and including December 3, 2009. Reply comments should be filed on or before December 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28795 Filed 12–1–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0865; FRL–9088–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Group and Consumer Survey Research for Improving Fuel Economy Label Design and Content; EPA ICR No. 2343.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0865 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- Mail Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0865
- *Hand Delivery:* Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0865. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0865. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://*www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Roberts French, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone number: (734) 214–4380; fax number: (734) 214–4869; e-mail address: *French.Roberts@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–2009–0865, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OAR Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2009–0865.

Affected entities: Entities potentially affected by this action are randomly selected U.S. citizens. Some screening may be done to ensure that the respondents may have some familiarity with fuel economy and fuel economy labels. For example, respondents could be randomly selected from records of people who have recently purchased a vehicle.

Title: Focus Group and Consumer Survey Research for Improving Fuel Economy Label Design and Content.

ICR numbers: EPA ICR No. 2343.01, OMB Control No. 2060–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is responsible for developing the fuel economy labels that are posted on window stickers of all new light duty cars and trucks sold in the U.S. and, beginning with the 2011 model year, on all new medium-duty passenger vehicles (a category that includes large sport-utility vehicles and passenger vans). In 2006 EPA updated how the city and highway fuel economy values are calculated, to better reflect typical real-world driving patterns and provide more realistic fuel economy estimates. Since then, increasing market penetration of advanced technology vehicles, in particular plug-in hybrid electric vehicles and electric vehicles, will require new metrics to effectively convey information to consumers. This action will amend the way in which fuel economy estimates are calculated and/or displayed. EPA plans to conduct a limited set of voluntary focus groups and consumer surveys over the course of the rulemaking to solicit information from a diverse group of consumers regarding what information displayed on the fuel economy label will best serve the intended purpose of providing consumers with useful and meaningful information about the vehicles they are considering to purchase. Participation in surveys and focus groups is strictly voluntary. Focus group participants will be compensated, and incentives will be offered for participation in consumer surveys. Resulting reports from the consumer research will not be considered confidential. The identity of individual participants will be strictly confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to

respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 8,520.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 4,140 hours.

Estimated total annual burden costs: $121,300.

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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 24, 2009.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E9–28836 Filed 12–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0265; FRL–8800–4]

Dicloran; Notice of Receipt of a Request to Voluntarily Amend To Terminate a Use of DCNA Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend their DCNA registrations to terminate a certain use. The request would terminate dicloran (DCNA) use in or on carrots. The request would not terminate the last DCNA product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws the request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 4, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0265, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation, (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special Arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0265. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: James Parker, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; fax number: (703) 308–7070; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. 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 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. Background on the Receipt of Request To Amend Registrations To Delete Use

This notice announces receipt by EPA of a request from the registrant, Gowan Company, to amend the product registrations of DCNA to terminate use in or on carrots. DCNA is a pre-harvest and post-harvest fungicide used as a preventative and curative fungal spore germination inhibitor. In an email dated November 2, 2009, Gowan Company requested EPA to terminate use in or on carrots from all DCNA pesticide product registrations identified in this notice. The specific products for which Gowan Company is requesting this use deletion are identified in Table 1 of this notice. These product registration amendments will not terminate the last DCNA product registered for use in the United States.

III. What Action Is the Agency Taking?

This notice announces receipt by EPA of a request from Gowan Company to amend its DCNA product registrations to terminate use in or on carrots. The affected products and the registrant making the requests are identified in Tables 1 and 2 respectively, of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The DCNA registrant has requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1—DCNA PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration number	Product name	Company
10163–189	Botran 75-W Fungicide	Gowan Company
10163–195	Botran Technical	Gowan Company
10163–226	Botran 5F Fungicide	Gowan Company

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company number	Company name and address
10163	Gowan Company P.O. Box 5569 Yuma, AZ 85366–5569

IV. What Is the Agency's Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of DCNA

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 4, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that

accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the canceled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 19,2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–28542 Filed 12–1–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, December 1, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–28705 Filed 12–1–09; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition To Add a Class of Employees to 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 of a determination concerning a petition to add a class of employees at the Baker-Perkins Company, Saginaw, Michigan, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384q. On November 13, 2009, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All AWE employees who performed Atomic Energy Commission work at Baker Perkins Company, in Saginaw, Michigan, from May 14, 1956 through May 18, 1956.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim 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. E9–28809 Filed 12–1–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Rashanda Robertson, Emory University: Based on an assessment conducted by Emory University (EU), the Respondent's own admission, and additional oversight of that admission conducted by ORI, ORI and EU found that Ms. Rashanda Robertson, former Research Coordinator, Department of General Medicine, EU, engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant K23 HL077597. The randomized study for which she coordinated was designed to assess whether patient medication compliance was improved by a meeting with a clinical pharmacist to discuss the patient's current and newly prescribed medications prior to the patient's discharge from the hospital. The enrolled subjects randomized to the intervention group received a card listing all of their medications and a ''pill box'' to help them with medication compliance. The subjects also were called three days after discharge to check on their medication compliance.

Specifically, the U.S. Public Health Service (PHS), EU, and Ms. Robertson, in a three-way Voluntary Settlement Agreement, agree that the Respondent committed the following acts of research misconduct, which she fully acknowledged. In an affidavit obtained by EU, the Respondent admitted that during the last two weeks of her employment at EU, she fabricated enrollment forms to create enrollees who did not exist and falsified the data of some enrollees who did not exist to cover up the data fabrication. To create the fabricated enrollment forms, the Respondent:

- Identified patients who were eligible for the study based on their charge screens but who were considered ineligible after a face-to-face screen;
- Obtained patients' names from the screening records and used the names to obtain the personal information (address and telephone numbers) on these patients from the site hospital's pharmacy online system;
- Created a fabricated enrollment form for each of the non-existent enrollees; specifically, Respondent fabricated a participant's name by using the name of a patient who had failed screening and then fabricated the date of enrollment by using the date of the patient's screening failure; using this method, Respondent fabricated the participant names, personal information, and enrollment dates on twenty-eight (28) enrollment forms;
- Dispersed the fabricated enrollment forms among those enrollment forms, beginning around participant number 136 through 212;
- Falsified the numbering of the enrollment forms for some individuals who had actually been enrolled to disperse the fabricated enrollment forms among the authentic enrollment forms; Respondent falsified the status of some actual participants to include them in the intervention group, even though they had not actually received the intervention; Respondent falsified the data on both the enrollment form and the follow-up form for 16 participants between numbers 137 and 198;

• Respondent falsified data on the enrollment forms and follow-up forms for participant numbers 153 and 154 by changing their enrollment numbers.

ORI acknowledges that the Respondent was remorseful.

Ms. Robertson has entered into a Voluntary Settlement Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on October 14, 2009:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses her in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of her research contribution; respondent agreed that she will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI; and

(3) That any institution employing her submits, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS-funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, analyses, and methodology are accurately reported in the application, report, manuscript, or abstract. The Respondent must ensure that the institution sends a copy of the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. E9–28814 Filed 12–1–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0554]

Agency Information Collection Activities; Proposed Collection; Comment Request; Manufactured Food Regulatory Program Standards

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 the Manufactured Food Regulatory Program Standards.

DATES: Submit written or electronic comments on the collection of information by February 1, 2010.

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: Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

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.

Manufactured Food Regulatory Program Standards—(OMB Control Number 0910–0601—Extension)

I. Background

In the Federal Register of July 20, 2006 (71 FR 41221), FDA announced the availability of a draft document entitled ''Manufactured Food Regulatory Program Standards.'' These draft program standards are the framework that States should use to design and manage its manufactured food program. The implementation of the program standards will be negotiated as an option for payment under the State food contract. States that are awarded this option will receive up to $25,000 over a period of 5 years to fully implement the program standards.

In the first year of implementing the program standards, the State program conducts a baseline self-assessment to determine if they meet the elements of each standard. The State program should use the worksheets and forms contained herein; however it can use alternate forms that are equivalent. The State program maintains the documents and verifying records required for each standard. The information contained in the documents must be current and fit-for-use. If the State program fails to meet all program elements and documentation requirements of a standard, it develops a strategic plan to fully implement the program standards in 5 years. The strategic plan includes the following: (1) The individual element or documentation requirement

of the standard that was not met, (2) improvements needed to meet the program element or documentation requirement of the standard, and (3) projected completion dates for each task.

II. Electronic Access

Persons with access to the Internet may obtain the draft program standards at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM125448.pdf*.

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
44	1	44	40	1,760

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED FIRST-YEAR BASELINE SELF-ASSESSMENT BURDEN[1]

No. of Respondents	Five-Year Frequency per Response	Total First-Year Responses	Hours per Response	Total Hours
17	1	17	200	3,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28834 Filed 12–1–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069000 L17110000 AL0000]

Notice of Public Meeting of the Carrizo Plain National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Carrizo Plain National Monument Advisory Council (MAC) will meet as indicated below.

DATES: The meeting will be held on Saturday, January 23, 2010, at the Carissa Plain Elementary School, located approximately 2 miles northwest of Soda Lake Road on Highway 58. The meeting will begin at 10 a.m. and finish at 3 p.m. The meeting will focus on the Resource Management Plan/Environmental Impact Statement (RMP/EIS) being developed for the Carrizo Plain National Monument. There will be a public comment period from 2 p.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: The BLM, attention: Johna Hurl, Monument Manager, 3801 Pegasus Drive, Bakersfield, CA 93308. Phone (661) 391–6093 or e-mail: *jhurl@blm.gov*.

SUPPLEMENTARY INFORMATION: The nine-member MAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with the public land management of the Carrizo Plain National Monument in Central California. At this meeting, monument staff will present updated information on the progress of the RMP/EIS. Draft alternatives being developed by the Carrizo managing partners—the BLM, the California Department of Fish and Game and The Nature Conservancy—will be the focus of this meeting. This meeting is open to the public. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated below.

Dated: November 25, 2009.

Janet Bedrosian,

Deputy State Director, External Affairs, California State Office.

[FR Doc. E9–28808 Filed 12–1–09; 8:45 am]

BILLING CODE 4310–40–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 18–19, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Emory Law School, 1301 Clifton Road, Atlanta, GA 30322.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 23, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–28531 Filed 12–1–09; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on July 1, 2009, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the basic classes of controlled substances for manufacture of active pharmaceutical ingredients for sale to its customers.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28824 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2), authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 8, 2009, Mylan Pharmaceuticals Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II

The company plans to import the listed controlled substances as finished dosage forms (FDF) for analytical testing and distribution for clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 4, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28827 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 22, 2009, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the controlled substance to manufacture amphetamine.

Any bulk manufacturers who are presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 4, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28825 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 21, 2009, and published in the **Federal Register** on

September 8, 2009 (74 FR 46228), GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of GE Healthcare to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28821 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 28, 2009, and published in the **Federal Register** on September 8, 2009 (74 FR 46227), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Etorphine (except HCl)(9056)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Trimeperidine (9646)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28822 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 17, 2009, and published in the **Federal Register** on September 24, 2009, (74 FR 48780), Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for analytical research and clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Fisher Clinical Services, Inc., to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or

protocols in effect on May 1, 1971, at this time. DEA has investigated Fisher Clinical Services, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28823 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29720), Noramco Inc., Division of Ortho-McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tapentadol (9780), a basic class of controlled substance listed in schedule II.

The company plans to bulk manufacture the above listed controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28820 Filed 12–1–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 1, 2010.

ADDRESSES: You may submit comments, identified by Control Number 1215–0140, by either one of the following methods:

E-mail: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Michel Smyth, Chief, Regulatory Analysis Branch, Division of Interpretations and Regulatory Analysis, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* Regulations 29 CFR part 5 prescribe labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* the Davis-Bacon Related Acts (DBRA), and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor (DOL), to laborers and mechanics on most federally financed or assisted construction projects. 40 U.S.C. 3142(a)–(b) and 29 CFR 5.5(a)(1). The CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over forty in a week on most federal contracts involving the employment of laborers or mechanics. *See* 40 U.S.C. 3702(a) and 29 CFR 5.5(b)(1). The requirements of this information collection consist of reports of conformed classifications and wage rates and requests for approval of unconventional fringe benefit plans.

Conformance Reports (29 CFR 5.5(a)(1)(ii)): DBA section 1(a) provides

that every contract subject to the DBA must contain a provision (i.e., a wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. *See* 40 U.S.C. 3142(a) and 29 CFR 5.5(a)(1)(i). This requirement necessitates a method for establishing minimum rates for classes of employees omitted from wage determinations, primarily due to wage data being unavailable; therefore, regulations 29 CFR 5.5(a)(1)(ii) requires that any class of laborer or mechanic not listed in the wage determination that is to be employed under the contract to be classified in conformance with the wage determination. A report of the conformance action (or, where there is disagreement among the parties, the questions and views of all parties) is submitted through the contracting officer to the DOL for review and approval. 29 CFR 5.5(a)(1)(ii)(B)–(C).

The Wage and Hour Division (WHD) of the DOL reviews a proposed conformance action report to determine the appropriateness of the request. The WHD considers such factors as: (1) The work of the proposed classification, which cannot be work that is performed by a classification already listed in the wage determination; (2) whether the proposed classification is utilized in the area by the construction industry; and (3) whether the proposed wages and fringe benefits bear a reasonable relationship (i.e., appropriate comparison of skills and duties) to the rates contained in the wage determination. *See* 29 CFR 5.5(a)(1)(ii)(A). Upon completion of the review, the WHD approves, modifies, or disapproves the conformance request and issues a determination. *See id.* at 5.5(a)(1)(ii)(B)–(C).

Unconventional Fringe Benefit Plans (29 CFR 5.5(a)(1)(iv)): The DBA provides that wages may include costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers or mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program. 40 U.S.C. 3141(2)(B)(ii). Where a benefit plan is not of the conventional type described in the DBA and/or common in the construction industry that is established under a customary fund or program, it is necessary to determine from the circumstances whether the benefit is *bona fide,* as required by the DBA; thus, regulation 29 CFR 5.5(a)(1)(iv) provides for contractors to request approval of these unconventional fringe benefit plans.

Taking credit for payments to fringe benefit plans that are not *bona fide* violates the DBA and DBRA. *See* 29 CFR 5.5(a)(iv). The WHD reviews requests for approval of unconventional fringe benefit plans to determine the propriety of the plans. *Id.*

II. *Review Focus:* The DOL is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks the approval of the extension of this information collection in order to ensure there is a viable method for interested parties to seek approval of wage conformances and certain fringe benefit plans under the DBA and DBRA and to allow the WHD to carry out its enforcement responsibilities.

Type of Review: Extension.

Agency: Wage and Hour Division.

Titles: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.

OMB Number: 1215–0140.

Agency Numbers: None.

Affected Public: Businesses or other for-profits.

Respondents: 2966.

Total Annual Responses: 2966.

Estimated Total Burden Hours: 746.

Estimated Time per Response: 15 to 60 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1391.

Dated: November 24, 2009.

Michel Smyth,

Regulatory Analysis Branch Chief.

[FR Doc. E9–28783 Filed 12–1–09; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Employment Information (Forms WH–3 and WH–3 SP). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 1, 2010.

ADDRESSES: You may submit comments, identified by Control Number 1215–0001, by either one of the following methods:

E-mail: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified below for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail to or to submit them by mail early.

FOR FURTHER INFORMATION CONTACT: Michel Smyth, Chief, Regulatory Analysis Branch, Division of

Interpretations and Regulatory Analysis, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* This information collection provides a method for the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) to obtain information from complainants regarding alleged violations of the labor standards the agency administers and enforces. The law of most general application regarding wages and hours of work is the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* FLSA section 11(a) provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. 29 U.S.C. 211(a).

Other Federal laws the WHD administers provide similar authority. These Acts include the: Walsh-Healey Public Contracts Act (41 U.S.C. 38); McNamara-O'Hara Service Contract Act (41 U.S.C. 353(a)); Davis-Bacon Act (40 U.S.C. 3141 *et seq.,* pursuant to Reorganization Plan No. 14 of 1950, and Related Acts); Consumer Credit Protection Act (15 U.S.C. 1676); Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1862(a)); Employee Polygraph Protection Act (29 U.S.C. 2004(a)(3)); Family and Medical Leave Act (29 U.S.C. 2616(a)); Immigration and Nationality Act H–2A program (8 U.S.C. 1188(g)); and the Immigration and Nationality Act H–1C program (8 U.S.C. 1182(m)(2)(E)(ii)). The regulatory provisions authorizing the filing of complaints under these laws and how the agency acts upon the concerns can be found at 29 CFR 4.191, 5.6, 500.1(e), 501.1(c), 501.5, 801.7(a)(3), 825.401; 41 CFR 50–201.1202; and 20 CFR 655.1200(b).

WHD staff use Form WH–3 as a guide for obtaining optional information from complainants (e.g., current and former employees, unions, and competitor employers) about alleged employer violations of the labor standards provisions of the above-cited Acts. Complainants generally provide the optional information requested on the form to WHD staff over the telephone or in-person. Where the information provided does not support a potential WHD enforcement action, complainants are advised and referred to the appropriate agency for further assistance. When the WHD schedules a complaint-based investigation, the agency makes the completed Form WH–3 or its equivalent part of the investigation case file. The form is printed in both English and Spanish.

II. *Review Focus:* The DOL is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks the approval of the extension of this information collection in order to ensure complainants have a means for providing information to the WHD regarding alleged employer violations of the various labor standards provisions the WHD administers and to allow the WHD to carry out its enforcement responsibilities.

Type of Review: Extension.

Agency: Wage and Hour Division.

Titles: Employment Information Form.

OMB Number: 1215–0001.

Agency Numbers: Form WH–3 (English and Spanish).

Affected Public: Individuals or Households.

Respondents: 35,000.

Total Annual Responses: 35,000.

Estimated Total Burden Hours: 11,667.

Estimated Time per Response: 20 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Dated: November 24, 2009.

Michel Smyth,

Regulatory Analysis Branch Chief.

[FR Doc. E9–28781 Filed 12–1–09; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388; NRC–2009–0530]

PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–14 and NPF–22 for an Additional 20-Year Period Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF–14 and NPF–22 to PPL Susquehanna, LLC, (licensee), the operator of the Susquehanna Steam Electric Station (SSES), Units 1 and 2. Renewed Facility Operating License Nos. NPF–14 and NPF–22 authorizes operation of SSES by the licensee at reactor core power levels not in excess of 3952 megawatts thermal for each unit, in accordance with the provisions of the SSES renewed license and its technical specifications.

The notice also serves as the record of decision for the renewal of facility operating license No. DPR–14 and DPR–22, consistent with Title 10 of the *Code of Federal Regulations* Section 51.103 (10 CFR 51.103). As discussed in the final Supplemental Environmental Impact Statement (FSEIS) for SSES, dated March 2009, the Commission has considered a range of reasonable alternatives that included generation from oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, fuel cells, delayed retirement, and conservation measures. The factors considered in the record of decision can be found in the supplemental environmental impact statement (SEIS) for SSES.

SSES, Units 1 and 2, are boiling-water reactors located seven miles northeast of Berwick, Pennsylvania. The application

for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Chapter 1, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed licenses and of an opportunity for a hearing regarding the proposed issuance of the renewed licenses were published in the **Federal Register** on November 2, 2006 (71 FR 64566).

For further details with respect to this action, see: (1) PPL Susquehanna, LLC, license renewal application for SSES dated September 13, 2006, as supplemented by letters through July 28, 2009; (2) the Commission's safety evaluation report (NUREG–1931), published in November 2009; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 35), for SSES, Units 1 and 2, published in March 2009. These documents are available at the U. S. Nuclear Regulatory Commission's (NRC) Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of renewed facility operating license Nos. NPF–14 and NPF–22 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the SSES, Units 1 and 2, safety evaluation report (NUREG–1931) and the final environmental impact statement (NUREG–1437, Supplement 35) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), 703–605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954 Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800.

All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or Visa or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 24th day of November, 2009.

For the Nuclear Regulatory Commission.

Donnie J. Ashley,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28816 Filed 12–1–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Establishment of Prices and Classifications for Inbound Air Parcel Post at Universal Postal Union (UPU) Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List pursuant to 39 U.S.C. 3642.

DATES: December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it has filed with the Postal Regulatory Commission a Request of United States Postal Service to Add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List, Notice of Establishment of Prices and Classifications Not of General Applicability for Inbound Air Parcel Post at UPU Rates Established in Governors' Decision No. 09–15, and Application for Non-Public Treatment of Materials Filed under Seal. Documents are available at *http://www.prc.gov*, Docket Nos. MC2010–11 and CP2010–11.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–28766 Filed 12–1–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Inbound International Expedited Services 1

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Inbound International Expedited Services 1 to the Competitive Product List pursuant to 39 U.S.C. 3642.

DATES: December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it has filed with the Postal Regulatory Commission a Request to Add Inbound International Expedited Services 1 to the Competitive Product List, and Notice of United States Postal Service of Filing China Post Group—United States Postal Service Contractual Bilateral Agreement (Under Seal). Documents are available at *http://www.prc.gov,* Docket Nos. MC2010–13 and CP2010–12.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–28830 Filed 12–1–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of its intent to file a request with the Postal Regulatory Commission to add the Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Products List pursuant to 39 U.S.C. 3642 and of its exercise of its authority to adjust rates for that product pursuant to 39 U.S.C. 3622.

DATES: December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on November 19, 2009, it filed with the Postal Regulatory Commission a Request of United States Postal Service to Add Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal). The Postal Service further provides notice that it has determined to exercise its statutory authority to make a Type 2 rate adjustment for the proposed market dominant postal product. The implementation date for these rates is January 4, 2010. Documents are or will be available under Docket Numbers MC2010–12 and R2010–2 on the Postal

Regulatory Commission's Web site, *http://www.prc.gov.*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–28767 Filed 12–1–09; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11939 and #11940]

Virginia Disaster #VA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia, dated 11/25/2009.

Incident: Severe Nor'easter coupled with the remnants of Hurricane Ida.

Incident Period: 11/12/2009 through 11/15/2009.

Effective Date: 11/25/2009.

Physical Loan Application Deadline Date: 01/25/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 08/25/2010

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Cities: Hampton City, Newport News City, Norfolk City, Virginia Beach City.

Contiguous Cities and Counties:

Virginia: Chesapeake City, James City, Poquoson City, Portsmouth City, York.

North Carolina: Currituck.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.562
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 119396 and for economic injury is 119400.

The States which received an EIDL Declaration # are Virginia, North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 25, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–28768 Filed 12–1–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61066; File No. SR–Phlx–2009–98]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Tied Hedge Transactions

November 25, 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 November 20, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to adopt Commentary .04 to Phlx Rule 1064 (Crossing, Facilitation and Solicited Orders) to allow hedging stock, security future or futures contract positions to be represented concurrently with option facilitations or solicitations in the trading crowd (''tied hedge'' orders). The Exchange proposes to adopt a similarly worded Commentary .02 to Options Floor Procedure Advice (''OFPA'' or ''Advice'') B–11 (Crossing, Facilitation and Solicited Orders) to harmonize it with Rule 1064. The Exchange also proposes to amend Rule 1066 (Certain Types of Orders Defined) and Commentary .08 to Rule 1080 (Phlx XL and XL II) to clarify definitional language in respect of tied hedge orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to adopt new Commentary .04 to Phlx Rule 1064 and new Commentary .02 to OFPA B–11 to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the trading crowd (tied hedge orders); and to clarify definitional language in respect of tied hedge orders in Rules 1066 and 1080.

This rule change is based on a similar recently approved rule change proposal by another option exchange regarding tied hedge orders.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60499 (August 13, 2009), 74 FR 42350 (August 21, 2009) (SR–CBOE–2009–007) (notice of filing and order granting accelerated approval regarding ''tied hedge'' transactions). SR–CBOE–2009–007 was, in

Background

By way of background, Rule 1064 and OFPA B–11 [4] generally deal with, among other things: (a) When an Options Floor Broker (''Floor Broker'') who holds orders to buy and sell the same options series may cross such orders; [5] (b) when a Floor Broker holding an options order for a public customer and a contra-side order may cross such orders; [6] and (c) when a solicitation occurs where an order, other than a cross, is presented by a Floor Broker for execution in the trading crowd.[7] Rule 1064 also deals with firm participation guarantees entitling a Floor Broker to cross certain percentages of the original order with other orders that the Floor Broker is holding, or in the case of a public customer order, with facilitation orders of the original firm (i.e. the firm from which the original customer order originated).[8]

Additionally, Rule 1064 and OFPA B–11 indicate that a non member organization or person associated with a member or member organization who has knowledge of all the material terms of an order being facilitated, or an order being crossed, the execution of which is imminent, shall not enter (based on such knowledge) an order to: (a) Buy or sell an option for the same underlying security, (b) buy or sell a security underlying such class, or (c) buy or sell a related instrument (known as the ''anticipatory hedge rule'').[9]

The Exchange notes that Rule 1064 and OFPA B–11 were designed to preserve the right to solicit orders in advance of submitting a proposal to the trading crowd, while at the same time assuring that orders that are the subject of solicitation are exposed to the auction market (trading crowd) in a meaningful way by prohibiting behavior such as anticipatory hedging.

Rule 1064 and OFPA B–11 provide that a violation of the rule or Advice, respectively, may be considered inconsistent with just and equitable principles of trade.[10]

When Phlx originally adopted the anticipatory hedge rule in 2001, the Exchange believed that the prohibition on anticipatory hedging was necessary to prevent members and associated persons from using undisclosed non-public information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd.[11] While the Exchange has continued to believe that this basic principle remains true, changes in the marketplace have caused the Exchange to re-evaluate the effectiveness and efficiency of the Exchange's anticipatory hedge rule requirements.

The Exchange believes that increased volatility in the markets, as well as the advent of penny trading in underlying stocks and resultant decreased liquidity at the top of each underlying market's displayed NBBO, it has become increasingly difficult for members and member organizations to assess ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk. This risk extends to simple and complex orders,[12] and to all market participants involved in the transaction (whether upstairs or on-floor) because of the uncertainty of the extent to which the market participant will participate in the transaction, the amount of time associated with the auction process, and the likelihood that the underlying stock prices in today's environment may be difficult to assess and may change before they are able to hedge. These circumstances can make it difficult to obtain a hedge, difficult to quote orders, and difficult to achieve executions; and can translate into less liquidity in the form of smaller size and wider quote spreads, fewer opportunities for price improvement, and the inefficient handling of orders.

Additionally, more and more trading activity appears to be taking place away from the exchange-listed environment and in the over-the-counter (''OTC'') market, which by its nature is not subject to the same trade-through type risks present in the exchange environment. Therefore, the Exchange is seeking to make its trading rules more efficient not only to address the market risk and execution concerns, but also to effectively compete with and attract volume from the OTC market. What is more, trading strategies of market-makers, which include Registered Options Traders (''ROTs'') and specialists on the Exchange, have evolved.[13] Whereas market-makers previously tended to trade based on delta risk,[14] now market-making strategy tends to be based more on volatility.[15] The tied hedge transaction procedures (described below) are designed in a way that is consistent with this shift toward a volatility trading strategy, and makes it more desirable for market-makers to compete for orders that are exposed through the solicitation process.

Proposed Exception to Anticipatory Hedge Rule

In order to address the concerns associated with increased volatility and decreased liquidity and more effectively compete with the OTC market, the

turn, based on a previous Phlx rule change proposal, SR–PHLX–2003–75, that was ultimately not pursued to approval. *See* Securities Exchange Act Release No. 48875 (December 4, 2003), 68 FR 70072 (December 16, 2003) (SR–Phlx-2003–75) (notice of filing).

[4] OFPA B–11 is similar in structure and content to Rule 1064 (with the exception that Commentaries .02 and .03 to Rule 1064 are not in OFPA B–11). A sentence regarding priority is added to subsection (c)(iii) of Rule 1064 for conformity with OFPA B–11.

[5] Rule 1064(a).

[6] Rule 1064(b).

[7] Rule 1064(c).

[8] Commentary .02 to Rule 1064. For purposes of this commentary, an ''original order'' is when a Floor Broker holds an equity, index or U.S. dollar-settled foreign currency option order of the eligible order size or greater. Commentary .02 provides further that spread, straddle, combination or hedge orders, as defined in Exchange Rule 1066, on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in Rule 1064.

[9] Rule 1064(d). For purposes of this subsection (d), an order to buy or sell a ''related instrument'' means, ''in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.''

[10] Commentary .01 to Rule 1064 and OFPA B–11. The language of Commentary .01 to OFPA B–11 is clarified to indicate that a violation of the Advice may be considered conduct inconsistent with just and equitable principles of trade.

[11] *See* Securities Exchange Act Release No. 44740 (August 23, 2001), 66 FR 45721 (August 29, 2001) (SR–Phlx–2001–61) (notice of filing and immediate effectiveness regarding, among other things, anticipatory hedge rule in Rule 1064 and OFPA B–11).

[12] Subsection (a)(i)(F) to Commentary .08 is clarified to indicate that Complex Orders include ''tied hedge'' orders. Rule 1066 is similarly clarified to indicate that hedge orders include ''tied hedge'' orders.

[13] For obligations and restrictions generally applicable to ROTs and specialists, *see* Rule 1014.

[14] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Market-makers price options based on fundamental measures of risk as well. One of these measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security, security future or futures contract. The delta of an option is measured incrementally based on movement in the price of the underlying security, security future or futures contract. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $0.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50.

[15] Volatility is a measure of the fluctuation in the underlying security's market price. Market-makers that trade based on volatility generally have options positions that they hedge with the underlying. Once hedged, the risk exposure to the market-maker is realized volatility and implied volatility. Realized volatility (also known as historical volatility) is the actual volatility in the underlying. Implied volatility is determined by using option prices existing in the market at the time rather than using historical data on the market price changes of the underlying.

Exchange is proposing to adopt in Commentary .04 to Rule 1064 and Commentary .02 to OFPA B–11 a limited exception to the anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception remains in keeping with the original design of Rule 1064(d), but sets forth a more practicable approach considering today's trading environment that will provide the ability to hedge in a way that will still encourage meaningful competition among upstairs and floor traders. Besides stock positions, the proposal would also permit security futures positions to be used as a hedge. In addition, in the case where the order is for options on indices, options on exchange-traded funds (''ETFs'') or options on Holding Company Depository Receipts (''HOLDRS''), a related instrument may be used as a hedge. A ''related instrument'' would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' would mean, in reference to an ETF or HOLDR option, a futures contract on any economically equivalent index applicable to the ETF or HOLDR underlying the option order.[16]

With a tied hedge transaction, Exchange members would be permitted to hedge an option order with the underlying security, a security future or futures contract, as applicable, and then forward the option order and the hedging position to an Exchange Floor Broker with instructions to represent the option order together with the hedging position to the options trading crowd. The in-crowd market participants that chose to participate in the option transaction must also participate in the hedging position.

First, under the proposal, the original option order must be in a class designated as eligible for a tied hedge transaction as determined by the Exchange, including FLEX options classes.[17] The original option order must also be within designated tied hedge eligibility size parameters, which would be determined by the Exchange and would not be smaller than 500 contracts.[18] The Exchange notes that the minimum order size would apply to an individual original order.[19] Multiple original orders could not be aggregated to satisfy the requirement (though multiple contra-side solicited orders could be aggregated to execute against the original order). The Exchange states that the primary purpose of this provision is to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge.[20] Assuming an option order meets these eligibility parameters, the proposal also includes a number of other conditions that must be satisfied.

Second, the proposal would also require that, prior to entering tied hedge orders on behalf of customers, the member or member organization must deliver to the customer a onetime written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures. Under the proposal, the written notification must disclose the terms and conditions contained in the proposed rule and be in a form approved by the Exchange. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedges procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors. The Exchange therefore believes that a one-time notification delivered by the member or member organization to the customer would be sufficient, and that an order-by-order notification would be unnecessary and overly burdensome.

Third, a member or member organization would be required to create an electronic record that it is engaging in a tied hedge order in a form and manner prescribed by the Exchange. The Exchange states that the purpose of this provision is to create a record to ensure that hedging trades would be appropriately associated with the related options order and appropriately evaluated in the Exchange's surveillance program. The Exchange believes that this requirement should enable the Exchange to monitor for compliance with the requirements of the proposed rule, as discussed below, by identifying the specific purchase or sell orders relating to the hedging position.

Fourth, the proposed rule would require that members and member organizations that have decided to engage in tied hedge orders for representation in the trading crowd would have to ensure that the hedging position associated with the tied hedge order is comprised of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (a) The same underlying stock applicable to the option order, (b) a security future overlying the same stock applicable to the option order, or (c) in reference to an option on an index, ETF or HOLDR, a ''related instrument'' (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.[21] The Exchange states that the purpose of this provision is to ensure that the hedging position would be for the same stock, equivalent security future or related instrument, as applicable, thus allowing crowd participants who may be considering participation in a tied hedge order to adequately evaluate the risk associated with the option as it relates to the hedge. With stock positions in particular, the Exchange notes that occasionally crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. Except as otherwise discussed above for index options, the proposed

[16] For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF (IWM) might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

[17] FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. *See* Rule 1079.

[18] The designated classes and minimum order size applicable to each class would be communicated to the membership via an Options Regulatory Alert (''ORA''). For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1000 contracts or more. Such a determination would be announced via ORA, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[19] In determining whether an individual original order satisfies the eligible order size requirement, any complex order must contain one leg alone which is for the eligible order size or greater. For complex order procedures generally, *see* Commentary .08 to Rule 1080 and Rule 1089(b)(2). For complex order procedures in respect of locked and crossed markets, *see* Rule 1083(d).

[20] The Exchange believes that, given the decreased amount of liquidity available at the NBBO, the frequency with which quotes may flicker, and differing costs associated with accessing liquidity on various markets, as well as for ease of administration, the proposed 500 contract minimum should be sufficient to address these considerations.

[21] As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the membership via ORA, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available. *See* note 19, supra.

rule change would not allow such a ''related'' hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

Fifth, the proposal would require that the entire hedging position be brought without undue delay to the trading crowd. In considering whether the hedging position is presented without ''undue delay,'' the Exchange believes that members and member organizations should continue to have the same ability to shop an order in advance of presenting it to the crowd and should be able to enhance that process through obtaining a hedge. The Exchange also believes that, once a hedge is obtained, the order should be brought to the crowd promptly in order to satisfy the ''undue delay'' requirement. In addition, the proposal would require that the hedging position be announced to the trading crowd concurrently with the option order, offered to the crowd in its entirety, and offered at the execution price received by the member or member organization introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction must also participate in the hedging position on a proportionate basis [22] and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Exchange states that the purpose of these requirements is to ensure that the hedging position represented to the crowd would be a good faith effort to provide in-crowd market participants with the same opportunity as the member or member organization introducing the tied hedge order to compete most effectively for the option order.

For example, if a member or member organization introducing a tied stock hedge order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offer only 30,000 of 100,000 shares of the underlying stock that the member obtained as a hedge, crowd participants might only be willing or able to participate in 300 of the option contracts offered if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing member or member organization for the remaining 700 option contracts in the tied stock hedge order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes the requirement that the hedging position be presented concurrently with the option order in the crowd and offered to the crowd in its entirety at the execution price received by the member or member organization introducing the order should ensure that the crowd would be competing on a level playing field with the introducing member or member organization to provide the best price to the customer.

Sixth, the proposal would require that the hedging position not exceed the options order on a delta basis. For example, in the situation where a tied stock hedge order involves the simultaneous purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contract (known as a ''buy-write''), and the delta of the option is 100, it would be considered ''hedged'' by 50,000 shares of stock. Accordingly, the proposed rule would not allow the introducing member firm to purchase more than 50,000 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging position be in amounts that do not exceed the equivalent size of the related options order on a delta basis, and not for a greater number of shares. The Exchange believes that the proposed rule change would support its view that the member or member organization introducing the tied hedge order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the option order. Consequently, while delta estimates may vary slightly, the introducing member or member organization would be required to assume hedging positions not to exceed the equivalent size of the options order on a delta basis.[23]

The Exchange believes that the delta basis requirement, together with the additional conditions that an introducing member or member organization bring the hedging position without undue delay to the trading crowd and announce it concurrently with the option order, offer it to the crowd in its entirety, and offer it at the execution price received by the member or member organization to any in-crowd market participant who has established parity or priority, will help assure that the hedging activity is bona fide and not for speculative or manipulative purposes. Additionally, the Exchange believes these conditions will help assure that there is no adverse affect on the auction market because, as discussed above, in-crowd market participants will have the same opportunity as the member or member organization introducing the tied hedge order to compete for the option order and will share the same benefits of limiting the market risk associated with hedging. The Exchange believes that customers will also benefit if the market risks are limited in the manner proposed. Once an original order is hedged, there is no delta risk. With the delta risk minimized, quotes will likely narrow as market participants (whether upstairs or on-floor) are better able to hedge and compete for orders. For example, market-makers could more easily quote markets to trade against a customer's original order based on volatility with the delta risk minimized, which should ultimately present more price improvement opportunities to the original order.[24]

At this time, the Exchange is not proposing any special priority provisions applicable to tied hedge transactions, though it intends to evaluate whether such changes are desired and may submit a separate rule filing on this subject in the future. Under the instant proposal, all tied hedge transactions will be treated as

[22] For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowd market participant would trade 10,000 shares of a 50,000 stock hedge position tied to that option order (1/5).

[23] The Exchange notes that there may be scenarios where the introducing member purchases (sells) less than the delta, e.g., when there is not enough stock available to buy (sell) at the desired price. In such scenarios, the introducing member would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating member may still be unable to execute enough stock at the desired price. To the extent the initiating member is able to execute any portion of the hedge, the risk exposure to the initiating member and in-crowd market participants would be diminished because those shares would be ''tied up'' and available for everyone that participates on the resulting tied hedge transaction. The Exchange does not believe that the initiating member would have an unfair advantage by having the ability to pre-facilitate less than a delta hedge because the proposed procedures would require the in-crowd market participants to get a proportional share of the hedge. To the extent more stock is needed to complete a hedge, the initiating member and the in-crowd market participants would have the same risk exposure that they do today.

[24] The Exchange also believes that the proposed exception to the anticipatory hedging procedures will assist in the Exchange's competitive efforts to attract order flow from the OTC market, which may result in increased volume on the exchange markets.

complex orders. Priority will be afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for complex orders.[25] Any resulting tied hedge transactions will also be subject to the existing NBBO trade-through requirements for options and stock, as applicable. In this regard, the Exchange believes that the resulting option and stock components of the tied hedge transactions may qualify for various NBBO trade through exceptions including, for example, the complex trade exception.[26] However, when the option order is a simple order the execution of the option leg of a tied hedge transaction does not qualify it for any NBBO trade-through exception for a Complex Trade. Recognizing that tied hedge transactions involve complex orders and trades, the Exchange is amending the definition of Complex Order to clarify that these include ''tied hedge'' transactions.[27]

The Exchange recognizes that, at the time a tied hedge transaction is executed in a trading crowd, market conditions in any of the non-Phlx market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. For example, the execution price may be outside the non-Phlx market's best bid or offer (''BBO''), such as where the stock leg is to be executed at a price of $25.03 and the particular stock market's BBO is $24.93–$25.02; such an execution would normally not be permitted unless an exception applies that permits the trade to be reported outside the BBO.[28] The Exchange clarified in proposed Commentary .04 to Rule 1064 and Commentary.02 to OFPA B–11 that in the event the conditions in the non-Phlx market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction may be cancelled at the request of any member that is a party to the tied hedge transaction.

The following examples illustrate these principles:

- Simple Original Order: Introducing member receives an original customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the appropriate Phlx trading crowd.
- Complex Original Order: Introducing member receives an original customer stock-option order to buy 500 XYZ call options and sell 50,000 shares of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the appropriate trading crowd.

In either the scenario regarding simple orders or the scenario regarding complex orders (which includes ''tied hedge'' orders), the next steps are the same and generally are no different from the procedures currently used to execute a complex order on Phlx in open outcry.

The Exchange notes regarding the examples above that:

- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (and not for the individual component legs of the package). For example, assume the best net price is $24.53 (equal to $0.50 for each option contract and $25.03 for each corresponding share of hedging stock).
- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating member, in accordance with the allocation algorithm applicable to the options class, with the options leg being executed and reported on Phlx and the stock leg being executed and reported on the stock market specified by the initiating member. For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different market-makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per market-maker).
- The resultant tied hedge transaction: (a) would qualify as a ''complex trade'' under the Options Intermarket Linkage and the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series in the scenario where the original order is a complex order (not a simple order); and (b) would qualify as a ''qualified contingent trade'' under Regulation NMS and the execution of the 30,000 shares of stock (the original 50,000 shares less the initiating member's 20,000 portion) with the market participants would not be subject to the NBBO for the underlying XYZ stock.
- The execution of the options leg would have to satisfy Phlx's intra-market priority rules for complex orders (including that the execution price may not be outside the Phlx BBO (''PBBO'')). Thus, if the PBBO for the series was $0.40 $0.55, the execution could take place at or inside that price range (e.g., at the quoted price of $0.50) and could not take place outside that price range (e.g., not at $0.56).
- Similarly, the execution of the stock at $25.03 per share would have to satisfy the intra-market priority rules of the non-Phlx market(s) where the stock is to be executed (including that the execution price may not be outside that market's BBO) or, alternatively, qualify for an exception that permits the trade to be reported outside the non-Phlx market(s) BBO.
- If market conditions in the non-Phlx market(s) prevent the execution of the stock leg(s) at the price(s) agreed upon from occurring (e.g., the BBO remains at $24.93–$25.02), then the options leg(s) could be cancelled at the request of any member that is a party to that trade.

While the particular circumstances surrounding each transaction on the Exchange's trading floor are different, the Exchange does not believe, as a general proposition, that the tied hedge

[25] For reporting procedures, *see,* Rules 1053 (Filing of Trade Information), 1003 (Reporting of Options Positions), 1022 (Securities Accounts and Orders of Specialists and Registered Options Traders), and 1028 (Confirmations). For allocation procedures, *see,* Rules 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) and 1080 (Phlx XL and XL II). Options trading rules are generally located in the 1000 series of rules known as the Options Rules (Rule 1000 et. seq.) and include Rules 1001 (Position Limits), 1002 (Exercise Limits), 1033 (Bid and Offers—Premium), 1034 (Minimum Increments), and 1035 (Acceptance of Bid or Offer).

[26] *See* Rule 1085(b)(6) (Order Protection). Rules 1083 (Intermarket Linkage) through 1087 (Limitation on Principal Order Access) implement the recently-approved joint Options Order Protection and Locked/Crossed Market Plan (the ''Protection and Locked/Crossed Plan''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(File No. 4–546)(approval order for the Protection and Locked/Crossed Plan). *See also* Securities Exchange Act Release No. 60550 (August 20, 2009), 74 FR 44430 (August 28, 2009)(SR–Phlx-2009–61)(approval order for Phlx rules implementing the Protection and Locked/Crossed Plan).

[27] *See* Commentary .08(a)(i)(F) to Rule 1080. The Exchange notes that a complex order for ''tied hedge''purposes in Rule 1080 is distinct from a complex trade for linkage purposes in Rule 1083; and that intramarket priority on the Exchange for tied hedge purposes is distinct from intermarket priority for linkage purposes.

[28] The Exchange notes that the possibility of this scenario occurring exists with complex order executions today and tied hedge transactions would present nothing unique or novel in this regard.

procedures would be inherently harmful or detrimental to customers or have an adverse affect on the auction market. Rather, the Exchange believes the procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders,[29] and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 1064(d) which, as discussed above, was to eliminate the unfairness that can be associated with a solicited transaction and encourage meaningful competition. The tied hedge procedures should enable in-crowd market participants to be on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [30] in general, and furthers the objectives of Section 6(b)(5) of the Act [31] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by establishing rules governing tied hedge orders, which include specific requirements and procedures to be followed. Specifically, the Exchange believes the procedures will improve the opportunities for orders to be exposed to price improvement in a manner that will encourage a fair, competitive auction process and minimize all parties' market risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[29] As market participants are better able to hedge risk associated with completing these transactions, the Exchange believes that quotes may narrow and result in increased price improvement opportunities.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[32] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–98 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.

[32] The Exchange has satisfied this requirement.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–Phlx–2009–98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–98 and should be submitted on or before December 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28740 Filed 12–1–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61060 File No. SR–FINRA–2009–072]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Deficient Claims Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

November 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[35] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2009 Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend Rule 12307 of the Code of Arbitration for Customer Disputes (the ''Customer Code'') and Rule 13307 of the Code of Arbitration for Industry Disputes (the ''Industry Code'') (collectively, ''the Codes'') to clarify the date of filing of an arbitration claim once a deficiency is corrected, as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rules 12307(b) and 13307(b) of the Customer Code and for the Industry Code, respectively, to clarify the date of filing of an arbitration claim once a deficiency is corrected.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When parties initiate arbitration claims in FINRA's arbitration forum, they must file a signed and dated submission agreement and a statement of claim explaining the facts and outlining the remedies requested.[3] Parties must also pay all required filing fees at the time they file their claims.[4] If a party's claims do not meet the criteria for filing a claim under the Codes or otherwise do not comply with the Codes, the claims are considered deficient. A claim may be deficient because, for example, the party failed to file a properly signed and dated submission agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the submission agreement, statement of claim or other supporting documents.

Currently, Rule 12307 of the Customer Code and Rule 13307 of the Industry Code, which address deficient claims (hereinafter, ''deficient claims rules''), state that the Director of FINRA Dispute Resolution (''Director'') will not serve a claim that is deficient. The deficient claims rules permit a party to correct all deficiencies. Under the current rules, if all deficiencies are not corrected within 30 days from the time a party receives notice of a deficiency, the Director will close the case without serving the claim and refund part of the filing fee.[5] However, the rules are silent on the date that the Director will use as the date of filing if a party corrects a deficient claim within 30 days of receiving notice of a deficiency.

FINRA has received inquiries from constituents on how the arbitration forum determines the date of filing of a claim that was deficient when filed, but is later corrected. Thus, FINRA is proposing to amend Rules 12307(b) and 13307(b) of the Codes to clarify the arbitration forum's procedure concerning the date of filing of a deficient claim when the deficiency is corrected within the 30-day deficiency period. So amended, the rules would provide that if the deficiency is corrected within 30 days from the time the party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed.

FINRA believes the proposal would clarify the date that the forum uses to determine the filing date of the claim, which should help resolve issues concerning whether a claim is eligible for submission to arbitration under the Codes,[6] and whether statutes of limitation, if applicable, should apply. Moreover, FINRA believes that adding this existing policy to the rules will eliminate confusion for parties concerning deficient claims, provide transparency concerning forum practice, and enhance the efficiency of case administration.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which require, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would eliminate confusion for parties concerning deficient claims, provide transparency concerning forum practice, and enhance the efficiency of case administration.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

[4] *Id.*

[5] Rule 12307(b) of the Customer Code and Rule 13307(b) of the Industry Code.

[6] Under the Codes, no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. *See* Rule 12206(a) of the Customer Code and Rule 13206(a) of the Industry Code.

[7] 15 U.S.C. 78o–3(b)(6).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–072 and should be submitted on or before December 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28741 Filed 12–1–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6547]

U.S. Department of State Advisory Committee on Private International Law: Organization of American States (OAS) Specialized Conference on Private International Law (CIDIP) Study Group

The Working Group on Conflicts of Law previously established under the Department of State Advisory Committee on Private International Law has been renamed the OAS CIDIP Study Group to reflect a broader scope of activity including consideration of issues relating to choice of law, applicable law, jurisdiction, enforcement of judgments, and dispute resolution that may be discussed in the Organization of American States (OAS) CIDIP process. This is not a meeting of the full Advisory Committee.

In the context of the Seventh Inter-American Specialized Conference on Private International Law (CIDIP–VII), the Committee on Juridical and Political Affairs (CJAP) of the Permanent Council of the OAS is carrying out work on consumer rights as part of its program on private international law. Three proposals have been put forward: A revised Brazilian draft convention on applicable law that has recently been expanded to include jurisdiction, a Canadian draft model law on applicable law and jurisdiction, and a United States proposal (with several components) for legislative guidelines/model laws/rules to promote consumer redress mechanisms such as small claims tribunals, collective procedures, on-line dispute resolution, and government actions. The U.S. is considering the possibility of expanding its existing proposal.

The United States is also considering whether to pursue ratification of the Inter-American Convention on the Law Applicable to International Contracts (known as the Mexico City Convention), which was adopted at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP–V). The United States is exploring the process for obtaining official corrections to the English text of the Convention to conform to the Spanish version. Copies of proposed corrections to the English text can be obtained through the contact points listed below. Other developments which may be relevant to work at the OAS include the proposal at UNCITRAL for future work on on-line dispute resolution and the establishment by the Permanent Bureau of the Hague Conference on Private International Law of an experts group to consider development of a non-binding instrument on choice of law in international commercial contracts.

The Advisory Committee's OAS CIDIP Study Group will hold a public meeting to obtain additional views on the three consumer protection proposals identified above (along with possible revisions) and the Mexico City Convention.

Time and Place: The public meeting of the Study Group will take place at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room H–481, Washington, DC on December 14, 2009, from 10 a.m. EST to 4 p.m. EST. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: Advisory Committee Study Group meetings are open to the public. Persons wishing to attend must contact Trisha Smeltzer at *smeltzertk@state.gov* or 202–776–8423 and provide their name, e-mail address, and affiliation(s) if any. Please contact Ms. Smeltzer for additional meeting information, any of the documents referenced above, or dial-in information on the conference call. A member of the public needing reasonable accommodation should advise those same contacts not later than December 9th. Requests made after that date will be considered, but might not be able to be fulfilled. Persons who cannot attend or participate by conference call but who wish to comment on any of the topics referred to above are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov* or Hugh Stevenson at *hstevenson@ftc.gov.*

Dated: November 25, 2009.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9–28837 Filed 12–1–09; 8:45 am]

BILLING CODE 4710–08–P

TRADE AND DEVELOPMENT AGENCY

Notice of Public Information Collection Requirements Submitted to OMB for Review

AGENCY: United States Trade and Development Agency.

ACTION: Request for Comments.

SUMMARY: U.S. Trade and Development Agency (USTDA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. USTDA published its first **Federal**

Register Notice on this information collection request on September 24, 2009, at 74 FR 48807, at which time a 60-day comment period was announced. The comment period ended November 23, 2009. No comments were received in response to this notice.

Comments are again being solicited on the following proposed information collection concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who 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.

DATES: Comments must be received by OMB by January 4, 2010.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be addressed as follows: Attention: Desk Officer for USTDA, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carolyn Hum, Attn: PRA, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209–3901; Tel.: (703) 875–4357, Fax: (703) 875–4009, E-mail: *chum@ustda.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: New collection.

Title: Evaluation of USTDA Performance.

Form Number: USTDA 1000E–2009a.

Frequency of Use: annually for duration of project.

Type of Respondents: Business or other for profit; Not-for-profit institutions; Farms; Federal Government.

Description of Affected Public: U.S. companies and other entities that participate in USTDA-funded activities.

Reporting Hours: 1000 hours per year.

Number of Responses: 3000 per year.

Federal Cost: $425,000 per year.

Authority for Information Collection: Government Performance and Results Act of 1993; 103 Public Law 62; 107 Stat. 285.

Abstract (Needs and Uses): USTDA and contractors will collect information from various stakeholders on USTDA-funded activities regarding developmental impact and/or commercial objectives as well as evaluate success regarding GPRA and OMB PART objectives.

Dated: November 27, 2009.

Carolyn Hum,

Administrative Officer.

[FR Doc. E9–28847 Filed 12–1–09; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2009–0142]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden.

DATES: Comments must be submitted on or before February 1, 2010.

ADDRESSES: Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave., SE., W46–474, Washington, DC 20590. Docket No. NHTSA–2009–0142.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Ph.D., Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–132), National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., W46–495, Washington, DC 20590. Dr. Roberts' phone number is 202–366–5594 and his e-mail address is *Scott.Roberts@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Focus Groups to Develop Strategic Messaging for Distracted Driving Programs.

Type of Request: Emergency clearance.

Requested Expiration Date of Approval: 180 days from approval date.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct a limited number of focus group sessions with members of the general public to test and refine its strategic messaging.

Affected Public: A maximum of 24 focus group sessions, lasting 90 minutes, will be held with nine participants in each session. Participation by all respondents would be voluntary, and respondents will receive $75 for their participation.

Estimated Total Annual Burden: 324 hours.

Comments are invited on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A)

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. E9–28838 Filed 12–1–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information

collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 8, 2009, vol. 74, no. 172, page 46292. Fractional Ownership is a program that offers increased flexibility in aircraft ownership.

DATES: Please submit comments by January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fractional Aircraft Ownership Programs.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0684.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 11 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 45 minutes per response.

Estimated Annual Burden Hours: An estimated 19,609 hours annually.

Abstract: Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a ''pool'' of other shared aircraft and to lease their aircraft to another owner in that pool. The aircraft owners use a common management company to maintain the aircraft and administer the leasing of the aircraft among the owners.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 24, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–28829 Filed 12–1–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35323]

Pioneer Railcorp—Continuance in Control Exemption—Georgia Southern Railway Co.

Pioneer Railcorp (Pioneer), a noncarrier holding company, has filed a verified notice of exemption to continue in control of Georgia Southern Railway Co. (GASR), upon GASR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35322, *Georgia Southern Railway Co.—Lease and Operation Exemption and Operation Exemption—Certain Lines of Georgia Midland Railroad, Inc. and Heart of Georgia Railroad, Inc.* In that proceeding, GASR has sought an exemption under 49 CFR 1150.31 pursuant to an agreement with: (1) The Georgia Midland Railroad, Inc. to assume the lease and operation of approximately 51.9 miles of rail line in Peach, Houston, Crawford, Candler, Bulloch, and Screven Counties, GA; and (2) the Heart of Georgia Railroad, Inc. (HOG) to operate, under contract with HOG, approximately 42.4-miles of line currently leased and operated by HOG in Toombs, Treutlen, Emanuel and Jenkins Counties, GA.

The transaction is scheduled to be consummated on December 16, 2009 (the effective date of this exemption).

Pioneer currently controls 16 Class III rail carriers: West Michigan Railroad Co.; Fort Smith Railroad Co.; Shawnee Terminal Railroad Co., Inc.; Mississippi Central Railroad Co.; Alabama & Florida Railway Co., Inc.; Decatur Junction Railway Co.; Vandalia Railroad Company; Keokuk Junction Railway Co.; Keokuk Union Depot Company; Michigan Southern Railroad Company; Elkhart & Western Railroad Co.; Kendallville Terminal Railroad Co.; Pioneer Industrial Railway Co.; The Garden City Western Railway, Inc.; Indiana Southwestern Railway Co.; and Gettysburg & Northern Railroad Co. None of these subsidiaries has operations within the State of Georgia.

Pioneer represents that: (1) The rail lines to be operated by GASR do not connect with any other railroads in the Pioneer corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Pioneer corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than December 9, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35323, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Daniel A. LaKemper, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.''*

Decided: November 24, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–28633 Filed 12–1–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) for a Written Re-evaluation of the Final Environmental Impact Statement (FEIS) for the Relocation of the Panama City-Bay County International Airport, Panama City, FL

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

ACTION: Notice of availability of a Record of Decision (ROD).

SUMMARY: The FAA is issuing this notice to advise the public that it has issued a ROD for a Written Re-evaluation of the FEIS for the Relocation of the Panama City-Bay County International Airport, Panama City, Florida. The FEIS for the relocation of the airport was issued in May 2006. The FAA issued a ROD for this federal action in September 2006. Airport facilities are currently being constructed at the new airport site. This ROD is issued for a Written Re-evaluation of the FEIS because the Panama City-Bay County Airport and Industrial District (Airport Sponsor) has proposed to extend the primary runway (Runway 16L–34R) from 8,400 feet to 10,000 feet. This ROD approves the extension and other minor changes as shown on a revised Airport Layout Plan (ALP) that has been submitted to the FAA. Subsequent to this ROD, the FAA will conditionally approve the revised ALP.

SUPPLEMENTARY INFORMATION: Copies of this ROD and Written Re-evaluation are available for public review at the following locations during normal business hours: Panama City-Bay County International Airport Administration Office, 3173 Airport Road, Panama City, Florida 32405, Telephone (850) 783–6751; Federal Aviation Administration Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida, Telephone (407) 812–6331; Federal Aviation Administration Southern Region Office, 1701 Columbia Avenue, College Park, GA 30337, Telephone (404) 305–6700. The ROD will also be available for review at the FAA's Web site *http://www.faa.gov* in mid December, 2009.

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Specialist, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, Telephone (407) 812–6331 Extension 129.

Issued in Orlando, Florida on November 24, 2009.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. E9–28839 Filed 12–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35322]

Georgia Southern Railway Co.—Lease and Operation Exemption and Operation Exemption—Certain Lines of Georgia Midland Railroad, Inc. and Heart of Georgia Railroad, Inc.

Georgia Southern Railway Co. (GASR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 pursuant to an agreement with: (1) The Georgia Midland Railroad, Inc. to assume lease and operation of the following lines: (a) The Perry Line between milepost N–219.7 at or near Fort Valley, GA, and milepost 232.6 at or near Perry, GA, a distance of approximately 12.9 miles, in Peach and Houston Counties, GA, (b) the Roberta Line between milepost 95.5FV at or near Roberta, GA, and milepost 105.3FV at or near Fort Valley, GA, a distance of approximately 9.8 miles in Peach and Crawford Counties, GA, and (c) the Metter Line between milepost W–57.5 at or near Dover, GA, and milepost W–86.7 at or near Metter, GA, a distance of approximately 29.2 miles in Candler, Bulloch and Screven Counties, GA; and (2) the Heart of Georgia Railroad, Inc. (HOG) to operate, under contract with HOG, a line currently leased and operated by HOG between milepost 194.64 at or near Midville, GA, and milepost 152.2 at or near Vidalia, GA, a distance of approximately 42.4 miles in Toombs, Treutlen, Emanuel and Jenkins Counties, GA.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35323, *Pioneer Railcorp–Continuance in Control Exemption–Georgia Southern Railway Co.* In that proceeding, Pioneer Railcorp has sought an exemption to continue in control of GASR upon GASR's becoming a Class III rail carrier.

GASR certifies that its projected annual revenues as a result of the transaction will not result in GASR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is scheduled to be consummated on December 16, 2009 (the effective date of this exemption).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 9, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35322, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel A. LaKemper, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: November 24, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–28652 Filed 12–1–09; 8:45 am]

BILLING CODE 4915–01–P

[1] GASR notes that HOG will retain a common carrier obligation for the line. In addition, GASR will acquire a common carrier obligation for the line once it consummates the proposed transaction.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A, and Form 1040EZ, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before February 1, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:FSA, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. The burden estimates for each control number are displayed in (1) The PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with the Federal tax laws. The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers in meeting their tax return filing compliance obligation. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return, *e.g.* with software or paid preparer, and the taxpayer's activities, *e.g.* recordkeeping and tax planning.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system. Time expended and out-of-pocket costs incurred are estimated separately. The methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels. Indicators of tax law and administrative complexity as reflected in tax forms and instructions are incorporated in the model. The preparation methods reflected in the model are:

- Self-prepared without software
- Self-prepared with software
- Used a paid preparer

The types of taxpayer activities reflected in the model are:

- Recordkeeping
- Form completion
- Form submission (electronic and paper)
- Tax planning
- Use of services (IRS and paid professional)
- Gathering tax materials

The methodology incorporates results from a new individual taxpayer survey for TY 2007 and conducted in CY 2008 and CY 2009. (Prior survey for TY 1999 and TY 2000 were conducted in CY 2000 and CY 2001). The new survey results capture the significant gains in productivity associated with the usage of tax preparation software and tax preparation services and large shifts in the population away from self preparation by hand towards use of the assisted methods (paid preparers and tax software). Summary level results using this methodology are presented in the table below.

Taxpayer Burden Estimates

Time spent and out-of-pocket costs are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples of out-of-pocket costs include tax return preparation and submission fees, postage, tax preparation software costs, photocopying costs, and phone calls (if not toll-free).

Both time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 17.3 hours, with an average cost of $225 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 21.4 hours, and taxpayers filing Form 1040A and Form 1040EZ are expected to average about 8 hours. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The data shown are the best forward-looking estimates available as of November 12, 2009, for income tax returns filed for 2009. The estimates are subject to change as new data become available. The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Taxpayer Burden Model

The table below shows burden estimates by form type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method (self-prepared without software, self-prepared with software, and prepared by paid preparer).

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; and all attachments to these forms (*see* the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: The changes in aggregated compliance burden estimates can be explained in terms of three major components: Technical Adjustments, Statutory Changes, and Agency (IRS) Discretions.

Technical Adjustments

The largest adjustments are from the new survey data. The latest burden estimates are based on a new individual taxpayer survey for TY 2007 and conducted in CY 2008 and CY 2009. (Prior survey for TY 1999 and TY 2000 were conducted in CY 2000 and CY 2001). The new survey results capture the significant gains in productivity associated with the usage of tax preparation software and tax preparation services and large shifts in the population away from self preparation by hand towards use of the assisted methods (paid preparers and tax software).

The economic recession in the past year also has a significant impact on burden estimates, reducing the filing volume and resulting in lower time and money burdens. The inclusion of Form 1040X has a significant positive impact on compliance burden estimates. The impact of including 1040X has actually out-weighted the impact of economic recession in terms of filing volume, but not in terms of burden changes (time and money). The burden associated with 1040X was not previously included in the aggregated burden estimates.

Statutory Changes

The primary drivers for the statutory changes are the American Recovery and Reinvestment Act (ARRA) of 2009 and related legislations.

IRS Discretions Changes

The IRS discretions changes include 1040X redesign, simplifications in filing Form 1099B/Schedule D/Form 1040, creation of Form 4506T–EZ, IRS support of the Free File Alliance, and changes to expand the eligibility of filing Form 3800 by individuals and businesses for general business credits. All these initiatives reduce time and money burdens for the taxpayers.

These changes have resulted in an overall decrease of 86,792,628 total hours in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 143,400,000.

Total Estimated Time: 2.431 billion hours (2,431,000,000 hours).

Estimated Time per Respondent: 17.3 hours.

Total Estimated Out-of-Pocket Costs: $31.43 billion ($31,543,000,000).

Estimated Out-of-Pocket Cost per Respondent: $225.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 25, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

[The average time and costs required to complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:]

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						
		Total time	Record-keeping	Tax planning	Form completion	Form submission	All other	Average cost (dollars)
All taxpayers	100	17.3	8.0	1.7	4.3	1.0	2.4	$225
Primary forms filed:								
1040	70	21.4	10.2	2.1	5.2	1.0	2.9	280
1040A & 1040EZ	30	8.0	2.7	0.8	2.3	0.8	1.3	96
Type of taxpayer:								
Nonbusiness*	69	10.7	4.1	1.1	3.0	0.8	1.7	129
Business*	31	31.9	16.5	3.0	7.1	1.2	4.0	434

*You are considered a ''business'' filer if you file one or more of the following with Form 1040: Schedule C, C–EZ, E, or F or Form 2106 or 2106–EZ. You are considered a ''nonbusiness'' filer if you did not file any of those schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

APPENDIX

Forms	Title
673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	Application To Use LIFO Inventory Method.
972	Consent of Shareholder To Include Specific Amount in Gross Income.
982	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040	U.S. Individual Income Tax Return.
1040 SCH A	Itemized Deductions.
1040 SCH B	Interest and Ordinary Dividends.
1040 SCH C	Profit or Loss From Business.
1040 SCH C–EZ	Net Profit From Business.
1040 SCH D	Capital Gains and Losses.
1040 SCH D–1	Continuation Sheet for Schedule D.
1040 SCH E	Supplemental Income and Loss.

APPENDIX—Continued

Forms	Title
1040 SCH EIC	Earned Income Credit.
1040 SCH F	Profit or Loss From Farming.
1040 SCH H	Household Employment Taxes.
1040 SCH J	Income Averaging for Farmers and Fishermen.
1040 SCH L	Standard Deduction for Certain Filers.
1040 SCH M	Making Work Pay and Government Retiree Credits.
1040 SCH R	Credit for the Elderly or the Disabled.
1040 SCH SE	Self-Employment Tax.
1040 A	U.S. Individual Income Tax Return.
1040ES (NR)	U.S. Estimated Tax for Nonresident Alien Individuals.
1040 ES/V–OCR	Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
1040 ES–OCR–V	Payment Voucher.
1040 ES–OTC	Estimated Tax for Individuals.
1040 EZ	Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR	U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V	Payment Voucher.
1040 X	Amended U.S. Individual Income Tax Return.
1045	Application for Tentative Refund.
1116	Foreign Tax Credit.
1127	Application For Extension of Time For Payment of Tax.
1128	Application To Adopt, Change, or Retain a Tax Year.
1310	Statement of Person Claiming Refund Due to a Deceased Taxpayer.
2106	Employee Business Expenses.
2106 EZ	Unreimbursed Employee Business Expenses.
2120	Multiple Support Declaration.
2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
2350	Application for Extension of Time To File U.S. Income Tax Return.
2350 SP	Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441	Child and Dependent Care Expenses.
2555	Foreign Earned Income.
2555 EZ	Foreign Earned Income Exclusion.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	General Business Credit.
3903	Moving Expenses.
4029	Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070	Employee's Report of Tips to Employer.
4070 A	Employee's Daily Record of Tips.
4136	Credit for Federal Tax Paid on Fuels.
4137	Social Security and Medicare Tax on Unreported Tip Income.
4255	Recapture of Investment Credit.
4361	Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	Depreciation and Amortization.
4563	Exclusion of Income for Bona Fide Residents of American Samoa.
4684	Casualties and Thefts.
4797	Sales of Business Property.
4835	Farm Rental Income and Expenses.
4852	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868	Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP	Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	Investment Interest Expense Deduction.
4970	Tax on Accumulation Distribution of Trusts.
4972	Tax on Lump-Sum Distributions.
5074	Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	Election To Postpone Determination as to Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405	First-Time Homebuyer Credit.
5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.

APPENDIX—Continued

Forms	Title
5471 SCH M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695	Residential Energy Credits.
5713	International Boycott Report.
5713 SCH A	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	Tax Effect of the International Boycott Provisions.
5754	Statement by Person(s) Receiving Gambling Winnings.
5884	Work Opportunity Credit.
6198	At-Risk Limitations.
6251	Alternative Minimum Tax—Individuals.
6252	Installment Sale Income.
6478	Credit for Alcohol Used as Fuel.
6765	Credit for Increasing Research Activities.
6781	Gains and Losses From Section 1256 Contracts and Straddles.
8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	Disclosure Statement.
8275 R	Regulation Disclosure Statement.
8283	Noncash Charitable Contributions.
8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379	Injured Spouse Claim and Allocation.
8396	Mortgage Interest Credit.
8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	Passive Activity Loss Limitations.
8582 CR	Passive Activity Credit Limitations.
8586	Low-Income Housing Credit.
8594	Asset Acquisition Statement.
8606	Nondeductible IRAs.
8609–A	Annual Statement for Low-Income Housing Credit.
8611	Recapture of Low-Income Housing Credit.
8615	Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689	Allocation of Individual Income Tax to the Virgin Islands.
8693	Low-Income Housing Credit Disposition Bond.
8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812	Additional Child Tax Credit.
8814	Parents' Election To Report Child's Interest and Dividends.
8815	Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818	Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	Orphan Drug Credit.
8821	Tax Information Authorization.
8822	Change of Address.
8824	Like-Kind Exchanges.
8826	Disabled Access Credit.
8828	Recapture of Federal Mortgage Subsidy.
8829	Expenses for Business Use of Your Home.
8832	Entity Classification Election.
8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	Qualified Electric Vehicle Credit.
8835	Renewable Electricity and Refined Coal Production Credit.
8838	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839	Qualified Adoption Expenses.
8840	Closer Connection Exception Statement for Aliens.
8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	Empowerment Zone and Renewal Community Employment Credit.
8845	Indian Employment Credit.
8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	Credit for Contributions to Selected Community Development Corporations.
8853	Archer MSAs and Long-Term Care Insurance Contracts.
8854	Initial and Annual Expatriation Information Statement.
8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859	District of Columbia First-Time Homebuyer Credit.
8860	Qualified Zone Academy Bond Credit.

APPENDIX—Continued

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8861	Welfare-to-Work Credit.
8862	Information To Claim Earned Income Credit After Disallowance.
8863	Education Credits.
8864	Biodiesel Fuels Credit.
8865	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K–1	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	Transfer of Property to a Foreign Partnership.
8865 SCH P	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	Extraterritorial Income Exclusion.
8874	New Markets Credit.
8878	IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP	Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879	IRS e-file Signature Authorization.
8879 SP	Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880	Credit for Qualified Retirement Savings Contributions.
8881	Credit for Small Employer Pension Plan Startup Costs.
8882	Credit for Employer-Provided Childcare Facilities and Services.
8885	Health Coverage Tax Credit.
8886	Reportable Transaction Disclosure Statement.
8888	Direct Deposit of Refund to More Than One Account.
8889	Health Savings Accounts (HSAs).
8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	Low Sulfur Diesel Fuel Production Credit.
8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	Qualified Railroad Track Maintenance Credit.
8903	Domestic Production Activities Deduction.
8906	Distills Spirits Credit.
8907	Nonconventional Source Fuel Credit.
8908	Energy Efficient Home Credit.
8910	Alternative Motor Vehicle Credit.
8911	Alternative Fuel Vehicle Refueling Property Credit.
8915	Qualified Hurricane Retirement Plan Distribution and Repayments.
8917	Tuition and Fees Deduction.
8919	Uncollected Social Security and Medicare Tax on Wages.
8923	Mining Rescue Team Training Credit.
8925	Report of Employer-Owned Life Insurance Contracts.
8930	Qualified Disaster Recovery Assistance Retirement Plan Distributions and Repayments.
8931	Agricultural Chemicals Security Credit.
8932	Credit for Employer Differential Wage Payments.
8933	Carbon Dioxide Sequestration Credit.
8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
9465	Installment Agreement Request.
9465 SP	Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52	
Notice 160920–05	Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables	Child Tax Credit.
REG–149856–03	Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	Application for Employer Identification Number.
SS–8	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	Forest Activities Schedules.
W–4	Employee's Withholding Allowance Certificate.
W–4 P	Withholding Certificate for Pension or Annuity Payments.
W–4 S	Request for Federal Income Tax Withholding From Sick Pay.
W –4 SP	Certificado de Exencion de la Retencion del Empleado.
W–4 V	Voluntary Withholding Request.
W–5	Earned Income Credit Advance Payment Certificate.
W–5 SP	Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–7	Application for IRS Individual Taxpayer Identification Number.
W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP	Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos.

Forms removed from this ICR:	Reason for removal:
(1) Form 1040A, Schedule 1	Obsolete.
(2) Form 1040A, Schedule 2	Obsolete.
(3) Form 1040A, Schedule 3	Obsolete.

Forms removed from this ICR:	Reason for removal:
(4) Form 8901	Obsolete.
Forms added to this ICR:	**Justification for addition:**
(1) Form 8923	
(2) Form 8930	Section 702(d) of P.L. 110–343 modifies IRC 1400Q.
(3) Form 8933	Public Law 110–343, Division B, Title II, section 202 added Code section 45Q.
(4) Form 8936	This new credit is pursuant to section 115 of Subtitle B of Title II of Division B of the Emergency Economic Stabilization Act of 2008 (P.L. 110–343) which added new Code section 45Q.
(5) 1040, Schedule L	PL 111–5, Div B, sec 1008.
(6) 1040, Schedule M	PL 111–5, sections 1001 and 2202, respectively.

[FR Doc. E9–28770 Filed 12–1–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
December 2, 2009

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2009–0183]

RIN 2127–AK23

Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking would establish a new Federal Motor Vehicle Safety Standard (FMVSS) No. 226, to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The standard would apply to the side windows next to the first three rows of seats in motor vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilogram (kg) or less (10,000 pounds (lb) or less). To assess compliance, the agency is proposing a test in which an impactor would be propelled from inside a test vehicle toward the windows. The ejection mitigation safety system would be required to prevent the impactor from moving more than a specified distance beyond the plane of a window. To ensure that the systems cover the entire opening of each window for the duration of a rollover, each side window would be impacted at up to four locations around its perimeter at two time intervals following deployment.

The agency anticipates that manufacturers would meet the standard by modifying existing side impact air bag curtains, and possibly supplementing them with advanced laminated glazing. The curtains would be made larger so that they cover more of the window opening, made more robust to remain inflated longer, and made to deploy in both side impacts and in rollovers. In addition, they would be tethered or otherwise designed to keep the impactor within the vehicle.

This NPRM advances NHTSA's initiatives in rollover safety and also responds to Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). That section directs NHTSA to initiate and complete rulemaking to reduce complete and partial ejections of vehicle occupants from outboard seating positions, considering various ejection mitigation systems.

DATES: You should submit your comments early enough to ensure that the docket receives them not later than February 1, 2010.

ADDRESSES: You may submit comments (identified by the Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Louis Molino, NHTSA Office of Crashworthiness Standards, telephone 202–366–1740, fax 202–493–2739. For legal issues, you may contact Ms. Deirdre Fujita, NHTSA Office of Chief Counsel, telephone 202–366–2992, fax 202–366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Addressing vehicle rollovers is one of NHTSA's highest safety priorities. In 2002, the agency conducted an in-depth review of rollovers and associated deaths and injuries and assessed how NHTSA and the Federal Highway Administration (FHWA) could most effectively improve safety in this area.[1] The agency formulated strategies involving improving vehicle performance and occupant behavior, and with the FHWA taking the lead, improving roadway designs. Vehicle performance strategies included crash avoidance and crashworthiness programs, and included four wide-ranging initiatives to address the rollover safety problem: Prevent crashes, prevent rollovers, prevent ejections, and protect occupants who remain within the vehicle after a crash. Projects aimed at protecting occupants remaining in the vehicle during a rollover included improved roof crush resistance and researching whether seat belts could be made more effective in rollovers.

A major undertaking implementing the first two initiatives was completed in 2007 when NHTSA published a new Federal Motor Vehicle Safety Standard (FMVSS) No. 126 to require electronic stability control (ESC) systems on passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 lb) or less (72 FR 17236, April 6, 2007, Docket 27662). ESC systems use automatic computer-controlled braking of the individual wheels of a vehicle to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). Because most loss-of-control crashes culminate in the vehicle's leaving the roadway—an event that significantly increases the probability of a rollover—preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes.[2] The agency estimates that when all vehicles (other than motorcycles) under 10,000 lb GVWR have ESC systems, the number of deaths each year resulting from rollover crashes would be reduced by 4,200 to 5,500. Currently, there are over 10,000 such deaths each year.

While ESC systems will avoid many of the roadway departures that lead to rollover, vehicle rollovers will continue to occur.[3] Once a rollover occurs, vehicle crashworthiness characteristics play a crucial role in protecting the occupants. According to agency data, occupants have a much better chance of surviving a crash if they are not ejected from their vehicles. Among the promising technological innovations to prevent occupant ejections are side curtain air bags and improved glazing.

Concurrent with the agency's work on ESC, NHTSA began work on the third initiative on rollover safety, which addresses occupant ejections through side windows in rollovers (''ejection mitigation''). Inroads on this third initiative were realized in 2007 when the agency published a final rule that incorporated a dynamic pole test into FMVSS No. 214, ''Side impact protection'' (49 CFR 571.214) (72 FR 51908; September 11, 2007, Docket No. NHTSA–29134; response to petitions for reconsideration, 73 FR 32473, June 9, 2008, Docket No. NHTSA–2008–0104).[4] The pole test, applying to motor vehicles with a GVWR of 4,536 kg (10,000 lb) or less, requires vehicle manufacturers to provide side impact protection for a wide range of occupant sizes and over a broad range of seating positions. To meet the pole test, manufacturers will install new technologies capable of improving head and thorax protection in side crashes, *i.e.,* side curtain air bags and torso side air bags. We believe that these side curtain air bag systems can be effectively modified to meet the occupant containment requirements of this ejection mitigation initiative on rollover safety.

The ejection mitigation initiative was bolstered by the efforts of vehicle manufacturers to install side impact air bags (SIABs) on a voluntary basis. Immediately prior to the publication of the FMVSS No. 214 NPRM, the Alliance of Automobile Manufacturers (the Alliance), the Association of International Automobile Manufacturers, and the Insurance Institute for Highway Safety announced a voluntary commitment to enhance occupant protection in front-to-side crashes, focusing on, among other things, accelerating the installation of SIABs.[5] The industry's voluntary commitment to install side impact air bags demonstrated the feasibility of installing side curtain air bags on a near fleet-wide basis.

Today's NPRM begins a new stage in implementing ejection mitigation. This document would establish a new FMVSS for ejection mitigation (FMVSS No. 226), specifying occupant containment performance requirements. It would apply to motor vehicles with GVWR of 4,536 kg (10,000 lb) or less. The countermeasures most likely to be installed to meet the performance requirements of this NPRM would be the FMVSS No. 214 side curtain air bags[6] made larger to cover more of the window opening, made more robust to remain inflated longer, enhanced to deploy in side impacts and in rollovers, and made not only to cushion but also made sufficiently strong to keep an occupant from being fully or partially ejected through a side window. We have drafted the test procedure of our proposal to accommodate the use of advanced laminated glazing in fixed and

[1] The assessment was carried out by one of four Integrated Project Teams (IPTs) formed within NHTSA, whose recommendations culminated in the agency's priority plan, ''NHTSA Vehicle Safety Rulemaking and Supporting Research: 2003–2006'' (68 FR 43972; July 18, 2003) *http://www.nhtsa.dot.gov/cars/rules/rulings/PriorityPlan/FinalVeh/Index.html*. The IPT Report on Rollover was published in June 2003 (68 FR 36534, Docket 14622).

[2] NHTSA estimates that the installation of ESC will reduce single-vehicle crashes of passenger cars by 34 percent and single vehicle crashes of sport utility vehicles (SUVs) by 59 percent. NHTSA further estimates that ESC has the potential to prevent 71 percent of the passenger car rollovers and 84 percent of the SUV rollovers that would otherwise occur in single-vehicle crashes. NHTSA estimates that ESC would save 5,300 to 9,600 lives and prevent 156,000 to 238,000 injuries in all types of crashes annually once all light vehicles on the road are equipped with ESC systems.

[3] The target population addressed by this rulemaking action is discussed in detail in the Preliminary Regulatory Impact Analysis (PRIA) for this NPRM, which has been placed in the docket for this NPRM.

[4] On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' (SAFETEA–LU), Public Law 109–59 (Aug. 10, 2005; 119 Stat. 1144) was enacted, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. Section 10302(a) of SAFETEA–LU directed the Secretary to complete the FMVSS No. 214 rulemaking by July 1, 2008. The September 11, 2007 final rule completed the rulemaking specified in § 10302(a).

[5] See Docket NHTSA–2003–14623–13. Alliance and AIAM members agreed to provide side impact head protection in at least 50 percent of their new passenger car and light truck fleet by September 1, 2007, and in 100 percent of the vehicles by September 1, 2009.

[6] In this document, this countermeasure is referred to as an ''ejection mitigation side curtain air bag,'' ''side curtain air bag,'' ''air bag curtain,'' ''rollover curtain,'' or simply ''curtain.'' This countermeasure is designed to deploy in a rollover crash and is distinct from strictly a ''side impact curtain,'' which is designed predominately to protect occupants in side crashes and meet the requirements of FMVSS No. 214. Notwithstanding this nomenclature, it is anticipated that rollover curtains will mitigate occupant ejections in side impacts as well as rollover crashes.

in possibly moveable windows in addition to or in lieu of the side curtain air bag.

The standard would use a guided impactor component test to assess the ability of the countermeasure (*e.g.,* a curtain system) to mitigate ejections in different types of rollover and side impact crashes involving different occupant kinematics. The test has been carefully designed to represent the dynamic rollover event. The impact mass is based on the mass imposed by a 50th percentile male's upper torso on the window opening during an occupant ejection. The mass of the impactor, 18 kilograms (kg) (40 lb), in combination with the impact speed discussed below, has sufficient kinetic energy to assure that the ejection mitigation countermeasure is able to protect a far-reaching population of people in real world crashes. In the test, the linear travel of the impactor beyond where the device contacts the inside of the unbroken vehicle glazing must not exceed 100 millimeters. This displacement limit serves to control the gap size between the countermeasure and the window opening, thus reducing the potential for both partial and complete ejection of an occupant.

To evaluate the performance of the curtain to fully cover potential ejection routes, the impactor would typically target four specific locations per side window adjacent to the first three rows of the vehicle. NHTSA has tentatively determined that impacting four targets around the perimeter of the opening would assure that the window will be covered by the curtain, while imposing a reasonable test burden. Small windows would be tested with fewer targets.

Computer modeling has shown that ejections can occur early and late in the rollover event. The impactor would strike the targets at two impact speeds and at two different points in time following side curtain air bag deployment, to ensure that the curtains will retain the occupant from the relatively early through the late stages of a rollover. The first impact would be a 24 kilometer per hour (km/h) (15 miles per hour (mph)) impact, 1.5 seconds after deployment of the curtain. The 1.5 second time delay is proposed because half of all fatal complete ejections occurred in crashes with 5 or more quarter-turns (¼-turns), and film analysis of vehicles that rolled 5 or more ¼-turns in staged rollover tests performed by the agency showed the vehicles taking about 1.5 seconds to achieve one complete vehicle revolution. The second impact would be at 16 km/h (10 mph), 6 seconds after deployment of the curtain. Film analysis of the staged vehicle tests showed a maximum roll time of 5.5 seconds for a vehicle that rolled 11¼-turns. The test speeds are representative of the occupant dynamics during the rollover events as well as side impacts. The agency is considering the alternative of applying the 24 km/h (1.5 second delay) impact only to the target location that exhibited the greatest displacement in the 16 km/h (6 second delay) impact.

Under today's NPRM, vehicle manufacturers would have to provide information to NHTSA upon request that describes the conditions under which the ejection mitigation air bags will deploy. We do not believe conditions need to be specified in the standard dictating when the sensors should deploy; field data indicate that rollover sensors are deploying when they should in the real world. We discuss our rationale for this decision in more detail below. Comments are requested on this issue.

II. Congressional Mandate

Section 10301 of SAFETEA–LU required the Secretary to issue by October 1, 2009, an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions. Section 10301 of SAFETEA–LU amended Subchapter II of chapter 301 (the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. Chapter 301) to add § 30128. Paragraph (a) directs the Secretary to initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds. Paragraph (c) directs the Secretary to initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. Paragraph (c) states that, in formulating the standards, the Secretary shall consider various ejection mitigation systems, and that the Secretary shall issue a final rule under this paragraph no later than October 1, 2009. Paragraph (e) states that if the Secretary determines that the subject final rule deadline cannot be met, the Secretary shall notify and provide explanation to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce of the delay. On September 24, 2009, the Secretary provided appropriate notification to Congress that the final rule will be delayed until January 31, 2011.

III. Safety Problem

Rollover crashes are a significant and a particularly deadly safety problem. As a crash type, rollovers are second only to frontal crashes as a source of fatalities in light vehicles. According to 1998–2007 Fatal Analysis Reporting System (FARS) data, frontal crash fatalities have averaged about 12,000 per year, while rollover fatalities have averaged 10,400 per year. In 2007, 35 percent of all fatalities were in rollover crashes. Since the early 1990s, the sport utility vehicle (SUV) segment has provided an increasing proportion of rollover fatalities. There were approximately 1,700 SUV rollover fatalities in 1998, and more than 2,800 in 2007. The last 10 years of data from the National Automotive Sampling System (NASS) General Estimates System (GES) indicate that an occupant in a rollover is 14 times more likely to be killed than an occupant in a frontal crash.[7]

Ejection is a major cause of death and injury in rollover crashes. According to 1998–2007 FARS data, about half of the occupants killed in rollovers were completely ejected from their vehicle. During this time period, there were 338 fully ejected occupants killed for every 1,000 fully ejected occupants in rollover crashes, as compared to 14 of every 1,000 occupants not fully ejected occupants killed.[8] Although the majority of occupants exposed to rollover crashes are in vehicles that roll two ¼-turns or less, the distribution of ejected occupants who are seriously injured (maximum abbreviated injury scale (MAIS) 3+) or killed is skewed towards rollovers with higher degrees of rotation. According to NASS Crashworthiness Data System (CDS) data of occupants exposed to a rollover crash from 1988 to 2005, half of all fatal complete ejections occurred in crashes with five or more ¼-turns.

Annualized injury data from 1997 to 2005 NASS CDS and fatality counts adjusted to 2005 FARS levels indicate that ejection through side windows constitutes the greatest part of the ejection problem. There were 6,174 fatalities, 5,271 MAIS 3–5 injuries, and 18,353 MAIS 1–2 injuries for occupants

[7] The relative risk of fatality for each crash type can be assessed by dividing the number of fatalities in each crash type by the frequency of the crash type. The frequency of particular crash types is determined by police traffic crash reports (PARs).

[8] The data combines partially-ejected and un-ejected occupants together, because partial ejection is sometimes difficult to determine and the PAR-generated FARS data may not be an accurate representation of partially-ejected occupant fatalities.

ejected through side windows. These constitute 61 percent of all ejected fatalities, 47 percent of MAIS 3–5 injuries, and 68 percent of MAIS 1–2 injuries.

This NPRM seeks to reduce complete and partial ejections of occupants from outboard seating positions in crashes involving a rollover or a side planar crash. The target population for this rulemaking would not include the population addressed by the FMVSS No. 214 pole test rulemaking.[9] The target population would also not include persons benefited by the installation of ESC systems in vehicles, based on an assumption that all model year 2011 vehicles would be equipped with ESC. As adjusted, the target population for this ejection mitigation rulemaking is 1,392 fatalities, 1,410 MAIS 3–5 injuries and 4,217 MAIS 1–2 injuries. This target population constitutes 23% of fatally-injured occupants ejected through the side window, 27% of MAIS 3–5 injured, and 23% of MAIS 1–2 injured side window-ejected occupants.

IV. Proposed Solution

a. Various Ejection Mitigation Systems Considered

In formulating this NPRM, NHTSA considered various ejection mitigation systems in accordance with Section 10301 of SAFETEA–LU. One of the considered systems was advanced laminated side glazing, a countermeasure thought in the 1990s to have potential for use in ejection mitigation.[10] In 2002, the agency terminated an advance notice of proposed rulemaking on advanced glazing after observing that advanced glazing appeared to increase the risk of neck injury by producing higher neck shear loads and neck moments than impacts into tempered side glazing (67 FR 41365, June 18, 2002). In addition, the estimated incremental cost for installing ejection mitigation glazing in front side windows ranged from over $800 million to over $1.3 billion, based on light vehicle annual sales of 17 million units in the 2005–2006 timeframe. Moreover, because side curtain air bags were showing potential as an ejection mitigation countermeasure, NHTSA redirected its research and rulemaking efforts toward developing performance-based test procedures for an ejection mitigation standard.[11]

As with all of the FMVSSs, this proposed ejection mitigation standard would be performance-oriented, to provide manufacturers wide flexibility and opportunity for design innovation in developing countermeasures that could be used for ejection mitigation. We anticipate that manufacturers would likely install ejection mitigation side curtain air bags in response to this rulemaking, taking advantage of the side impact curtains already in vehicles. However, advanced glazing could have a role in complementing ejection mitigation curtain systems. NHTSA tested several vehicles' ejection mitigation side curtain air bags both with and without laminated glazing to the 18 kg impactor performance test proposed in this NPRM. In the tests, the glazing was pre-broken to simulate the likely condition of the glazing in a rollover. Tests of vehicles with advanced glazing resulted in an average 51 mm reduction in impactor displacement across target locations.[12] That is, optimum (least) displacement of the headform resulted from use of both an ejection mitigation window curtain and advanced glazing. To encourage manufacturers to enhance ejection mitigation curtains with advanced glazing, this NPRM proposes to allow windows of advanced laminated glazing to be in position, but pre-broken to reproduce the state of glazing in an actual rollover crash. Although the glazing is pre-broken, the laminate in combination with the remaining integrity of the glazing acts as a barrier to ejection. Details on the pre-breaking method are given later in this preamble. As discussed later, the vast majority of side windows in real-world rollover crashes are closed.[13]

Comments are requested on whether manufacturers would use advanced glazing or some other novel window design alone, without a window curtain, to meet the ejection mitigation requirements throughout the vehicle or at least for some windows (*e.g.,* as the countermeasure to protect against ejection from a small window). Pre-breaking the glazing using the proposed methodology would substantially damage advanced glazing and might foreclose its use to meet the proposed requirements. NHTSA's (limited) test data, discussed below, indicate that various combinations of ejection mitigation countermeasures do not have a high potential for producing neck injury.[14] Yet, in lateral impact tests comparing unbroken advanced glazing alone to tempered glazing, the agency found that in some tests the lateral neck shear forces were higher for the advanced glazing.[15] Given these data, comments are requested on the potential for neck injury in the event that advanced glazing alone were used to comply with the proposed standard.

b. Full Window Opening Coverage Is Key

NHTSA undertook several research programs using a dynamic rollover fixture (DRF), which produced full-dummy ejection kinematics in an open window condition, to assess the potential effectiveness of ejection mitigation countermeasures in a rollover.[16] These countermeasures

[9] The Phase 1 FMVSS No. 214 rulemaking included reduction of partial side window-ejected adult (13+ years) occupants in side impacts, but did not include complete ejections. The Phase 1 rulemaking also excluded any impact where a rollover was the first event. Crashes where a rollover was a subsequent event were included, but only for partially-ejected fatalities. In addition, benefits were only assumed for side impact crashes with ΔV between 19.2 and 40.2 km/h (12 to 25 mph) and impact directions from 2 to 3 o'clock and 9 to 10 o'clock.

[10] Ejection mitigation glazing systems have a multi-layer construction with three primary layers. There is usually a plastic laminate bonded between two pieces of glass.

[11] ''Ejection Mitigation Using Advanced Glazing, Final Report,'' NHTSA, August 2001, DMS Docket 1782–22 (''advance glazing final report'').

[12] To accompany this NPRM, NHTSA prepared a technical analysis that presents a detailed analysis of engineering studies, and other information supporting the NPRM, such as the results of NHTSA's impactor testing of OEM and prototype side window ejection mitigation systems, ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation.'' We will refer to this technical analysis from time to time in this preamble. A copy of the technical analysis has been placed in the docket.

[13] For the target population of this rulemaking, the front row window through which an occupant was ejected was closed or fixed prior to the crash 69 percent of the time. However, we are concerned that for those instances where manufacturers utilize advanced (laminated) glazing in their design, when the window is partially or fully down, there may be a reduction of occupant retention. As discussed later in this preamble, comments are requested on alternatives to the approach of allowing laminated windows to be in place and pre-broken. One option would be to test with all movable windows removed or rolled down, regardless of whether the window is laminated.

[14] ''Status of NHTSA's Ejection Mitigation Research Program,'' Willke *et al.,* 18th International Technical Conference on the Enhanced Safety of Vehicles, paper number 342, June 2003.

[15] ''Ejection Mitigation Using Advanced Glazing, Final Report,'' *supra.*

[16] NHTSA developed the DRF to produce full-dummy ejection kinematics in a less costly manner than full-scale testing. The DRF models a lateral rollover crash of approximately one vehicle revolution. The DRF rotates approximately one revolution and comes to rest through the application of a pneumatic braking system on one end of the pivot axle. It does not simulate lateral vehicle accelerations often encountered in a rollover crash prior to initiation of the rollover event. The DRF has a test buck fabricated from a Chevrolet CK pickup cab. The cab was longitudinally divided down the center from the firewall to the B-pillar. The left (driver) side is rigidly attached to the test platform. The Chevrolet CK was chosen so that the advanced glazing systems developed in the previous ejection

Continued

included several designs of inflatable curtain air bags, advanced laminated glazing, and combinations of curtains and advanced glazing. The results showed, however, that not all ejection mitigation air bag curtains work the same way. Full window opening coverage is key to the effectiveness of the curtain in preventing ejection.

1. Tests With 50th Percentile Adult Male and 5th Percentile Adult Female Test Dummies

In the first research program, experimental roof rail-mounted inflatable devices developed by Simula Automotive Safety Devices (Simula) and by TRW were evaluated on the DRF, along with an advanced side glazing system.[17] In the tests, unrestrained 50th percentile male and 5th percentile female Hybrid III dummies, instrumented with 6 axis upper neck load cells and tri-axial accelerometers in the head, were separately placed in the buck.[18] The DRF rotation results in a centripetal acceleration of the dummy that caused it to move outwards towards the side door/window. In baseline tests of the unrestrained dummies in the DRF with an open side window and no countermeasure, the dummies were fully ejected. The ability of the countermeasure to restrain the dummies was assessed and compared to that baseline test.

In the tests of the experimental inflatable devices, the air bags were pre-deployed and their inflation pressure was maintained throughout the test by the use of an air reservoir tank mounted on the platform.[19] In the tests, the dummy's upper body loaded the inflatable device, which limited the dummy's vertical movement toward the roof and caused the pelvis to load the side door throughout the roll, rather than to ride up the door. The inflatable devices contained the torso, head, and neck of the dummy, so complete ejection did not occur. However, both devices did allow partial ejection of the dummy's shoulder and arm below the bags, between the inflatable devices and the vehicle door.

In the test of the advanced side glazing (laminated with door/window frame modifications around the entire periphery to provide edge capture), the glazing contained the dummies entirely inside the test buck. The glazing was not pre-broken before the testing. There was some flexing of the window frame when the dummies loaded the glazing, and the 50th percentile male dummy's shoulder shattered the glass when the dummy was located behind the steering wheel.

In the test of the combined systems, the dummies remained entirely inside the buck. Although the shoulder and arm escaped under the inflatable devices, the advanced glazing prevented the partial ejection seen in tests of the inflatable devices alone.

In these tests, the ejection mitigation systems did not show a high potential for producing head and neck injury. However, head and neck loading were higher than the open window condition. The highest load with respect to the Injury Assessment Reference Values (IARVs) was 82 percent for the neck compression for the 5th percentile female tested with the Simula/laminate combination. The highest injury response for the 50th percentile male dummy was 59 percent for the neck compression with the TRW system alone. All HIC_{36} [20] responses were extremely low and ranged from 8 to 90, with the maximum occurring in an open window test. Lateral shear and bending moment of the neck were also measured, although there are no established IARVs. The maximum lateral neck shear loads were 950 N (50th percentile male tested with TRW system) and 1020 N (5th percentile female tested with laminate only).

2. Tests With 6-Year-Old Child Test Dummy Showed a Risk of Ejection Through Openings Not Fully Covered

The second research program involved a series of tests on the DRF using an unrestrained Hybrid III 6-year-old dummy. In previous tests with the 50th percentile adult male and 5th percentile adult female dummies, a gap formed between the inflatable devices and the window sill (bottom of the window opening), which allowed partial ejection of those dummies. The second program investigated whether the gap allowed ejection of the 6-year-old child dummy.[21]

In baseline testing with an open side window without activation of an ejection mitigation countermeasure, the child dummy was fully ejected. In tests of the two inflatable systems tested in the first program (at the time of the second research program, the inflatable device formerly developed by Simula was then developed by Zodiac Automotive US (Zodiac)), the inflatable devices prevented full ejection of the 6-year-old child dummy in upright-seated positions (no booster seat was used). However, dummy loading on the systems produced gaps that did allow an arm and/or hand to pass through in some tests. Moreover, in a series of tests with the dummy lying in a prone position (the dummy was placed on its back at the height of the bottom of the window opening), representing a near worst-case ejection condition, the dummy was completely ejected at positions near the bottom of the inflatable devices (above the sill) with the TRW curtain, while the Zodiac system contained the dummy inside the test buck in all testing. Adding pre-broken advanced glazing with the TRW system managed to contain the dummy inside the test buck in all tests.[22]

3. Differences in Design Between the Two Inflatable Systems

The two prototype inflatable devices tested had fundamentally different designs. The Zodiac/Simula prototype system used an inflatable tubular structure (ITS) [23] tethered near the base of the A and B-pillars that deployed a woven material over the window opening. (The Zodiac system differed from the originally-tested Simula design in that it had more window coverage. This was achieved by placing the ITS tether locations lower on the pillars and adding additional woven material.) The TRW prototype was more akin to a typical air bag curtain and was fixed to the A- and B-pillar at its end points and along the roof rail, but not tethered. The ITS differed from conventional air bags in that it was not vented. We believe that the better performance of the Zodiac prototype system compared to that of TRW, in the DRF testing described above and in impactor test

mitigation research could be evaluated in this program. A seat back and cushion were made from Teflon material, to minimize the shear forces on the dummy buttocks for more desired loading on the window area by the dummy's head and upper torso.

[17] ''Status of NHTSA's Ejection Mitigation Research Program,'' Willke *et al.,* 18th International Technical Conference on the Enhanced Safety of Vehicles, paper number 342, June 2003.

[18] Two dummy positions were used. The first was behind the steering wheel. The second position was more inward, toward the pivot axle, which generated higher contact velocities. Film analysis was used to measure the dummy's relative head contact velocity with the side window plane from these two seating positions. From the first position, the impact speeds were 14 km/h (9 mph) for the 5th percentile female dummy and 18 km/h (11 mph) for the 50th male. From the second (inboard) position, the velocities were 31 km/h (19 mph) for the 5th female and 29 km/h (18 mph) for the 50th male.

[19] Since these were experimental systems, they were not deployed through pyrotechnic or in-vehicle compressed gas, as might be the case with production designs. The air pressure supplied by the laboratory reservoir kept the systems fully inflated over the test period.

[20] HIC_{36} is the Head Injury Criterion computed over a 36 msec duration. HIC_{36} =1000 represents an onset of concussion and brain injury.

[21] ''NHTSA's Crashworthiness Rollover Research Program,'' Summers, S., *et al.,* 19th International Technical Conference on the Enhanced Safety of Vehicles, paper number 05–0279, 2005.

[22] Id.

[23] ITS systems were originally introduced by BMW as a side impact countermeasure.

results provided later in this preamble, was due to the greater window coverage by the Zodiac prototype along the entire sill and A-pillar.

4. Insights

The DRF research provided the following insights into ejection mitigation curtains:

- Inflatable devices prevented ejection of test dummies in simulated rollover tests, but design differences accounted for differences in performance;
- Gaps in the inflatable device's coverage of the window opening at the sill and A-pillar allowed partial ejection of adult dummies and full ejection of a 6-year-old child dummy;
- Adding pre-broken advanced glazing to an air bag system enhanced the ability of the system to contain the dummy; and,
- To optimize ejection mitigation potential, a performance test should ensure that the countermeasure has full coverage of the window opening.

c. Comparable Performance in Simulated Rollovers and Component-Level Impact Tests

Because full-vehicle rollover crash tests can have an undesired amount of variability in vehicle and occupant kinematics, in the advanced glazing program NHTSA developed a component-level impact test for assessing excursion and the risk of ejection. The component-level test is basically the test proposed in this NPRM for ejection mitigation.[24] The test involves use of a guided linear impactor designed to replicate the loading of a 50th percentile male occupant's head and shoulder during ejection situations. The impactor[25] is described later in this preamble. There are many possible ways of delivering the impactor to the target location on the ejection mitigation countermeasure. The ejection mitigation test device[26] used in agency research has a propulsion mechanism[27] with a pneumatic piston that pushes the shaft component of the impactor. The shaft slides along a plastic (polyethylene) bearing. The impactor has an 18 kg mass.

The component-level test identified four impact locations to evaluate a countermeasure's window coverage and retention capability. Two of the positions were located at the extreme corners of the window/frame and were located such that a 25 mm gap existed between the outermost perimeter of the headform and window frame. A third position was near the transition between the upper window frame edge and A-pillar edge. The fourth position was at the longitudinal midpoint between the third position and the position at the upper extreme corner of the window/door frame, such that the lowest edge of the headform was 25 mm above the surface of the door at the bottom of the window opening. At each impact location, different impact speeds and different time delays between air bag deployment and impact were used. To simulate ejection early in a rollover event and in a side impact, the air bags were impacted 1½ seconds after air bag deployment, at 20 and 24 km/h. To simulate ejection late in a rollover event, the air bags were impacted after a delay of 6 seconds at an impact speed of 16 km/h.

The two inflatable systems tested in the above-described research programs (the inflatable devices developed by Zodiac and by TRW) were installed on a Chevrolet CK pickup cab and subjected to the component-level impact test. The air bag systems were evaluated for allowable excursion (impactor displacement) beyond the side window plane. The tests also assessed the degree to which the component-level test was able to replicate the findings of the DRF tests.

The component-level tests mimicked the DRF tests by revealing the same deficiencies in the side curtain air bags that were highlighted in the dynamic test. The Zodiac system[28] did not allow the impactor to go beyond the plane of the window in the 16 km/h and 20 km/h tests. The air bag allowed only 12 and 19 mm of excursion beyond the window plane in the 24 km/h tests. In the 24 km/h tests of the TRW system, the curtain was not able to stop the impactor before the limits of travel were reached (about 180 mm beyond the plane for the vehicle window for that test setup) at the position at the extreme forward corner of the window sill. This is the position at which the TRW prototype system allowed excessive excursion of the test dummies in the DRF dynamic tests. In the DRF tests, the 6-year-old dummy was completely ejected through that window area even when the prone dummy was aimed at the position at the other extreme corner of the window. In other tests, the TRW prototype system was able to stop the impactor before the impactor reached its physical stops.

d. Advantages of a Component Test Over a Full Vehicle Dynamic Test

The component test not only distinguishes between acceptable and unacceptable performance in side curtain air bags, but has advantages over a full vehicle dynamic test. The acceptable (or poor) performance in the laboratory test correlated to the acceptable (or poor) performance in the dynamic test. The component test was able to reveal deficiencies in window coverage of ejection mitigation curtains that resulted in partial or full ejections in dynamic conditions. NHTSA tentatively believes that incorporating the component test into an ejection mitigation standard would ensure that ejection mitigation countermeasures provide sufficient coverage of the window opening for as long in the crash event as the risk of ejection exists, which is a key component contributing to the efficacy of the system.

As noted earlier, rollover crash tests can have an undesirable amount of variability in vehicle and occupant kinematics. In contrast, the repeatability of the component test has been shown to be good.[29] Moreover, there are many types of rollover crashes, and within each crash type the vehicle speed and other parameters can vary widely. A curb trip can be a very fast event with a relatively high lateral acceleration. Soil and gravel trips have lower lateral accelerations than a curb trip and lower initial roll rates. Fall-over rollovers are the longest duration events, and it can be difficult to distinguish between rollover and non-rollover events. Viano and Parenteau[30] correlated eight different tests to six rollover definitions from NASS–CDS.[31] Their analysis indicated that the types of rollovers occurring in the real-world varied significantly. Soil trip rollovers accounted for more than 47 percent of the rollovers in the field, while less than 1 percent of real-world rollovers were

[24] ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation,'' supra.

[25] The ''ejection impactor'' is the moving mass that strikes the ejection mitigation countermeasure. It consists of an ejection headform attached to a shaft

[26] The ejection mitigation test device consists of an ejection impactor and ejection propulsion mechanism.

[27] The ''ejection propulsion mechanism'' is the component that propels the ejection impactor and constrains it to move along its axis or shaft.

[28] Testing was restricted to the extreme corners of the window due to limited availability of this system.

[29] ''NHTSA's Crashworthiness Rollover Research Program,'' *supra.*

[30] Viano D, Parenteau C. Rollover Crash Sensing and Safety Overview. SAE 2004–01–0342.

[31] ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation,'' *supra.*

represented by the FMVSS No. 208 dolly test.

Occupant kinematics will also vary with these crash types, resulting in different probabilities of occupant contact on certain areas of the side window opening with differing impact energies. A single full vehicle rollover test could narrowly focus on only certain types of rollover crashes occurring in the field.[32] NHTSA is concerned that a comprehensive assessment of ejection mitigation countermeasures through full vehicle dynamic testing may only be possible if it were to involve multiple crash scenarios. Such a suite of tests imposes test burdens that could be assuaged by a component test such as that proposed today. We also note that a comprehensive suite of full-vehicle dynamic tests would likely involve many more years of research, which would delay this rulemaking action and the potential for incorporating these life-saving technologies. Such a delay seems unwarranted since NHTSA believes the component test will be an effective means of determining the acceptability of ejection countermeasures. Whether it would be more or less effective than a yet-to-be-defined suite of full vehicle tests remains an open question. However, as explained above, the proposed test clearly has advantages over a single full vehicle test.

e. Existing Curtains Can Be Made More Effective

1. Existing Curtains

The availability of vehicles that offer inflatable side curtains that deploy in a rollover has increased since they first became available in 2002. In the middle of the 2002 model year (MY), Ford introduced the first generation of side curtain air bags that were designed to deploy in the event of a rollover crash. The rollover air bag curtain system, marketed as a ''Safety Canopy,'' was introduced as an option on the Explorer and Mercury Mountaineer.[33] For the 2007 MY, rollover sensors were available on approximately 95 models, with 75 of these models being sport utility vehicles. The system is standard equipment on 62 vehicles (65 percent) and optional on 33 vehicles (35 percent).

In addition to the presence of a rollover sensor, there are two important design differences between air bag curtains designed for rollover ejection mitigation and air bag curtains designed for side impact protection. The first difference is longer inflation duration. Rollover crashes with multiple full vehicle rotations can last many seconds. Ford states that its Safety Canopy stays inflated for 6 seconds,[34] while GM has been reported to state that its side curtain air bags designed for rollover protection maintain 80 percent inflation pressure for 5 seconds.[35] Honda reportedly states that the side curtains on the 2005 and later Honda Odyssey stay fully inflated for 3 seconds.[36] (To our knowledge, Ford has not indicated what level of inflation is maintained during the duration.) In contrast, side impact air bag curtains designed for occupant protection in side crashes, generally stay inflated for less than 0.1 seconds.

The second important air bag curtain design difference between rollover and side impact protection is the size or coverage of the air bag curtain. One of the most obvious trends in newer vehicles is the increasing area of coverage for rollover curtains. Ford reportedly stated that its rollover protection air bags cover between 66 and 80 percent of the first two rows of windows, and that it was expanding the designs so they cover all three rows in all models.[37] GM reportedly stated that its curtains designed for rollover protection are larger than non-rollover curtains.[38]

2. Component Tests of Real-World Curtains and Advanced Glazing Systems Show That Improvements Could Be Made

NHTSA has tested real-world side window air bag curtains and advanced glazing[39] according to the test procedure proposed in this NPRM, except for some differences in the target locations.[40] [41] In addition, prototype Zodiac and TRW systems were installed on the GM CK pickup and the Lincoln Navigator. In this section of the preamble, we provide test results for ejection mitigation countermeasures installed as original equipment (OE) and as prototypes, tested to the proposed requirements. One of the findings of this test series was that none of the original equipment (OE) systems met the proposed displacement limit when impacted at the target in the forward lower corner of the front window (target A1, see Figure 1 below) at 24 km/h.[42]

The target locations shown in Figure 1 were determined by the method proposed for this NPRM. With the exception of the Honda Odyssey, for all tests of prototype systems and OE system through MY05, the method for determining the target location was slightly different than currently proposed. (We will refer to this method as the ''research target method'' as opposed to the ''proposed target method.'') The MY05 Odyssey was tested by the proposed target method. As explained below, the differences in target locations identified by the two methods are small enough that data using the research target method can be reasonably compared to the proposed target method.

The difference in determining the target location had the most effect on the location of A2, A3, B1 and B4. The resulting shift in target location was a function of the window shape. The primary difference in the research target method was that A3 was found by bisecting the angle produced by the intersection of a line parallel to the A-pillar and roof rail, which in the case of the window in Figure 1 would shift A3 rearward and upward. Since A2 is located horizontally midway between A3 and A4 in both the research and proposed target methods, A2 in the research target method would be rearward of the A2 position shown in Figure 1.

The rear window data for prototype and OE system through MY05 is, for the most part, limited to B1 and B4. Under the research target method used to find the target locations, B1 was at the lower sill, in the middle of the window and B4 was in the upper rear corner. Again, under the research target method, B1 and B4 would likely be shifted forward from the location shown in Figure 1. For only this vehicle, Tables 1 through 3 of this preamble present an average

[32] The agency has in the past performed dolly type dynamic testing. The agency has not performed enough repeat tests of the same vehicles to draw any conclusions about the repeatability of these tests to determine occupant containment. However, regardless of the level of repeatability of dummy kinematics, it still only represents a part of the kinematics that would occur in the field.

[33] *http://media.ford.com/article_display.cfm?article_id=6447.*

[34] *Ibid.*

[35] ''Who Benefits From Side and Head Airbags?'' (*http://www.edmunds.com/ownership/safety/articles/105563/article.html*).

[36] *http://www.autodeadline.com/detail?source=Honda&mid=HON20040831726788&mime=ASC.*

[37] *Ibid.*

[38] Who Benefits From Side and Head Airbags?'' (*http://www.edmunds.com/ownership/safety/articles/105563/article.html*).

[39] The laminates tested were marketed as theft protection and not as a form of ejection mitigation.

[40] ''Status of NHTSA's Ejection Mitigation Research Program,'' *supra.*

[41] ''NHTSA Crashworthiness Rollover Research Program,'' *supra.*

[42] ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation,'' *supra.*

result from two impacts that were on either side of the proposed targets B1 and B4.

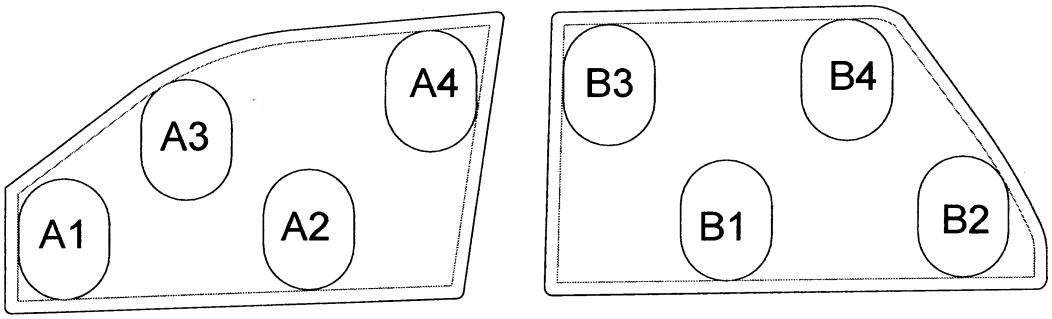

Figure 1 – Target Location Determined by Proposed Method

The results of the testing are given in Tables 1 through 3. The results are given in columns, by target location. These data are also found in a color coded format in the Technical Analysis report accompanying this NPRM. The target location key is shown in Figure 1 of this preamble, supra. In general, for a particular vehicle and target location, if multiple trials were run at a particular impact speed and time delay, each of the displacement results is shown by separating the table cell into two or three cells.

Although the agency is proposing a 24 km/h impact test 1.5 seconds after air bag deployment, research data was acquired at 20 km/h to determine the sensitivity to impact speed. Several ejection mitigation systems were not tested at 24 km/h at every target location because the 20 km/h results indicated displacements in excess of 100 mm at that location. We assume the 24 km/h impact would also have exceeded 100 mm. Where this occurred, the cell in Table 1 contains the 20 km/h displacement value and is identified by an asterisk. Similarly, some target locations were not tested at 20 km/h, but we assume that the value that would have been obtained would be below 80 mm of displacement because the 24 km/h impact was less than 80 mm. Where this occurred, the cell in Table 2 contains the 24 km/h displacement value and is identified by a double asterisk.

Tables 1 through 3 show the results for vehicle front windows. For all three sets of tests, A1 was the most challenging target and A4 was the least challenging. For the 24 km/h test, the only system that did not exceed the 100 mm criterion at A1 was the Zodiac prototype on the CK pickup. At 20 km/h, the MY05 Infinity had one test result of 99 mm and another of 106 mm at A1. For the 16 km/h impact at a 1.5 second delay, two OE systems and two prototype systems had displacements slightly more or less than 100 mm at A1. No displacement at A4 exceeded 76, 73 or 67 mm at 24, 20 and 16 km/h, respectively. Taken as a whole, A2 and A3 showed similar results to each other for all three test conditions in that neither was as consistently challenging to meet as A1 nor as easily met as A4. The trends for severity by target location are the same for the 16 km/h impacts at a 6 second delay.

TABLE 1—IMPACTOR DISPLACEMENT—FRONT ROW WINDOW, 24 KM/H IMPACT, 1.5 SECOND DELAY

	Position A1	Position A2	Position A3	Position A4
03 Navigator	No Data	*186 196*	*229	−22.
03 Navigator w/lam	No Data	35	No Data	No Data.
04 Volvo XC90	*163	193	130	18.
04 Volvo w/lam	*102 *151	44	118	15.
05 Nissan Pathfinder	*181	161	*240	76 76.
05 Toyota Highlander	*159 *164	202	137	67.
05 Infinity FX35	124	83 96 112	89 89 108	53.
05 Chevy Trailblazer	138	168	159	No Data.
05 Chevy Trailblazer w/lam	No Data	No Data	*107 *110	No Data.
05 Honda Odyssey	No Cover	119	107	No Data.
06 Dodge Durango	174	156	*180	54.
06 Dodge Durango w/lam	No Data	*101	No Data	No Data.
Zodiac Prot. on CK	12	19	No Data	No Data.
Zodiac Prot. on Navigator	150 143	54	96 102	21 24.
Zodiac Prot. on Nav. w/lam	No Data	No Data	91 97	No Data.
TRW Prot. on CK	No Cover†	82 82 102	2 6	−13 −8.
TRW Prot. on CK w/lam	180 182	21	−26 −26	−33 −25.

*Only tested at 20 km/h and displacement exceeded 100 mm.
†No countermeasure at this target location.

TABLE 2—IMPACTOR DISPLACEMENT—FRONT ROW WINDOW, 20 KM/H IMPACT, 1.5 SECOND DELAY

	Position A1	Position A2	Position A3	Position A4
03 Navigator	No Data	186 196	229	−37.
03 Navigator w/theft lam	No Data	6	No Data	No Data.
04 Volvo XC90	163	84 107	107 131	−3.
04 Volvo w/theft lam	102 151	27	97	** 15.
05 Nissan Pathfinder	181	133	240	58
05 Toyota Highlander	159 164	113 150	106 113	73.
05 Infinity FX35	99 106	58	70	29.
05 Chevy Trailblazer	112	121	127	No Data.
05 Chevy Trailblazer w/lam	90	80	109	No Data.
05 Honda Odyssey	No Cover †	96	57	−45.
06 Dodge Durango	160	140	180	18.
06 Dodge Durango w/lam	No Data	101	No Data	No Data.
Zodiac Prot. on CK	−12	−9	No Data	No Data.
Zodiac Prot. on Navigator	122	38	76 81	−9 −0.9.
Zodiac Prot. on Nav. w/lam	No Data	No Data	No Data	No Data.
TRW Prot. on CK	No Cover †	75	−29	−52.
TRW Prot. on CK w/lam	104	0	−54	−60 −63.

** Only tested at 24 km/h and displacement was below 80 mm.
† No countermeasure at this target location.

TABLE 3—IMPACTOR DISPLACEMENT—FRONT ROW WINDOW, 16 KM/H IMPACT, 6 SECOND DELAY

	Position A1	Position A2	Position A3	Position A4
03 Navigator	243	74	211	−30.
03 Navigator w/theft lam	157	−14	137	No Data.
04 Volvo XC90	154 167	52 93	78	−22.
04 Volvo w/theft lam	86 105	26	59	No Data.
05 Nissan Pathfinder	108 120	93 106	188	37 46.
05 Toyota Highlander	198	132	147	67.
05 Infinity FX35	85	21	39	9.
05 Chevy Trailblazer	121	192	124	No Data.
05 Chevy Trailblazer w/lam	No Data	102	No Data	No Data.
05 Honda Odyssey	No Cover †	77	47 90	−54.
06 Dodge Durango	138	135	167	13.
06 Dodge Durango w/lam	No Data	No Data	142	No Data.
Zodiac Prot. on CK	0	0	No Data	No Data.
Zodiac Prot. on Navigator	135	49	78 81	−0.2.
Zodiac Prot. on Nav. w/lam	104	No Data	70	No Data.
TRW Prot. on CK	No Cover †	99 97	−36	−41.
TRW Prot. On CK w/lam	80	−3	−44	−67.

† No countermeasure at this target location.

The 2nd row window data in Tables 4 through 6 are much more limited, with nearly all the data at B1 and B4. In general, these data indicate target location B1 is more challenging than B4. The exception to this is the Dodge Durango, which performed well at all 2nd row targets. For the 24 km/h test at B1, three of the ejection mitigation systems tested had displacements that did not exceed 100 mm. For the 20 and 16 km/h test at B1, a total of 3 systems did not exceed 100 mm. We also expect that the Durango would not have exceeded 100 mm at 20 km/h, since it did not exceed 100 mm at 24 km/h. At B4, three systems had displacements that exceeded 100 mm. This was reduced to one system for the 20 and 16 km/h impacts.

Any cell listed as ''To Stops'' indicates a displacement of the impactor to the point where the mechanical stops of the device keep it from further movement. This occurred for the MY03 Navigator at B1 at 24 and 20 km/h. ''To stops'' is considered an infinite displacement and indicates very little countermeasure coverage at this location.

Table 7 shows very limited 3rd row window data for the Odyssey and Durango at all test conditions. For this system C4 is much more challenging than C1.[43]

TABLE 4—SECOND ROW WINDOW, 24 KM/H IMPACT, 1.5 SECOND DELAY

	Position B1	Position B2	Position B3	Position B4
03 Navigator	To Stops	No Data	No Data	−40.
04 Volvo XC90	(20 km/h) *	No Data	No Data	69.
04 Volvo w/theft lam	91/93	No Data	No Data	62.
05 Nissan Pathfinder	161	No Data	No Data	128.

[43] We are using C1 through C4 to denote the impact locations for the 3rd row window. Third row target locations were found in the same manner as 2nd row targets.

TABLE 4—SECOND ROW WINDOW, 24 KM/H IMPACT, 1.5 SECOND DELAY—Continued

	Position B1	Position B2	Position B3	Position B4
05 Toyota Highlander	146	No Data	No Data	149.
05 Infinity FX35	143	No Data	No Data	45.
05 Honda Odyssey	71	152	80	193.
06 Dodge Durango	76	86	91	82.
Zodiac Prot. on Navigator	Avg. = 98 (96 to 100)‡.	99	No Data	Avg. = 104 (32 to 176)‡.

* Exceeded 100 mm at 20 km/h.
‡ Combines data from two impact location closest to the defined target location.

TABLE 5—SECOND ROW WINDOW, 20 KM/H IMPACT, 1.5 SECOND DELAY

	Position B1	Position B2	Position B3	Position B4
03 Navigator	To Stops	No Data	No Data	−14.
04 Volvo XC90	183	No Data	No Data	(24 km/h)**.
04 Volvo w/theft lam	94	No Data	No Data	(24 km/h)**.
05 Nissan Pathfinder	126/150	No Data	No Data	99.
05 Toyota Highlander	107	No Data	No Data	102.
05 Infinity FX35	79 94	No Data	No Data	21.
05 Honda Odyssey	42	134	34	84.
06 Dodge Durango	(24 km/h)	No Data	No Data	No Data.
Zodiac Prot. on Navigator	Avg. = 70 (67 to 72)‡.	70	No Data	Avg. = 77 (9 to 144)‡.

‡ Combines data from two impact location closest to the defined target location.
** Below 80 mm at 24 km/h.

TABLE 6—SECOND ROW WINDOW, 16 KM/H IMPACT, 6 SECOND DELAY

	Position B1	Position B2	Position B3	Position B4
03 Navigator	126	No Data	No Data	−27.
04 Volvo XC90	189	No Data	No Data	29.
04 Volvo w/theft lam	63	No Data	No Data	9.
05 Nissan Pathfinder	104	No Data	No Data	75.
05 Toyota Highlander	138	No Data	No Data	107.
05 Infinity FX35	61	No Data	No Data	19.
05 Honda Odyssey	12	121	55	28.
06 Dodge Durango	3	36	71	18.
Zodiac Prot. on Navigator	Avg. = 81 (73 to 89)†.	98	No Data	Avg. = 67 (16 to 117)†.

† Combines data from two impact location closest to the defined target location.

TABLE 7—THIRD ROW WINDOW, ALL IMPACT SPEEDS AND TIME DELAYS

	Position C1	Position C2	Position C3	Position C4
24 km/h—1.5 s				
05 Honda Odyssey	No Data	No Data	175	(20 km/h)*.
06 Dodge Durango	No Data	No Data	No Data	(20 km/h)*.
20 km/h—1.5 s				
05 Honda Odyssey	58	No Data	122	To Stops.
06 Dodge Durango	66	No Data	No Data	283.
16 km/h—6 s				
05 Honda Odyssey	44	To Stops	80	331.
06 Dodge Durango	52	No Data	No Data	No Data.

* Exceeded 100 mm at 20 km/h.

Summarized below are some very general trends for the displacement data. These trends were based on limited data and were not analyzed for statistical significance.

Within target locations we found the following general trends:

- The 24 km/h—1.5 second delay test was the most challenging test;
- The 20 km/h—1.5 second test was more consistently challenging than the 16 km/h—6 second test;
- For the 24 km/h test, the only system that did not exceed the 100 mm criterion at A1 was the Zodiac Prototype on the CK pickup.

Comparing target locations we found the following general trends:

- In row one, A1 was the most consistently challenging target and A4 was the least;
- In row two, target location B1 was more consistently challenging than target B4;
- Data from the third row targets were too limited to indicate any trends.

3. Use of advanced glazing with the air bag curtain resulted in reduced displacement

Several vehicles were tested both with and without laminated glazing. A prototype glazing was used on the CK pickup. Tests where advanced glazing was used resulted in a reduction in impactor displacement. Table 8 shows the reduction in impactor displacement for each of the vehicles. Not every target location was tested at each impact speed. For all prototype and MY06 and older vehicles, the glazing was pre-broken using a ball-peen hammer method discussed in the Technical Analysis report accompanying this NPRM, while for MY07 vehicles, the glazing was broken using a 50 mm matrix hole punch pattern. (The agency is proposing the latter method in this NPRM.)

The largest displacement reduction was for the MY03 Navigator at A2, impacted at 20 km/h—1.5 second delay. This location exhibited a 185 mm change in displacement (from 191 mm to 6 mm). The smallest change in displacement was 3 mm (18 mm to 15 mm) for the MY04 XC90 at A4, impacted at 24 km/h—1.5 second delay. For target positions with multiple vehicle tests, the A2 position had the largest change in displacement at each test speed. The average displacement reduction across target locations and test types was 51 mm.

TABLE 8—REDUCTION IN IMPACTOR DISPLACEMENT RESULTING FROM PRE-BROKEN LAMINATED GLAZING

	A1	A2	A3	A4	B1	B4
24 km/h, 1.5 sec.:						
04 Volvo XC90	.....	149	12	3	.....	7
Zodiac Prot. on Navigator	.....	.....	5	.....	.....	.....
TRW Prot. on CK	.....	68	30	19	.....	.....
Average	.....	108	16	11	.....	.....
20 km/h, 1.5 sec.:						
03 Navigator	.....	185	.....	.....	.....	.....
04 Volvo XC90	37	69	22	.....	89	.....
05 Trailblazer	22	41	19	.....	.....	.....
06 Durango	.....	47	.....	.....	.....	.....
TRW Prot. on CK	.....	75	25	10	.....	.....
Average	29	83	22	.....	.....	.....
16 km/h, 6 sec.:						
03 Navigator	86	88	74	.....	.....	.....
04 Volvo XC90	65	47	19	.....	126	20
05 Trailblazer	.....	90	.....	.....	.....	.....
06 Durango	.....	.....	25	.....	.....	.....
07 Commander	.....	91	.....	.....	.....	.....
Zodiac Prot. on Navigator	31	.....	10	.....	.....	.....
TRW Prot. on CK	.....	101	8	26	.....	.....
Average	61	83	27	.....	.....	.....

4. Field Performance of Ejection Mitigation Curtain Systems

To better understand the field performance of the current fleet equipped with rollover systems, the agency evaluated available crash data. A focus of this evaluation was the performance of the rollover sensors and their ability to detect the rollover event and activate deployment of the side curtain air bags. We also sought to understand the occupant containment provided by the vehicle system. The available data reviewed included a detailed analysis of a very limited number of rollover crashes by NHTSA's Special Crash Investigation (SCI) division. In all of the cases, the ejection countermeasure in the vehicle was an air bag curtain which partially covered the first two window rows.

The agency's SCI division analyzed seven real-world rollover crashes of Ford vehicles where the subject vehicles contained a rollover sensor and side curtain air bags. (Ford agreed to notify SCI of the crashes.) The subject vehicles were Ford Expeditions, a Ford Explorer, a Mercury Mountaineer, and a Volvo XC90. Table 9 gives details about each case.

In each case, the rollover sensor deployed the side curtain air bag. Of the seven cases, there were a total of 19 occupants, 15 of whom were properly restrained. All were in lap/shoulder belts, except one child in a rear facing child restraint system (CRS). A single crash (DS04–016) had all of the unrestrained occupants, serious injuries, fatalities and ejections in this set of cases. Two of the four unrestrained occupants were fully ejected from the vehicle, resulting in one fatal and one serious injury. The fatality was a 4-month-old infant, seated in the middle of the 2nd row. The ejection route was not determined. The seriously injured occupant was an adult in the left 3rd row, ejected through the uncovered right side 3rd row window. One non-ejected, restrained occupant received a fatal cervical fracture resulting from roof contact and another was seriously injured. The injuries to the remaining occupants were ''none'' to ''minor.''

TABLE 9—FORD SCI ROLLOVER CASES

Case	Make	Model	MY	Occupants			¼ Rot.	Deploy		
				Row 1	Row 2	Row 3		Angle	Time (ms)	Rate (deg/s)
CA02–059	Mercury	Mount	2002	1R	1R		1	17		17 to 25.
CA04–010	Ford	Expl	2003	1R			1	43	20	75.
IN–02–010	Ford	Exped	2003	1R			2	45	146	111.
2004–003–04009	Ford	Exped	2003	1R	2R		5	Yes	Unknown	Unknown.

TABLE 9—FORD SCI ROLLOVER CASES—Continued

Case	Make	Model	MY	Occupants			¼ Rot.	Deploy		
				Row 1	Row 2	Row 3		Angle	Time (ms)	Rate (deg/s)
DS04–016	Ford	Exped	2003	2R	2R, 2NR †	1R, 2NR †	5	Yes	Unknown	Unknown.
DS04017	Ford	Exped	2004	1R			12	Yes	Unknown	Unknown.
2003–079–057	Volvo	XC90	2003	1R	1R		6	Yes	Unknown	Unknown.

R = Restrained, NR = Not Restrained.
† One NR 2nd and 3rd row occupant ejected (total of 2 ejected).

V. Proposed Ejection Mitigation Requirements and Test Procedures

As discussed above, NHTSA's research on rollover ejection found that with partial window opening coverage by a curtain, occupants initially contacting covered areas can slide to an opening and be ejected. The agency is proposing a test that requires ejection mitigation curtains to retain an impactor such that its displacement is limited to a specified distance outside of the window. To assure full window opening coverage through the duration of a rollover, the proposed test procedure would require the first three rows of side window openings to be impacted at up to four locations around the perimeter of the opening at two time intervals.

In this section, we discuss in detail the rationale for selection of the impactor test parameters. The primary parameters that determine the stringency of the test are: (a) The impactor dimensions and mass; (b) the displacement limit; (c) impactor speed and time of impact; and (d) target locations. We also discuss: (e) glazing issues; (f) test procedure tolerances; (g) test device characteristics; and (h) a proposal for a telltale requirement. See also ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation,'' supra.

a. Impactor Dimensions and Mass

The component test involves use of a guided linear impactor designed to replicate the loading of a 50th percentile male occupant's head and upper torso during ejection situations. The portion of the impactor that strikes the countermeasure is a featureless headform that was originally designed for the upper interior head protection research program (FMVSS No. 201).[44] It averages the dimensional and inertial characteristics of the frontal and lateral regions of the head into a single headform. The headform is covered with an approximately 10 mm thick dummy skin material whose outer surface dimensions are given in Figure 2, below. The Technical Analysis report discusses other dimensional attributes of the headform, such as the curvature of the outer surface. There are many possible ways of delivering the impactor to the target location on the ejection mitigation countermeasure. The impactor used in agency research propels the shaft component of the impactor with a pneumatic piston. The shaft slides along a plastic (polyethylene) bearing. The impactor has an 18 kg mass.[45]

[44] ''Ejection Mitigation Using Advanced Glazings: A Status Report,'' November 1995, Docket NHTSA–1996–1782–3; ''Ejection Mitigation Using Advanced Glazings: Status Report II,'' August 1999, Docket NHTSA–1996–1782–21; ''Ejection Mitigation Using Advanced Glazings: Final Report,'' August 2001, Docket NHTSA–1996–1782–22.

[45] Since the proposed performance criterion for this ejection mitigation standard is a linear displacement measure (a linear displacement measure would correlate to the actual gap through which an occupant can be ejected), a linear impactor appears to be a suitable tool to dynamically measure displacement. The impactor can be placed inside the vehicle for testing the ejection mitigation curtains and glazing covering window openings.

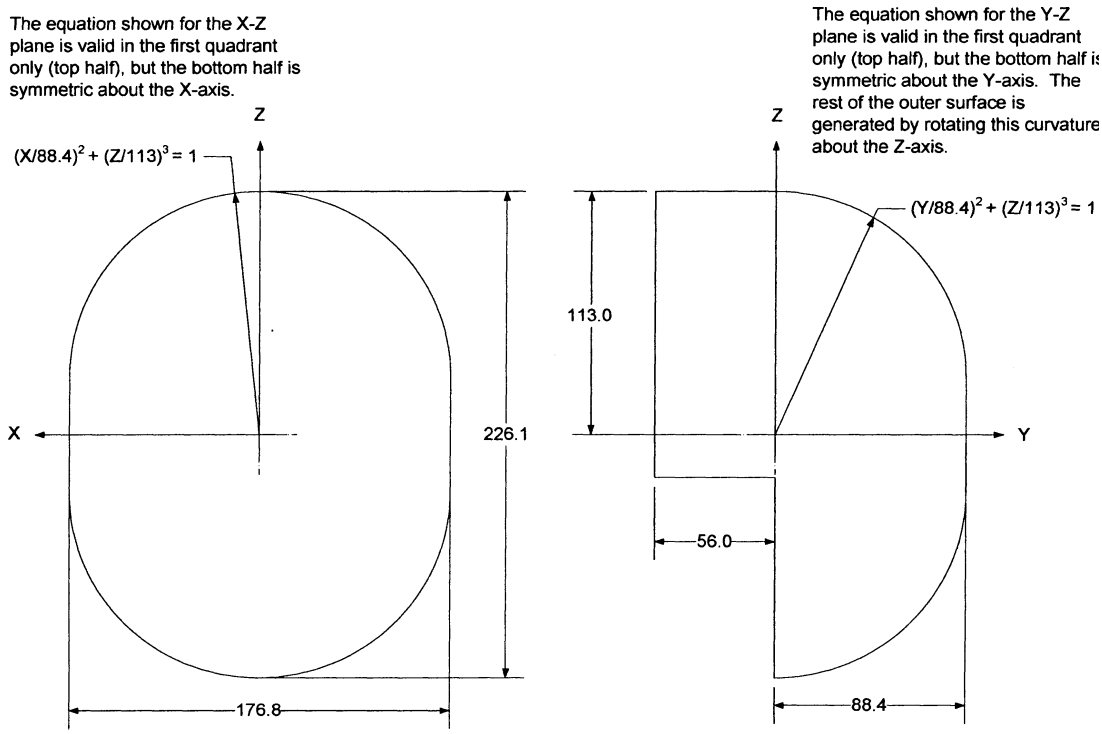

Figure 2 – Front and side view of headform outer surface (right) with dimensions given in millimeters

The mass of the guided impactor was developed through pendulum tests, side impact sled tests, and modeling conducted to determine the mass imposed on the window opening by a 50th percentile adult male's upper torso and head during an occupant ejection (''effective mass'').[46] Briefly, the pendulum impact tests were conducted on a BioSID anthropomorphic test device (50th percentile adult male) to measure effective mass of the head, shoulder, and upper torso. The BioSID was chosen because it was originally configured for side impact, unlike the Hybrid III dummy, and has a shoulder which the Side Impact Dummy (49 CFR 572, subpart F) currently used for FMVSS No. 214, ''Side impact protection,'' does not have. A linear impact pendulum weighing 23.4 kg (51.5 lb) was used to strike the head and shoulder of the dummy laterally (perpendicular to the midsagittal plane) using two impact speeds (9.7 and 12.9 km/h) and four impact surfaces. In addition to the rigid impactor face, three types of padding were added to the impactor face to increase the contact time, to replicate advanced glazing impacts.

Effective mass was calculated by dividing the force time history calculated from the pendulum accelerometers by the acceleration time history from the dummy sensors. In general, higher speed impacts and impacts with softer surfaces generated higher effective mass. Based on these pendulum tests, a range for the effective mass of the head and upper torso was estimated to be 16 to 27 kg.

In the sled tests, we used a side impact sled buck with a load plate representing a door and two load plates representing the glazing to measure shoulder and head impacts with three different stiffness foams. The purpose of these tests was to determine the effect lower body loading would have on the combined head and upper torso effective mass. Two impact conditions were simulated, one representative of a rollover event and the second of a side impact event.

In the rollover condition, the impact speed was 16.1 km/h and the dummy was positioned leaning towards the door such that the head and torso would contact the simulated glazing at the same time. This leaning position was intended to be more representative of an occupant's attitude in a rollover. For the test designed to be more representative of a side impact condition, the dummy was seated upright and the impact speed was 24 km/h. The effective mass of the head and upper torso calculated for the 16.1 km/h impact condition showed a quick rise to about 18 kg by about 5 ms, followed by an increase to about 40 kg at about 30 ms. The effective mass for the 24 km/h impact condition showed an initial artificially high value or spike prior to 5 ms because of a lag between the force measured in the load plates and the acceleration measured at the upper spine. This spike was also seen in the some pendulum shoulder impacts. The effective mass settled to about 9 kg at about 10 ms, with a slow rise to about 18 to 20 kg at about 25 to 30 ms. Looking at the results, we determined that early in each event, when the impacting mass is traveling near the pre-impact velocity, the energy levels of a 9 kg mass traveling at 24 km/h [9 kg × $(6.67\ m/s)^2/2$ = 200 Nm] and an 18 kg mass traveling at 16 km/h [18 kg × $(4.47\ m/s)^2/2$ = 180 Nm] were roughly the same. In consideration of the similarity of energy results for the sled testing at two impact speeds, we deferred to the 18 kg effective mass since the test condition more closely represented a rollover. In addition, the 18 kg value was within the range of the pendulum impactor results discussed above, which showed an effective mass range between 16 and 27 kg.

[46] ''Technical Analysis in Support of a Notice of Proposed Rulemaking for Ejection Mitigation,'' supra.

The final part of the analysis involved computer modeling of an 18 kg impactor and 50th percentile Hybrid III dummy impacting simulated glazing (foam). The comparison found that the total energy transferred by the 18 kg impactor was within the range of the total energy transferred by the entire dummy. For a 16.1 km/h dummy model impact with the foam, the effective mass that came in contact with the foam was between 12.5 kg and 27 kg.

We note that the 18 kg proposed mass is consistent with that used by General Motors (GM) in 16.2 km/h (4.5 m/s) tests of ejection mitigation curtains.[47] GM based this value on test results from 52 full vehicle rollover tests that estimated the effective mass of occupant contact with the first row side window area. Forty-six percent of the tests were less than a ¼-turn, 27 percent were one ¼-turn and 27 percent were two ¼-turns. (Twenty of the rollovers were curb trip; 18 were soil trip; 11 were fall-over, and 3 were corkscrew.) The tests used two 50th percentile male Hybrid III dummies in the front seats. In half of the tests, the dummies were belted and in half they were not. A membrane was placed over the window area to prevent ejections, and tri-axial load cells were incorporated into the membrane at the corners of the window opening. The effective mass was calculated using the resultant loading on the dummy head by the window membrane, along with resultant head and chest accelerations.

For a subset of tests the effective mass was calculated using the impulse and momentum principle represented by:

$$\int F dt = m\Delta v$$

Where:

F = membrane contact force
m = effective mass
Δv = change in occupant velocity

Results were similar for tests employing both methods. The estimated effective mass for most belted tests was about 5 kg and all were less than 10 kg. The majority of belted tests had effective masses which were a combination of both the near and far side occupants. The effective mass for the unbelted occupants ranged from 5 to 85 kg. However, we note there was a 40 kg effective mass for a single unbelted occupant contact. Energy levels calculated by using effective mass and peak head velocity were all below 182.25 Nm. This is the amount of energy imparted in GM's internal impactor testing (18 kg impactor and a 16.2 km/h (4.5 m/s) velocity).

[47] O'Brian-Mitchell, Bridget M., Lange, Robert C., ''Ejection Mitigation in Rollover Events—Component Test Development,'' SAE 2007–01–0374.

Request for Comments on the Impactor

In summary, the impactor mass was based on the determination of an effective mass calculated through both pendulum and sled test impacts. Sled tests designed to represent both side impacts and rollover impacts gave similar energies and two equivalent mass estimates. The 18 kg equivalent mass was seen during the test intended to be more representative of a rollover event. This was also the equivalent mass calculated from pendulum impact into the dummy shoulder. Thus, the 18 kg equivalent mass is considered a reasonable representation of an occupant's head and a portion of the torso. An equivalent mass more representative of just the head would be substantially smaller and an equivalent mass accounting for more torso and lower body mass would be substantially more. The 18 kg mass is well within the effective mass GM estimates from vehicle rollover tests, and is consistent with the impactor that GM uses to evaluate side curtains. Comments are requested on the 18 kg mass for the linear impactor headform.

b. Displacement Limit (100 mm)

We are proposing that the linear travel of the impactor headform must be limited to 100 mm from the inside of the tested vehicle's glazing as measured with the glazing in an unbroken state. The 100 mm boundary would be first determined with the original glazing ''in position'' (up) and unbroken. Then, for the test, the original glazing would be either: (a) In position but pre-broken; or (b) removed altogether, at the manufacturer's option.

The window-breaking procedure will damage but not destroy advanced (laminated) glazing, while it will obliterate tempered glazing. For vehicles with advanced glazing, the damaged glazing would be permitted to be in position under option (a), above. Tempered glazing will disintegrate when subjected to the window-breaking procedure, so under option (b), above, manufacturers may remove or completely retract the window since it would be destroyed in the pre-breaking procedure and would have no effect on the ejection mitigation results. When tested with the original glazing in position but pre-broken or with the glazing removed, the linear travel of the impactor headform must not exceed the 100 mm limit. If a side curtain air bag is present, and we anticipate that most, if not all, vehicles will have an ejection mitigation curtain, the curtain would be deployed.

In the test, the ejection mitigation countermeasure must prevent the headform from exceeding the 100 mm limit. The principle underlying the 100 mm displacement limit is to ensure that the countermeasure (curtain) does not allow gaps or openings to form through which occupants can be ejected. In the component test results, targets that had displacements of less than 100 mm did not eject the dummy in dynamic testing. As discussed previously in this preamble, the TRW and Zodiac prototype ejection mitigation countermeasures were tested on a CK pickup to the proposed impactor test procedure.[48] The TRW prototype had no coverage at position A1 (front window forward lower position), so the displacement in the impactor test was unlimited for all impact speeds and time delays (displacements well over 100 mm at position A1). These systems were later tested on the DRF with the 50th percentile male, 5th percentile female and 6-year-old dummies in upright seating positions, and a prone 6-year-old dummy aimed at approximately the target positions A1 and A2 (front window rear lower position). When tested on the DRF, the arms of the upright dummies flailed out of the window opening up to the shoulder at the sill (A1 and A2) and the prone 6-year-old dummy was completely ejected at A1.

It is noted, however, that dummy ejection did not occur all the time at targets that had displacements of over 100 mm. When tested with pre-broken laminated glazing, at position A1 the TRW system had a 181 mm of displacement at the 24 km/h (1.5 second delay) test and 104 mm of displacement in the 20 km/h (1.5 second delay) test, but did not eject either the prone or seated dummies in DRF tests. Nonetheless, the component and DRF testing indicate that there is an increased likelihood that a gap could be formed between the curtain and the window opening through which an occupant could be ejected if the displacement were over 100 mm in the headform test. In addition, a 100-mm limit would also help guard against the countermeasure being overly pliable or elastic so as to allow excessive excursion of an occupant's head and shoulders outside of the confines of the vehicle even in the absence of a gap.

A 100-mm performance limit is used in several regulations relating to occupant retention. In FMVSS No. 217, ''Bus emergency exits and window retention and release'' (49 CFR 571.217),

[48] There were only some slight variations in target locations.

bus manufacturers are required to ensure that each piece of glazing and each piece of window frame be retained by its surrounding structure in a manner that prevents the formation of any opening large enough to admit the passage of a 100-mm diameter sphere under a specified force. The purpose of the requirement is to minimize the likelihood of occupants being thrown from the vehicle. This value is also used in FMVSS No. 206, ''Door locks and door retention components'' (49 CFR 571.206; as amended 69 FR 75020). In FMVSS No. 206, the door is loaded with 18,000 N and the space between the interior of the door and the exterior of the door frame must be less than 100 mm. In addition, NHTSA also considered that a value of approximately 100 mm is used by the International Code Council (ICC) in developing building codes used to construct residential and commercial buildings.[49] The ICC 2006 International Building Code and 2006 International Residential Code require guards to be placed around areas such as open-sided walking areas, stairs, ramps, balconies and landings. The guards must not allow passage of a sphere 4 inches (102 mm) in diameter up to a height of 34 inches (864 mm). The ICC explains in the Commentary accompanying the Codes that the 4-inch spacing was chosen after considering information showing that the 4-inch opening will prevent nearly all children 1 year in age or older from falling through the guard.

Request for Comments on the Displacement Limit

NHTSA requests comment on the linear displacement limit of 100 mm as an appropriate value. We note that GM developed a test procedure that also uses a 100 mm displacement limit,[50] but the zero displacement plane is defined in a slightly different way. GM places a plane tangent to the exterior of the side of the vehicle at the target location and defines the displacement perpendicular to this excursion plane. Thus, the allowable GM displacement would be approximately 100/cos(θ) mm if other aspects of the test were identical to those of today's NPRM, with θ being the angle with the vertical of the exterior plane. If θ were 20 degrees, the GM limit would be approximately 106 mm, which allows slightly more displacement than the 100 mm proposal. The GM method also results in a slightly different allowable final displacement position than the proposed method because of the separation between the flat excursion plane and the inside surface of the window at the target location.[51] We do not know how that difference affects the final allowable displacement of the headform.

The agency further notes that an advantage to the displacement limit is that the linear displacement of the headform can be measured in a practicable and relatively straightforward manner, unlike a real-time dynamic measurement of a gap during an impact. The latter would likely involve complex and multiple imaging systems. Comments are requested on this issue.

c. Speed(s) and Time(s) at Which the Headform Would Impact the Countermeasure

As will be discussed in this section, there appears to be a need for a relatively high speed impact shortly after countermeasure deployment and a lower speed impact late in the deployment. The two time delays correspond to relatively early and late times in a rollover event.[52] The first impact would be at 24 km/h, and at 1.5 seconds after countermeasure deployment (1.5 second time delay). The second impact would be a 16 km/h impact initiated 6 seconds after deployment.

We are proposing and requesting comments on two alternatives regarding the testing of the four target locations for each window opening (see subsection 4, below). Only one of the alternatives would be selected for the final rule. The first proposal would subject all four target locations to both the 16 km/h (6 second time delay) and the 24 km/h (1.5 second time delay) impacts (which would amount to eight impacts per window). The second proposal would be to apply the 16 km/h (6 second time delay) test on all four target locations but just apply the 24 km/h (1.5 second time delay) test to the location that had the greatest displacement in the 16 km/h (6 second time delay) test (which would amount to five impacts per window). The second approach would reduce the costs and burdens of the impact tests per vehicle.

1. Ejections Can Occur Both Early and Late in the Rollover Event

Two impacts are proposed because ejections can occur both early and late in the rollover event. In the advanced glazing program, NHTSA performed a series of simulations to recreate three NASS-investigated rollover crashes with ejected occupants.[53] The vehicles were a MY 1991 Toyota pickup, a MY 1986 Toyota Corolla and a MY 1985 Volkswagen Jetta.[54] Vehicle handling simulation software [55] reconstructed the vehicle motion up to the point where the vehicle started to roll. The linear and angular velocity at the end of the vehicle handling simulation was then used as input to a MADYMO [56] lumped parameter model of the vehicle to compute its complete rollover motion. The motion of the vehicle obtained from the MADYMO vehicle model was used as input to a MADYMO occupant simulation. Head and torso velocities of a Hybrid III 50th percentile male driver dummy were calculated for the three rollover simulations.

Table 10 shows the simulation resultant head velocity through the open window at the time of ejection. As indicated in the table, the occupant of the pickup was ejected early (1st ¼-turn for Toyota truck) while the occupants of the other vehicles were ejected late (last ¼-turn for Corolla and Jetta) in the rollover event.

[49] The ICC is a nonprofit membership association that works on developing a single set of comprehensive and coordinated national model construction codes. *http://www.iccsafe.org/news/about/*.

[50] O'Brian-Mitchell, Bridget M., Lange, Robert C., ''Ejection Mitigation in Rollover Events—Component Test Development,'' SAE 2007–01–0374.

[51] GM explained that their justification for the 100 mm displacement limit is that it represents half the height of the 50th percentile male Hybrid III head.

[52] Each impact would take place on a test specimen (*e.g.*, a curtain) that was not previously subject to an impact test.

[53] ''Ejection Mitigation Using Advanced Glazings: A Status Report,'' November 1995, Docket NHTSA–1996–1782–3. Pg. 6–1.

[54] The circumstances of the Toyota pickup rollover were that the vehicle was traveling at 96 km/h and went into a sharp turn and yaw, which resulted in a rollover. In the case of the Corolla, it was also traveling 96 km/h on a gravel road. The vehicle went out of control and left the road, resulting in roll initiation. The Volkswagen was traveling at 88 km/h when the driver fell asleep and the vehicle left the road. It struck a rock embankment and rolled over.

[55] VDANL software user's manual V2.34, STI, 1992.

[56] MADYMO user's manual V5.1, TNO, 1994.

TABLE 10—HEAD AND TORSO VELOCITIES OF A HYBRID III 50TH PERCENTILE MALE DUMMY IN 3 ROLLOVER SIMULATIONS

Vehicle	Vehicle ¼ turns	¼ Turns at complete ejection	Restraint use	Head to opening (km/h)	Head to glazing (km/h)	Torso to glazing (km/h)
Toyota PU	12		Yes	20	20	7
		1	No	5	20	16
Toyota Corolla (86)	6		Yes	15	15	11
		6	No	13	13	10
Volkswagen Jetta (85)	4		Yes	14	14	10
		4	No	22	18	16

The agency has also considered other data indicating that very early occupant contact with the window area is possible in rollover crashes. Table 11 gives information on 30 rollover tests the agency performed from the mid-1980s to the mid-1990s. This data set included Rollover Test Device (RTD) tests, FMVSS No. 208 dolly tests, guardrail tests and pole tests.[57] A film analysis of dummy motion within the vehicles showed that, excluding a pole impact test, occupant contact with the window opening and surrounding area first occurred between 0.16 and 0.88 seconds after the event began.[58] We note, however, that the majority of these dummies were belted, which means they would be most representative of potential partial ejections. In addition, where the time of window breaking is known, most of these first contacts occurred prior to the window breaking due to roof contact.

TABLE 11—NHTSA FULL VEHICLE ROLLOVER TESTING FILM ANALYSIS

Test No.	Make	Model	MY	Test type	Tilt angle (deg.)	Roll axis (deg.)	Vehicle speed (km/h)	¼-Turns	Total time (sec)
878	Honda	Accord	84	RTD	41	45	33.8	2	1.29
888	Chevrolet	Celebrity	82	RTD	41	45	37.0	4	3.58
920	Dodge	Omni	79	RTD	41	45	37.0	2	0.96
939	Mercury	Zephyr	82	RTD	41	60	37.0	2	2.08
1255	Ford	Bronco	88	RTD	30	45	37.0	2	1.17
1266	Dodge	Caravan	88	RTD	30	45	48.3	1	0.50
1267	Chevrolet	Pickup	88	RTD	30	45	48.3	4	2.58
1274	Nissan	Pickup	88	RTD	30	45	48.3	6	3.76
1289	Nissan	Pickup	89	RTD	30	45	48.3	2	0.83
1391	Dodge	Caravan	89	RTD	30	45	48.3	8	5.08
1392	Ford	Bronco	89	RTD	30	0	48.3	8	3.60
1393	Nissan	Pickup	89	RTD	30	0	48.3	4	2.35
1394	Nissan	Pickup	89	RTD	30	0	48.3	4	1.33
1395	Pontiac	Grand Am	89	RTD	30	0	48.3	2	1.54
1471	Dodge	Colt	89	RTD	30	90	48.3	2	0.99
1520	Ford	Ranger	88	RTD	30	0	48.3	2	0.75
1521	Dodge	Ram	88	RTD	30	0	48.3	4	1.42
1530	Dodge	Caravan	88	Guardrail	N/A	N/A	96.6	1	N/A
1531	Nissan	Pickup	88	Guardrail	N/A	N/A	96.6	4	N/A
1546	Plymouth	Reliant	81	RTD	41	45	33.8	6	3.00
1851	Volvo	240	91	RTD	30	0	48.3	6	2.50
1852	Volvo	740	91	RTD	30	0	48.3	8	3.00
1925	Nissan	Pickup	90	RTD	30	0	48.3	8	3.04
1929	Nissan	Pickup	90	RTD	30	0	48.3	6	2.25
2141	Nissan	Pickup	90	RTD	30	0	48.3	8	4.25
2270	Nissan	Pickup	89	RTD	30	0	48.3	8	3.50
2514	Ford	Explorer	94	208	23	0	48.3	11	5.50
2553	Ford	Explorer	93	208	23	0	48.3	10	N/A
3012	Ford	Explorer	94	208	23	0	48.3	11	N/A
3635	Ford	Explorer	94	208	23	0	48.3	12	5.17
Analysis of 5+ ¼-turn Tests									
Average							47.2	8.3	3.7
Maximum							96.6	12	5.5
Average + 2 standard deviations							55.2	12.3	5.8

The agency is proposing that the ejection mitigation countermeasure be first tested at 1.5 seconds after deployment of the ejection countermeasure. As indicated earlier in this preamble, more than half of the

[57] These tests were done as part of a research program evaluating full scale dynamic rollover test methods, occupant kinematics, and vehicle responses. The RTD tests were similar to the FMVSS No. 208 dolly test except that the vehicle was initially 4 feet off of the ground instead of 9 inches, and hydraulic cylinders were used to push the vehicle from the cart and produce an initial roll rate. The guardrail tests used a guardrail as a ramp to initiate a vehicle roll. The pole tests rolled a vehicle into a pole. Twenty-four of these were RTD tests on passenger cars, pickups and vans (the RTD testing was not geared towards ejection testing since all of the test dummies were belted), and four were FMVSS No. 208 dolly tests on Ford Explorers. The test films are available at the National Crash Analysis Center (NCAC) at George Washington University *(http://www.ncac.gwu.edu)*.

[58] ''Evaluation of Full Vehicle Rollover Films,'' 2008, Docket NHTSA–2006–26467.

complete ejection fatalities occur when the vehicle rolls 5+ ¼-turns. As shown in Table 11, restricting the analysis to the tests with 5+ ¼-turns, the average amount of time to complete 1 full vehicle revolution (4¼-turns) was 1.62 seconds with a standard deviation of 0.31 seconds. Thus, the 1.5 second represents a period of time in which one full vehicle revolution occurs in a high-energy rollover event. We also note that at 1.5 seconds into the rollover, roof contact would likely have occurred, leading to window breaking. Thus, as discussed at section V(e) of this preamble, we are proposing to pre-break the glazing prior to this test.

Additional rationale comes from data obtained from the advanced glazing program (see Table 12, infra). In that program, NHTSA tested vehicles on the DRF with 5th percentile adult female and 50th percentile adult male test dummies (near and far side).[59] Video analysis of dummy head impact velocities with the glazing showed that for the 5th percentile female far side occupant, the time to glazing impact after the DRF began rotating was between 1.3 and 1.8 seconds, which was in the range of two to three ¼-turns of rotation. The peak impact speed was 31 km/h. Table 12 shows the estimated velocities for the near and far side dummies.

TABLE 12—DRF TESTING RESULTS

Dummy	Impact speed (km/h)		Far side impact time (sec.)	Far side impact ¼ turns
	Near side	Far side		
5th Female	14	31	1.3–1.8	2–3
50th Male	18	29	.....	.....

The agency is also proposing that ejection mitigation countermeasures be tested towards the end of a rollover. Data indicate that occupants could impact the window opening as late as 6 seconds after initiation of a rollover involving 5+ ¼-turns. The last three rows of Table 11, supra, show the average and maximum number of ¼-turns and the total time of rollovers involving 5+ ¼-turns.[60] This set of data contains 14 tests (highlighted in table). The average and maximum number of ¼-turns are 8.3 and 12, respectively. The average plus two standard deviations is 12.3 turns. Thus, 12.3 ¼-turns is the 98th percentile value for this subset of data. The average and maximum times to complete the entire rollover event were 3.7 and 5.5 seconds, respectively. The 98th percentile value was 5.8 seconds, which is not much different than the maximum time for the entire data set, which was 5.5 seconds.

Other information we considered also supported a 6-second impact time. The data set provided in Table 11, *supra,* showed the vehicle with the longest rollover time (5.5 seconds) in the FMVSS No. 208 dolly test rolled eleven ¼-turns. NASS–CDS shows that rollovers with eleven ¼-turns account for about 90% of rollovers with fatal complete ejection, *i.e.,* 10% of rollovers with fatal complete ejections have more than eleven ¼-turns. This does not mean that rollover crashes with eleven ¼-turns only take 5–6 seconds. Five to six seconds may be a conservative assumption for this many ¼-turns for some types of rollover. The FMVSS No. 208 dolly test has a very quick rollover initiation (high initial roll rate); the beginning of the rollover is well defined. However, the test only represents about 1% of field crashes.[61] The vast majority of field cases are soil and curb trip crashes. Soil trips involve high lateral deceleration in combination with low initial roll rates. Ideally, the curtain air bag should deploy in this early phase when the roll rate is still low but the occupant is moving towards the window due to the lateral deceleration. The rollover has a slow initiation, leading to a need for longer inflation. Therefore, some rollover crashes with less than eleven ¼-turns may have 5–6 second roll times. A factor that the agency also considered in determining the time delay for the lower speed impact was the practicability of curtains staying inflated for this length of time. Ford stated that its ''Safety Canopy'' system stays inflated for six seconds.[62] GM has reportedly stated that its side curtain air bags designed for rollover protection maintain 80 percent inflation pressure for 5 seconds.[63]

2. Speed at Which Occupants Impact or Move Through the Window Opening

This NPRM proposes that the impactor should strike the window opening countermeasure at a speed of 24 km/h (after a 1.5 second time delay after deployment of the countermeasure) and at 16 km/h (after a 6 second delay). The 24 and 16 km/h values are based on several analyses, discussed below, of speeds at which occupants impact or move through the window opening, including analysis of accident data, computer simulations and test films of rollover crashes.[64] In addition, the agency notes that the 24 km/h impact speed is consistent with the impact speed of FMVSS No. 201, ''Occupant protection in interior impact'' (49 CFR 571.201). FMVSS No. 201 uses a free-motion headform with a 4.6 kg mass to strike vehicle upper interior locations including areas around side window openings. The impact speed for these tests is 24 km/h.[65]

Accident Data

In the analysis of accident data, the agency investigated side impact accident data to determine the ΔV of the crashes in which near side impact occupants were completely ejected. This data is depicted in Figure 3, which shows the cumulative percentage of near side impact occupants completely ejected, by impact ΔV. This graph represents 15,062 occupant ejections weighted from 704 NASS ejection cases. The range of the ΔV was 2 to 55 km/h. With regard to the proposed impact test speeds of 16 and 24 km/h, 47.6 percent of the near side impact occupants were completely ejected at ΔVs at or below 16 km/h, while 65.5 percent of the

[59] Duffy, S., ''Test Procedure for Evaluating Ejection Mitigation Systems,'' 2002 SAE Government/Industry Meeting.

[60] As earlier, more than half of the complete ejection fatalities occur when the vehicle rolls 5+ ¼-turns.

[61] Viano, *supra.*

[62] *http://media.ford.com/article_display.cfm?article_id=6447*

[63] ''Who Benefits From Side and Head Airbags?'' (*http://www.edmunds.com/ownership/safety/articles/105563/article.html).*

[64] It is noted that the DRF test data presented above that showed far side occupant velocities of approximately 30 km/h (Duffy, ''Test Procedure for Evaluating Ejection Mitigation Systems'') also support the proposed test speeds.

[65] The 24 km/h speed was chosen in part because it is the average speed at which the onset of AIS 2 and AIS 3 injuries are likely to occur.

occupants were ejected at ΔVs at or below 24 km/h.

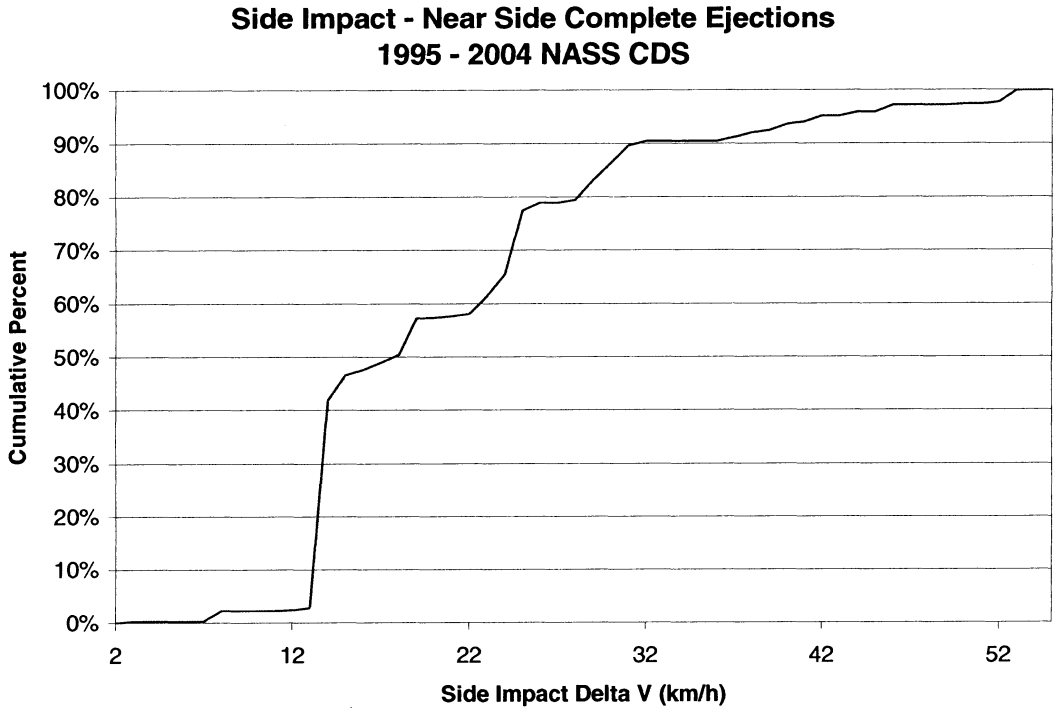

Figure 3 – Cumulative Percentage of Completely Ejected Occupants in Side Impacts by Impact Delta V. (15,062 weighted ejections from 704 ejection cases.)

Computer Simulations

NHTSA analyzed MADYMO simulations of the real-world rollovers of the Toyota pickup, Toyota Corolla and Volkswagen Jetta, *supra.* As shown in Table 10, *supra,* the computed resultant maximum head and torso velocities at contact with the intact glazing for the unejected occupant indicated a maximum head speed into the window openings of 22 km/h. The maximum head velocity was 22 km/h for the Jetta unrestrained occupant into the window opening. The maximum torso velocity was 16 km/h, also for the unrestrained Jetta occupant.

Film Analyses of Full Vehicle Rollover Tests

In the early 1990's the agency reviewed 23 of 28 full-scale rollover tests performed in the 1970s–1990s to find any cases of occupant to side glazing impact and to determine the contact velocities. In seven of these tests, the occupant was observed striking the side glazing with either the head or shoulder. As shown in Table 13, a film analysis was conducted to measure the velocity of the impacts.[66] The average impact velocity measured was 8.6 km/h. Maximum and average head velocities were 17.0 km/h and 10.3 km/h, respectively. Maximum and average shoulder velocities were 8 km/h and 6.3 km/h, respectively.[67]

TABLE 13—FILM ANALYSIS OF NHTSA ROLLOVER TESTS

Test #	Make	Model	Test type	Vehicle test speed (km/h)	Occupant impact speed (km/h)	Contact point
878	Honda	84 Accord	RTD	33.8	8.0	Shoulder.
No test #	Dodge	Aries	Guardrail	96.6	16.0	Head.
888	Chevrolet	82 Celebrity	RTD	37.0	6.5	Shoulder.
No test #	Ford	Pinto	Dolly	27.4	2.5	Head.
No test #	Dodge	Reliant	RTD	33.8	4.5	Shoulder.
1520	Ford	88 Ranger	RTD	48.3	5.8	Head.
1522	Nissan	88 Pickup	Pole	48.3	17.0	Head.
Average					8.61	

[66] The analysis is limited by the fact that a single camera was used to determine the velocities.

[67] These measurements compare very closely to the measurements reported in DOT HS476–PM–83–25. This report evaluated 48 FWHA rollover tests involving passenger cars. In these tests, they found six occupant/glazing impacts (5 head, 1 shoulder). An average impact velocity of 10.9 km/h was measured. Maximum and average head velocities were 17.8 km/h and 11.3 km/h, respectively. The only measured shoulder velocities were 8 km/h and 8.7 km/h.

Based on the above information, the agency is proposing two impact speeds and time delays. NHTSA requests comment on the appropriateness of the impact speeds and of the time delay for both the high and low speed impacts. If alternative impact speeds and/or time delays are suggested, what are the rationale and data supporting that suggestion?

3. Alternative Testing of Only One Target Position at Higher Speed

The agency proposes to subject all four target locations (per window opening) to the 16 km/h (6 second time delay) impact, but requests comments on whether to test all four target locations with a 24 km/h (1.5 second time delay) impact or just the location with the greatest displacement in the 16 km/h impact. The latter approach would reduce the test burden per window opening from eight targets to five. Our analysis of available data shows that there appears to be a correlation between the displacement results for the 24 km/h and the 16 km/h impacts, particularly for the target location with the greatest displacement. That is, the weakest point in the countermeasure (curtain) that allows the most displacement of the headform could be the same for the 24 km/h impact as for the 16 km/h impact. If the weakest point in the countermeasure is the same for each impact test, it may be possible to reduce the number of tests for one of the impact speeds to a single location. If a correlation exists, an approach the agency could take would be to first determine the displacement at each target location for the 16 km/h (6 second time delay) impact and rank the displacement results from largest to smallest. The agency would then subject only the target with the largest displacement to the 24 km/h (1.5 second delay) second impact. Under this scenario, if the weakest target passes the 24 km/h test, it would be reasonable to assume that the other targets would also have displacements under 100 mm in 24 km/h test. If the weakest target fails the 24 km/h test, the vehicle would fail the requirements of the FMVSS proposed today and there would not be a need to test the other targets.

There are test data demonstrating that the target locations with the most displacement at each test speed are generally the same, but the data are limited. Table 14 shows the impactor displacement results for the MY05 Infinity FX35 (front window), the Zodiac prototype on a Navigator (front window), a TRW prototype on a CK (front window), the MY06 Durango (second row window), and the MY05 Honda Odyssey (second row window). Table 15 shows the displacement rank for each target location and vehicle, from most displacement to least displacement.

For the MY05 Infinity FX35, in the 24 km/h test, the largest and smallest displacements are A1 and A4, respectively. For the 16 km/h test of the Infinity, the ascending displacement ranking is A1, A3, A2 and A4. However, for the 24 km/h test, three trials were performed at A2 and A3 and there is significant overlap in the displacement data. The average displacement plus or minus one standard deviation is shown in the table. In fact, there is no statistically significant difference between the average results of 97 mm at A2 and 95 mm at A3. For the Zodiac prototype data, the ranking of the displacement data at both impact speeds is A1, A3, A2 and A4. For the TRW prototype, the ranking is also identical at both speeds, but the ranking is A1, A2, A3 and A4, which is different from the Zodiac. The target locations for the Odyssey's largest and smallest displacements (A1 and A4, respectively) are the same in the 16 km/h tests as for the 24 km/h impacts.

For the second row window data, the MY06 Durango ranks the displacement at both test speeds as B3, B2, B4 and B1, in ascending order. However, at 24 km/h there is very little separating the displacements at each location. The MY 05 Honda Odyssey has the displacement ranking at the 24 km/h test of B4, B2, B3, and B1. However, for the 16 km/h test the displacement ranking is B2, B3, B4 and B1.

In general, this very limited data set shows a consistency in the displacement results for each impact test speed, particularly for the location of greatest displacement for the front window (A1). For the second row window, the Dodge Durango had consistent results, but the Honda Odyssey did not.

We note that this alternative of performing a single 24 km/h impact at the target that gives the largest displacement in the 16 km/h impact has not been analyzed in the Preliminary Regulatory Impact Analysis (PRIA). However, this does not mean there would be no difference in cost or safety benefits. Rather, assessing this difference would require sufficient data to determine the probability of having a 24 km/h impact displacement greater than 100 mm at some location other than the location of greatest displacement at 16 km/h. We do not have sufficient data for such an assessment.

Comments are requested on whether the 24 km/h impact should only be conducted on the target location with largest displacement in the lower speed test. If results for multiple targets at 16 km/h are within the variance for the test, which target should be selected for the 24 km/h test? The agency's supporting documents for this NPRM estimate the likely test burdens associated with the two approaches. The agency estimates that the restricted testing approach would reduce the number of tests to determine full compliance by 38 percent, while reducing the costs of testing by 8 percent. Please comment on the potential advantages and disadvantages of each method and how the agency might best balance both the safety and potential test burdens.

TABLE 14—DISPLACEMENTS FOR VEHICLE WINDOWS WHERE ALL TARGETS WERE IMPACTED

[mm]

	Position A1	Position A2	Position A3	Position A4
24 km/h—1.5 sec. Delay:				
05 Infinity FX35	124	97 ± 14.5	95 ± 11.0	53
Zodiac Prot. On Navigator	147 ± 4.9	54	99 ± 4.2	23 ± 2.1
TRW Prot. On CK w/lam	181 ± 1.4	21	−26 ± 0.0	−29 ± 5.7
16 km/h—6 sec. Delay:				
05 Infinity FX35	85	21	39	9
Zodiac Prot. On Navigator	135	49	80 ± 2.1	−0.2
TRW Prot. On CK w/lam	80	−3	−44	−67
	Position B1	Position B2	Position B3	Position B4

TABLE 14—DISPLACEMENTS FOR VEHICLE WINDOWS WHERE ALL TARGETS WERE IMPACTED—Continued

[mm]

	Position A1	Position A2	Position A3	Position A4
24 km/h—1.5 sec. Delay:				
05 Honda Odyssey	71 ± 8.5	152	80	193
06 Dodge Durango	76	86	91	82
16 km/h—6 sec. Delay:				
05 Honda Odyssey	12	121 ± 0.7	55	28
06 Dodge Durango	3	36	71	18

TABLE 15—DISPLACEMENT RANK (FROM LEFT TO RIGHT, MOST DISPLACEMENT TO LEAST DISPLACEMENT), FOR EACH VEHICLE AND TARGET LOCATION

Vehicle	16 km/h—6 sec. delay	24 km/h—1.5 sec. delay
05 Infinity FX35	A1, A3, A2, A4	A1, A2, A3, A4.
Zodiac Prot. on Navigator	A1, A3, A2, A4	A1, A3, A2, A4.
TRW Prot. on CK w/lam	A1, A2, A3, A4	A1, A2, A3, A4.
05 Honda Odyssey	B2, B3, B4, B1	B4, B2, B3, B1.
06 Dodge Durango	B3, B2, B4, B1	B3, B2, B4, B1.

d. Locations Where the Device Would Impact the Ejection Mitigation Countermeasure To Assess Efficacy

1. Occupants Are Mainly Ejected Through Side Windows

NHTSA analyzed 1997 to 2005 NASS CDS data files to determine the injury and fatality distribution by ejection routes.[68] Table 16 shows the MAIS 1–2, MAIS 3–5 and fatality distribution of ejected occupants by eight potential ejection routes.[69] Ejection through side windows constitutes the greatest part of the ejection problem. There were 18,353 MAIS 1–2 injuries, 5,271 MAIS 3–5 injuries, and 6,174 fatalities for occupants ejected through side windows. Table 17 gives the percentage of the total at each injury level. The side window ejections comprise 68 percent of all ejected MAIS 1–2 injuries, 47 percent of MAIS 3–5 injuries, and 61 percent of all ejected fatalities. Because of these data, NHTSA focused on the safety problem posed by side window ejections.

TABLE 16—OCCUPANT INJURY AND FATALITY COUNTS BY EJECTION ROUTE IN ALL CRASH TYPES

[Annualized 1997–2005 NASS, 2005 FARS]

Ejection route	MAIS 1–2	MAIS 3–5	Fatal
Row 1 Window	15,797	4,607	5,209
Row 2 Window	2,533	621	906
Row 3 Window	23	43	59
Windshield	1,923	1,565	1,155
Backlight	1,625	1,677	515
Sun Roof	1,127	305	237
Other Window	1	51	0
Not Window	3,870	2,411	2,068
Subtotals:			
All Side Windows	18,353	5,271	6,174
Total	26,899	11,280	10,149

TABLE 17—OCCUPANT INJURY AND FATALITY PERCENTAGES BY EJECTION ROUTE IN ALL CRASH TYPES

[Annualized 1997–2005 NASS, 2005 FARS]

Ejection route	MAIS 1–2 (percent)	MAIS 3–5 (percent)	Fatal (percent)
Row 1 Window	58.7	40.8	51.3
Row 2 Window	9.4	5.5	8.9
Row 3 Window	0.1	0.4	0.6
Windshield	7.1	13.9	11.4
Backlight	6.0	14.9	5.1

[68] All crash types are included, but the counts are restricted to ejected occupants that were injured. In addition, in NASS CDS the ejection route for side windows is only explicitly coded for the front (Row 1 Window) and rear (Row 2 Window). The third and higher row side window ejections should be coded as ''other glazing.'' This is because there are specific codes available for coding roof glazing, windshield and backlight. However, when extracting NASS cases of known ejections through ''other glazing,'' 17 unweighted occupants were observed. A hard copy review of these cases showed that 9 were known 3rd row side window ejections, but five cases were miscoded. Four were actually backlight ejections and one was a sunroof ejection. The known 3rd row ejections were recoded as ''Row 3 Window'' ejections.

[69] The ''Not Window'' category captures ejected occupants that did not go through a glazing area. This might have been an open door or an area of vehicle structure that was torn away during the crash.

TABLE 17—OCCUPANT INJURY AND FATALITY PERCENTAGES BY EJECTION ROUTE IN ALL CRASH TYPES—Continued

[Annualized 1997–2005 NASS, 2005 FARS]

Ejection route	MAIS 1–2 (percent)	MAIS 3–5 (percent)	Fatal (percent)
Sun Roof	4.2	2.7	2.3
Other Window	0.0	0.5	0.0
Not Window	14.4	21.4	20.4
Subtotals:			
All Side Windows	68.2	46.7	60.8
Total	100.0	100.0	100.0

2. The Requirements Would Apply to Side Windows Adjacent to First Three Rows

NHTSA evaluated crash data to assess which window, by row, the above injured and killed occupants were ejected through. Table 18 provides the counts of the injured and killed side window ejected occupants by the window row they were ejected through, ejection degree (complete or partial) and restraint condition for the target population of this rule. Table 19 shows the same data as a percentage of total side window ejected fatalities, MAIS 3–5 and MAIS 1–2 injuries. The first row (row 1) windows provide the ejection route for the most injured and killed occupants. There were 2,459 fatalities and 2,243 MAIS 3–5 injuries that were unbelted and completely ejected through the row 1 windows. The greatest number of fatally ejected occupants (3,671) went through the row 1 window. This represents 83 percent of all side window ejected fatalities. With regard to injuries, 3,735 (88 percent) MAIS 3–5 and 11,016 (87 percent) MAIS 1–2 injured occupants went through the row 1 windows. Ejection routes through row 1 and row 2 windows accounted for more than 99 percent of fatal and 98 percent of MAIS 3–5 completely ejected and unbelted occupants. These data show a compelling safety need to apply the ejection mitigation standard to row 1 and row 2 windows.

TABLE 18—DISTRIBUTION OF TARGET POPULATION BY EJECTION ROW AND INJURY LEVEL BY EJECTION DEGREE AND BELT USE

[Annualized 1997–2005 NASS, 2005 FARS]

Ejection degree	Belted	Row 1			Row 2			Row 3		
		MAIS 1–2	MAIS 3–5	Fatal	MAIS 1–2	MAIS 3–5	Fatal	MAIS 1–2	MAIS 3–5	Fatal
Complete	Yes	92	16	69	12	40	0	0	30	0
Complete	No	3,968	2,243	2,459	1,484	324	588	22	7	38
Partial	Yes	4,464	1,086	526	58	42	45	0	7	0
Partial	No	2,492	391	617	119	64	53	0	0	0
Total		11,016	3,735	3,671	1,673	471	686	22	43	38

TABLE 19—DISTRIBUTION OF TARGET POPULATION BY EJECTION ROW AND INJURY LEVEL BY EJECTION DEGREE AND BELT USE, AS A PERCENTAGE OF TOTALS AT EACH INJURY LEVEL

[Annualized 1997–2005 NASS, 2005 FARS]

Ejection degree	Belted	Row 1			Row 2			Row 3		
		MAIS 1–2 (percent)	MAIS 3–5 (percent)	Fatal (percent)	MAIS 1–2 (percent)	MAIS 3–5 (percent)	Fatal (percent)	MAIS 1–2 (percent)	MAIS 3–5 (percent)	Fatal (percent)
Complete	Yes	1	0	2	0	1	0	0	1	0
Complete	No	31	53	56	12	8	13	0	0	1
Partial	Yes	35	26	12	0	1	1	0	0	0
Partial	No	20	9	14	1	2	1	0	0	0
Total		87	88	84	13	11	16	0	1	1

We would also apply the standard to row 3 windows. All light vehicle (GVWR 4,536 kg (10,000 lb) or less) rollover occupants in the target population for this proposal were ejected through the windows of the first 3 rows. Third and higher row windows are not specifically coded as ejection routes in NASS, so the ''other'' window categories were reviewed. These categories contained only a limited number of 3rd row window ejections (about 1 percent of fatalities and MAIS 3–5 injuries). While the percentage of ejection through the third and higher rows is small, this might be a reflection of the very few light vehicles with more than three rows and the low occupancy in third and higher rows. NHTSA is concerned that in a crash, an unbelted occupant could be ejected from the 3rd row window opening. As discussed in IV(b)(2) of this preamble, the agency has observed laboratory DRF tests in which an unbelted dummy was initially prevented from ejection by a side curtain, but was eventually ejected

when it slid to an opening in the curtain. Further, with substantial numbers of 3-row vehicles used as passenger vehicles, applying the standard to row 3 as well as rows 1 and 2 windows would be consistent with the SAFETEA–LU mandate ''to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions.''

In addition, it appears practicable for manufacturers to meet ejection mitigation requirements applying to the row 3 windows. There are a number of current OE air bag curtains that cover rows 1, 2 and 3 windows, such as the 2005–2007 MY Honda Odyssey, 2006 Mercury Monterey, 2007 Chevrolet Tahoe, and 2007 Ford Expedition.

Less can be said about the practicability of air bag curtain coverage beyond three rows of seating. Vehicles in this category are primarily large vans with more than 10 seating positions and are in the bus category. We do not believe that manufacturers have installed air bag curtains that cover beyond the third row windows in vehicles that have more than three rows. Thus, we would not apply the standard to windows for row 4+.

Out of concern to properly assess the cost impact of this rulemaking, we are also proposing to limit the testable area of window openings extending rearward past the designated seating positions of the first three rows. This NPRM proposes that, for vehicles with 3 rows, for any side window opening that extends rearward of a 3rd row forward-facing designated seating position (DSP), the rearward edge of the testable side window opening would be bound by a transverse vertical vehicle plane 600 mm (approximately 24 inches) behind the seating reference point (SgRP) of the 3rd row DSP. If the 3rd row designated seating position is adjustable to a non-forward facing orientation, the target area extends to 600 mm behind the rearmost portion of the seat when the seat is adjusted to the most rearward position (with respect to the vehicle) and the seat cushion and seat back are in the manufacturer's design position. So if a vehicle's third row seat has both a forward and a rearward facing position, the testable area would be determined as specified above. The final target area would be the largest area as defined under either of these conditions, *i.e.,* (1) by the SgRP of the forward facing seat, or (2) the most rearward part of the non-forward facing seat. This limitation of testable area would also be applied to the 2nd row window in two-row vehicles and 1st row window in one-row vehicles. The limitation would primarily affect sport utility vehicles (SUVs) with two rows of seating and side window areas adjacent to the rear cargo area. While it is not impossible for unbelted occupants to be partially or completely ejected through this area, we believe that ejection through a non-adjacent opening more than 600 mm from the occupant's SgRP is less likely. We note that FMVSS No. 201 has a similar exclusion in S6.3 that excludes impact targets 600 mm rearward of the rearmost SgRP. We also note that changes to the seating configuration for vehicles with removable or stowable seats must be considered in the determination of the rearward limit of the testable area. We propose that the seating configuration that generates the largest testable area would be used.

This NPRM proposes a definition of the term ''row,'' since the proposed regulatory text frequently refers to the term in describing the applicability of the ejection mitigation requirements. While the definition of the term is generally understood, under the proposed definition we would clarify that a single seat could constitute a ''row.'' The proposed definition of ''row'' would state: ''Row'' means a set of one or more seats whose seat outline does not overlap with the seat outline of any other set of seats, when all seats are to their rearmost normal riding or driving position, when viewed from the side.[70]

In consideration of the above definition of ''row'' we believe it is necessary to define ''seat outline.'' The proposed definition of ''seat outline'' would state: ''Seat outline'' means the outer limits of a seat projected laterally onto a vertical longitudinal vehicle plane.

We believe that the definition is needed to address potential questions about vehicles that appear in one seating configuration to have 2 conventional rows of seating, but which have a seat or seats in a row (*e.g.,* the 2nd row) that are capable of being adjusted forward or rearward independently from other seats in its row. For example, suppose a seat in the 2nd row can move rearward such that it can occupy a position occupied by a seat traditionally considered to be in the 3rd row. NHTSA tentatively believes that a reasonable way of addressing this issue is as follows. First, the vehicle seats must be adjusted such that they are in the SgRP position. This places each seat in the rearmost normal driving or riding position. The transition for a seat being in one row as opposed to another is the overlapping of the side view ''seat outline'' of the seats. Seats whose seat outlines overlap are considered to be in the same row.

To illustrate, Figure 4 shows the top and side view of a two row vehicle, with two seats in the front row and three seats in the 2nd row. All seats are assumed to be adjusted such that the design H-point coincides with the SgRP. Figure 5 is another five-seat vehicle that has a more rearward position for the 2nd row center seat than in Figure 4. However, looking at the side view, there is still overlap between the outline of the rear center seat and the outboard 2nd row seats. Thus, by our proposed definitions this is still a two-row vehicle.

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[70] Stated differently, the seats are adjusted such that their design H-point coincides with seating reference point.

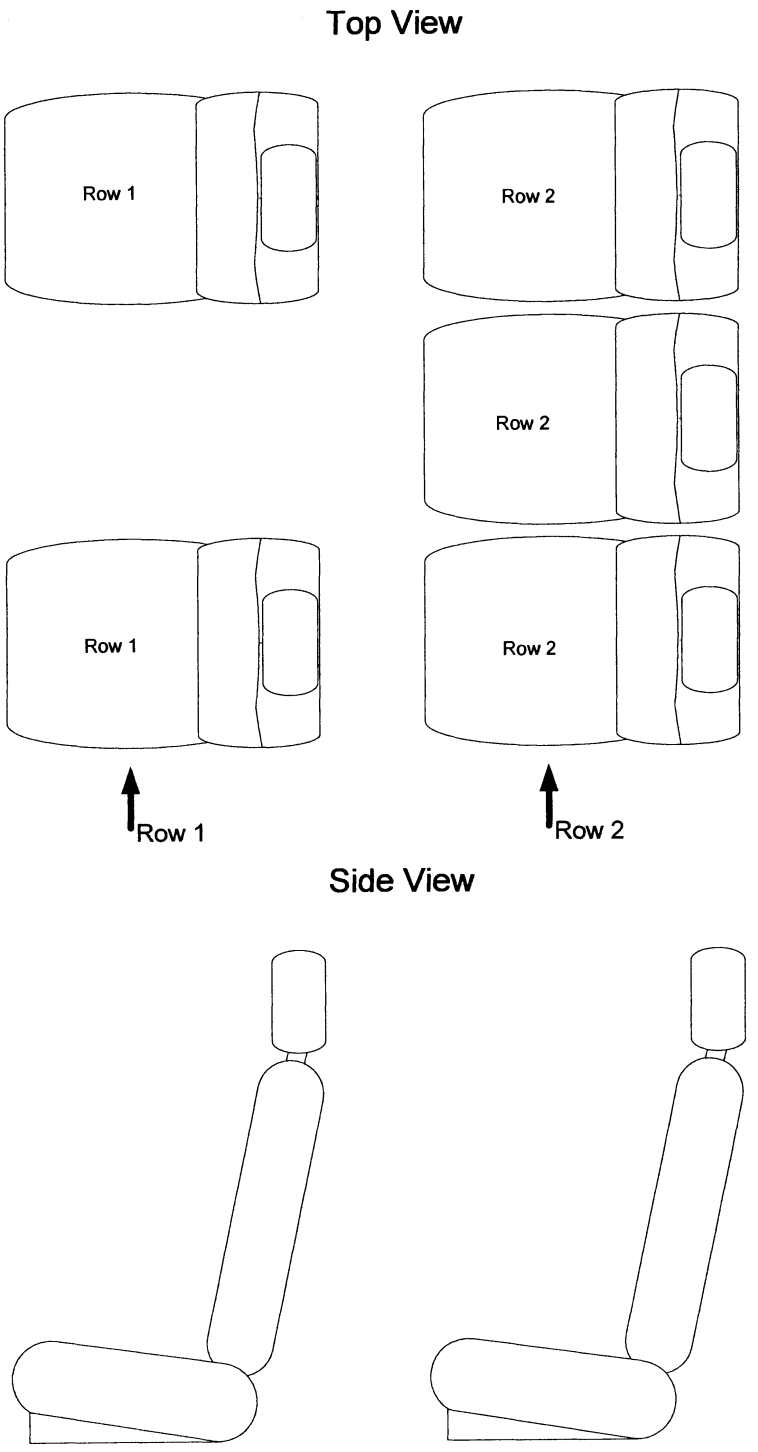

Figure 4 – Two row vehicle with all 2nd row seats aligned. All seats set to the SgRP position.

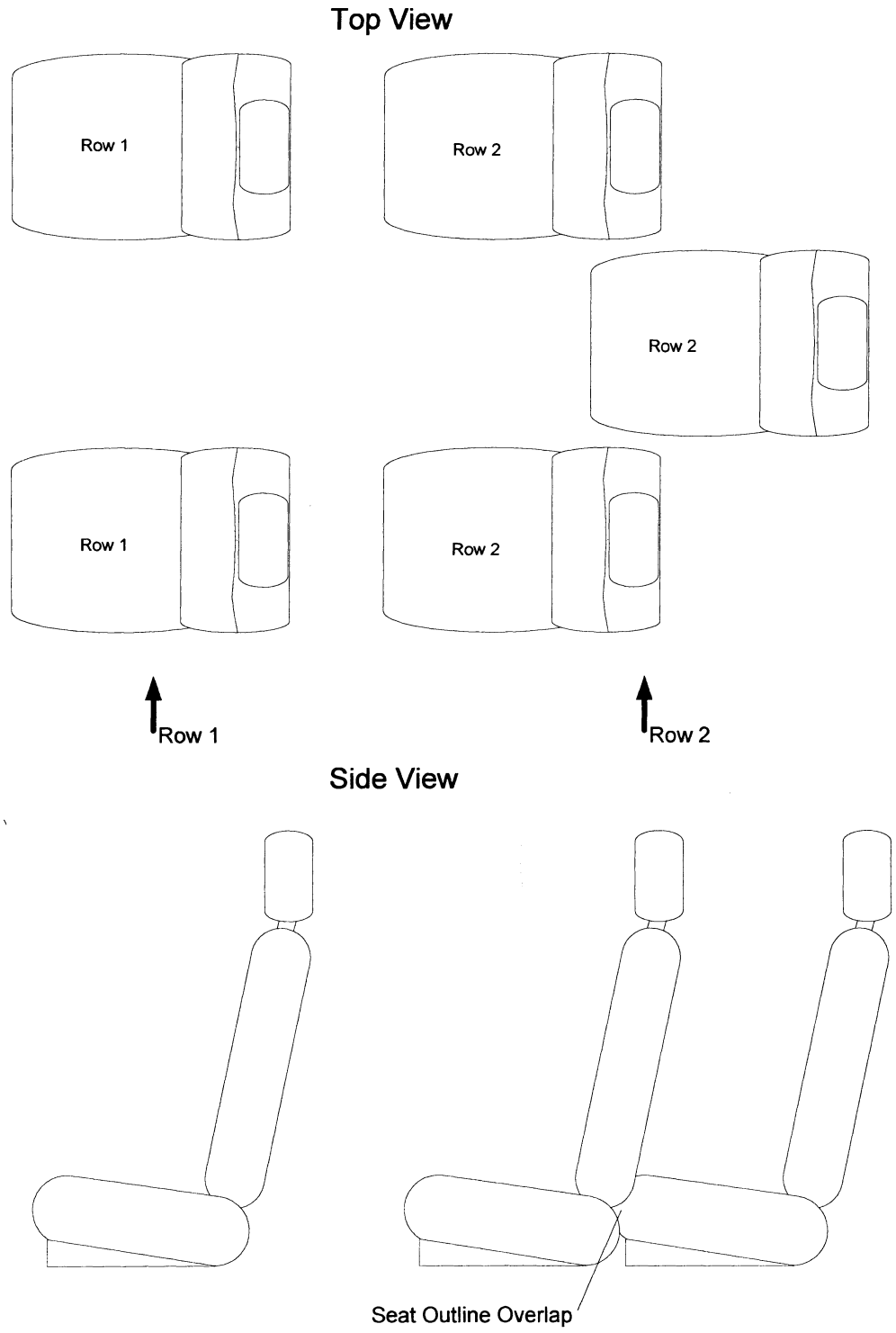

Figure 5 – Two row vehicle, with the middle seat of the 2nd row having a small overlap with the outboard seats. All seats set to the SgRP position.

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Comments are requested on the practicability, cost and potential benefit of extending application of the ejection mitigation requirements to rows beyond the 3rd row. Please also comment on the appropriateness and practicability of the 600 mm limitation, and on whether the value should be increased or decreased. Comments are also requested on the proposed definition of ''row'' and the implications of the definition on other FMVSSs, *e.g.,* FMVSS No. 225, ''Child restraint anchorage systems.'' Standard No. 225 requires vehicles that have ''3 or more rows'' to have a child restraint anchorage system in the ''second row'' (S4.4(a)(1), 49 CFR 571.225).

3. Four Targets per Glazing Area

NHTSA seeks to assure in a reasonable manner that any ejection

mitigation countermeasure provides the full coverage of potential ejection routes. The cost and burden of testing increases as the number of target locations increases, or as less specificity is provided in the test procedures identifying the target location. The agency has tentatively decided to limit the number of target locations per glazing area to four. In examining current side window designs, four targets appear sufficient to assure side window opening coverage for window designs. The targets would be less than four if the window area is small enough to create significant overlap in the target locations.

As discussed earlier in this preamble at section IV(e), a comparison of the results of the DRF tests and impactor tests indicated that if key locations around the perimeter of the window opening were not targeted, an opening could form through which an occupant could be ejected in a rollover. Target A1 (see Figure 6 below, which is replicated below for the convenience of the reader from Figure 1 of this preamble) was the most challenging target in the component test, while A4 was the least challenging. For the 24 km/h (1.5 second time delay) test, the only system that did not exceed the 100 mm criterion at A1 was the Zodiac Prototype on the CK pickup. The data indicate that if target position A1 were not tested, an ejection mitigation curtain could have displacements of less than 100 mm in the other tests, yet have a hole large enough in a rollover to allow an occupant to be ejected. No displacement at A4 exceeded 76, 73 or 67 mm at 24 km/h, 20 km/h and 16 km/h, respectively. Taken as a whole, A2 and A3 showed similar results to each other for all three test conditions (24 km/h, 20 km/h, and 16 km/h impacts)) in that neither was as consistently challenging to meet as A1 nor as easily met as A4. Thus, based upon existing agency tests, passage of point A1 would tend to indicate a satisfactory countermeasure, but some vehicles showed more displacement at A3 than at A1.

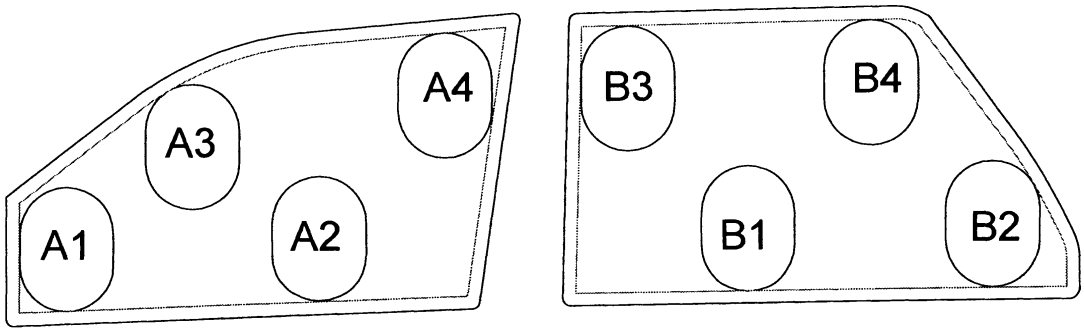

Figure 6—Target Location Determined by Proposed Method

(Figure 1 replicated)

The four targets are similar to those identified by GM in developing that manufacturer's ejection mitigation side curtain air bags. GM indicated that its test procedure targets the front side window opening in three locations: the upper rear corner, the lower front corner and the centroid of the window opening.[71] The first two target locations are very similar to the proposed target location A4 and A1 described in Figure 6 above. GM explained that it identified the upper rear target as a test point because it represents the most frequent impact position in rollover, and because it is at the edge of the rearward seating position and assesses protection for taller occupants. GM believes that the lower front corner test point evaluates the curtain for the forward seating position, assesses the curtain's performance with smaller occupants, and is the location at which the trailing (far side) occupant contacted the window opening in rollover tests. The centroid position represents the impact location with the least boundary condition support. While NHTSA's proposed targets are similar in location to GM's three targets, the agency tentatively believes that using four targets is preferable to only three targets to better assess how well the curtain covers the perimeter of the window opening.

Comments are requested on whether the FMVSS should specify that any point of the ejection mitigation window curtain will be tested by NHTSA, without limiting the number of target locations or specifying precisely the locations of the targets. The advantage to such an approach is that the agency would be allowed flexibility in choosing where to impact the ejection mitigation curtain, and could choose the location on the curtain that appeared to be the ''weakest,'' thereby assuring that all portions of the curtain would limit head displacement and not just the four target points identified in an FMVSS. Manufacturers would have to ensure that the curtain passed the performance limits at any point that NHTSA may select, which means that all parts of the curtain would have to meet the requirements. Further, it is possible that a sufficient assessment of countermeasure effectiveness could be achieved with fewer than four tests per window without decreasing the realized safety benefit.

What Is a ''Window Opening''?

This NPRM proposes a specified procedure for identifying the four targets of each window opening. The procedure is described in the next section and in detail in the Technical Analysis. To objectively describe ''window opening,'' this proposal would generally use the term ''daylight opening,'' as defined in FMVSS No. 201 for openings on the side of the vehicle. The term is defined in FMVSS No. 201 as: ''the locus of all points where a horizontal line, perpendicular to the vehicle longitudinal centerline, is tangent to the periphery of the opening. * * *'' There is a daylight opening for each separate piece of glazing. For example, a single door may have multiple daylight openings if there are

[71] O'Brian-Mitchell, Bridget M., Lange, Robert C., ''Ejection Mitigation in Rollover Events—Component Test Development,'' SAE 2007–01–0374.

multiple pieces of glazing comprising the side window opening.[72]

Note, however, there would be two differences between the proposed definition and the FMVSS No. 201 definition of daylight opening. First, the proposed definition would state that the above-referenced horizontal line would not only be tangent to the periphery of the opening, but would also include the area 50 mm inboard toward the vehicle centerline from the window glazing interior surface. This provision is intended to account for interior trim or other substantial vehicle structure that might be in the vicinity of the daylight opening, which could restrict the size of the opening through which an occupant could be ejected.

Second, we propose to exclude from the ''daylight opening'' definition any flexible gasket material or weather stripping used to create a waterproof seal between the glazing and the vehicle interior. The rationale for the exclusion is that the flexible material is unlikely to impede occupant ejection through the opening. This results in keeping the test area as large as possible. In the next paragraph, we discuss a proposal that would specify a 25 mm offset from the daylight opening in determining the testable area. If flexible gasket material or weather stripping were not excluded from the daylight opening definition, the testable area would be further reduced and the impactor targets would be moved even further inward away from the perimeter of the opening. Since we want to keep the target locations close to the opening perimeter to assure full coverage of the ejection mitigation curtain, we have tentatively decided to exclude the flexible material from the daylight opening definition. Comments are requested on the ''daylight opening'' definition.

Although the determination of daylight opening is made with flexible gasket material or weather stripping removed, we propose that the gasket material be present for the impactor test. Our rationale for having the material present is that conceivably, the material could affect the test results in some situations, and that during real world rollovers it is likely that the flexible gasket material or weather stripping would be present. However, we do not have comparative data between testing with and without the flexible gasket material or weather stripping. Further, we recognize that if the gasket material is removed to determine the daylight opening, specifying that the material is present on the vehicle for the impactor test will necessitate an extra step in the testing. Therefore, we request comments on whether the impact test should be performed with or without the flexible gasket material or weather stripping.

In specifying how the four targets of a side window opening are located, the test procedure would exclude a portion of the daylight opening. Briefly stated, to identify the four targets, measurements would be taken from a line offset 25 mm from the daylight opening (depicted as the innermost outline of the daylight opening in Figure 6, above). This is the line used to provide the tangent for the placement of the two dimensional projection of the headform as viewed from the lateral vehicle direction. The reason underlying the 25 mm offset for the headform tangent relates to the potential imprecision of the linear impactor. Although the impactor is guided, it is not possible to always have it strike precisely where targeted. As will be discussed later, we are proposing a ±10 mm tolerance on the impact location as well as ±2 mm for locating the offset line and ±2 mm for locating the target tangent to the offset line. Thus, a 25 mm offset from the window daylight opening yields 11 mm of buffer to assure that the impactor will not strike the window frame structure. If the impactor were to strike the window frame structure, the impactor could be at least partially restrained by the window frame structure rather than by only the window curtain and/or other ejection countermeasure.

We are proposing that the location of the offset-line be made by first projecting the daylight opening laterally onto a vehicle vertical longitudinal plane. Then at each point on the projection, a tangent line would be determined. Finally, a point would be located by moving 25±2 mm perpendicular to the point of tangency, in the vehicle vertical longitudinal plane. The set of points determined in this way would constitute the offset-line. Comments are requested on the 25 mm offset value and the method used to determine its location. Is there a simpler method to provide an offset from the daylight opening that is sufficiently objective and repeatable?

4. Method for Determining Impactor Target Locations

The agency developed a method for determining target locations with the following goals in mind:

(1) The test method has to be objective and repeatable so that there would be no ambiguity as to the target locations and so different testers would put the targets in the same locations;

(2) The method has to result in the placement of targets that are well distributed around the perimeter of the window opening to assure full coverage of the opening by the ejection mitigation countermeasure; and

(3) The method has to be simple and straightforward and suitable for varied window shapes of the vehicles to which the standard applies.

NHTSA believes that the proposed test method meets these goals. The test approach has three main parts. The first part specifies how targets would be identified on front (between A- and B-pillars) and rear windows (rearward of the B-pillar).[73] The test method differs slightly between front and rear windows to account for the distinct shapes of the windows. Front windows typically have a large rearward rake, while rear windows usually either have a forward rake due to the inclination of the rear backlight area or are somewhat rectangular in shape. For front windows, the lower-front and upper-rear portions of the opening have acute angles. For rear windows, particularly the second row in two-row vehicles and the third row in three-row vehicles, the acute angles are on the upper-front and lower-rear part of the opening. The lower acute angle locations are likely to be challenging for any header-mounted air bag curtain and are, therefore, good potential target locations (goal #2, above). These acute angles also provide convenient target locations because there is no ambiguity as to placement of the headform (goals #1 and 3). After conducting this first part of the test approach, the four target locations would be identified on most front and rear windows.

The second part of the test procedure addresses what happens if, after conducting the first part of the test approach, the four targets substantially overlap each other, as would be the case involving smaller than typical rear windows, such as ''sail panels'' that are installed in the rear of larger rear windows of some vehicles. (These windows are usually triangular in shape.) This part of the test procedure specifies an objective means of eliminating some of the four targets that overlap to avoid redundancy in testing, and describes which targets would be eliminated or considered for elimination

[72] The proposed test procedure has a provision that provides for fewer targets than four for small daylight openings.

[73] The proposed method of determining target locations is limited to *side* window openings. Thus, all front and rear window locations discussed are on the sides of the vehicle. The front window(s) are adjacent to the first vehicle seating row and the rear window(s) are adjacent to second and third seating rows.

and the order in which they would be considered (goals #1 and 2).

The third and final part of the test procedure addresses what happens if, after eliminating some targets pursuant to the second part of the test procedure, too few targets remain to test a daylight opening sufficiently. This part of the procedure involves the reconstituting (adding back in) of targets if, after implementing the second part of the procedure, there are too few targets remaining to evaluate the ejection mitigation performance of a countermeasure (goal #3).

Part 1: Finding the Four Targets

The first step in determining the four impactor target locations would be to find the corners of the daylight opening. The target locations are found by viewing the window from the lateral vehicle direction (y-axis). The corner would be located by using the ''target outline'' of the impactor face, which would be the x-z plane [74] projection of the ejection headform face, as shown in Figure 2 of this preamble. The target outline would be the projection of the impactor face in a vehicle vertical longitudinal plane. A corner would be defined as any location within the daylight opening where the impactor target outline is tangent to the offset line (the offset line would be 25 millimeters inside the daylight opening) at two or more points. Figure 7 shows target outlines placed in the corners of the side window daylight opening for the front and rear windows of a two-row vehicle.

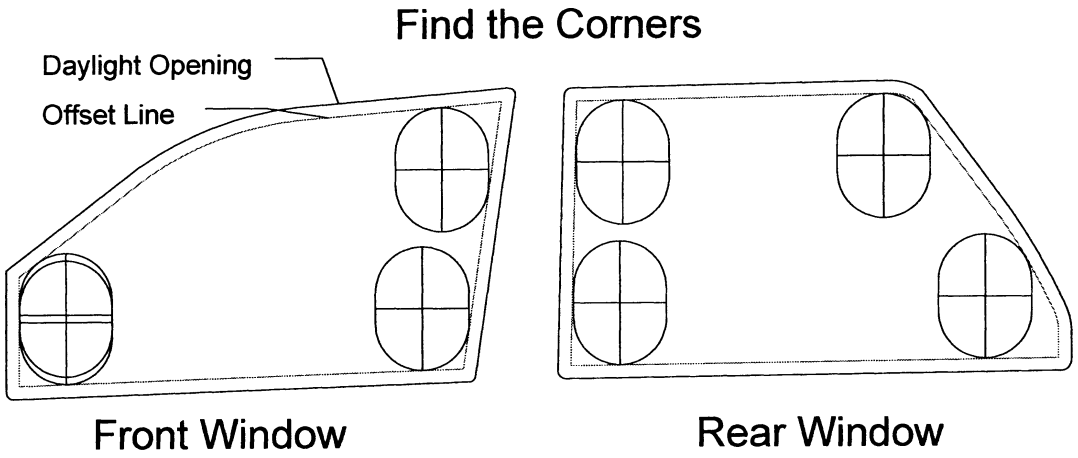

Figure 7

The next step in the target location process would be to locate the geometric center [75] of the daylight opening, and then to use the geometric center to separate the opening into four quadrants, *i.e.,* lower-front, lower-rear, upper-front and upper-rear. Next, we would eliminate the target in certain quadrants. For the front window, we would eliminate any target whose center is not within (inclusive of the border between quadrants) the lower-front and upper-rear quadrants. For all rear window openings, we would eliminate any target whose center is not within the upper-front and lower-rear quadrants (inclusive of the border). We would retain the front window lower front-most and rear window lower rear-most target locations because they are likely to be challenging for any header-mounted air bag curtain and are, therefore, good potential target locations (goal #2, above). These locations also have the advantage of presenting no ambiguity as to placement of the headform (goals #1 and 3), as is also the goal for the front window upper rear-most and rear window upper forward target locations.

The remaining targets are called ''primary targets,'' and the quadrants in which they are located are ''primary target quadrants.'' If there is more than one target left in a primary target quadrant, we would maintain the lowest target in the lower quadrants and the highest targets in the upper quadrants, to ensure that the extremes of the ejection mitigation countermeasure would be tested. If there were no target centers within those quadrants, we would use the target whose center is closest to the quadrant. This process leaves the ''primary targets'' shown in Figure 8.[76]

[74] The coordinate system convention is—
x-axis: vehicle longitudinal axis;
y-axis: vehicle lateral axis;
z-axis: vehicle vertical axis.

[75] The balance point of an object assuming uniform weight distribution. Later in this section of this document we request comments on an alternative to using the geometric center to separate the window into quadrants.

[76] Geometric center locations shown are for illustration purposes only and may not reflect the actual location for the daylight opening depicted.

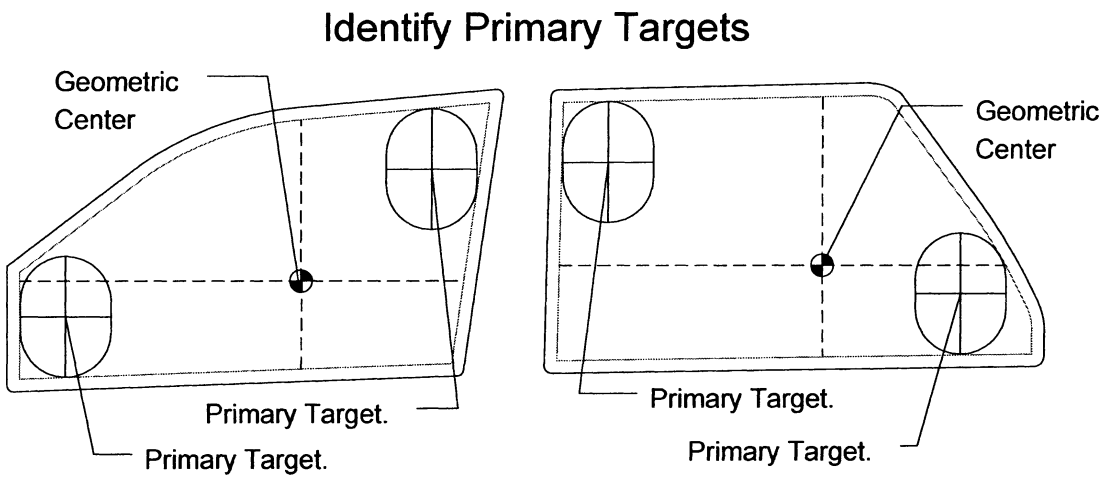

Figure 8

The final step in the target location process would be to locate the two additional targets (''secondary targets'') for each daylight opening. The two targets would be positioned in reference to the primary targets. To locate the two additional targets, we would measure the horizontal distance between the centers of the primary targets. These distances are shown as A and B for the front and rear windows in Figure 9, respectively. In order to have targets spaced equally in the fore-aft direction, vertical reference lines would be located at horizontal distances A/3 and B/3 from the primary target locations. For the front window area, a secondary target (the third target) would be centered at a rearward horizontal distance A/3 from the lower-front primary target and moved vertically upward until contact is made with the offset line. Another secondary target (the fourth target) would be centered at a forward horizontal distance A/3 from the upper-rear primary target and moved vertically downward until contact is made with the offset line.

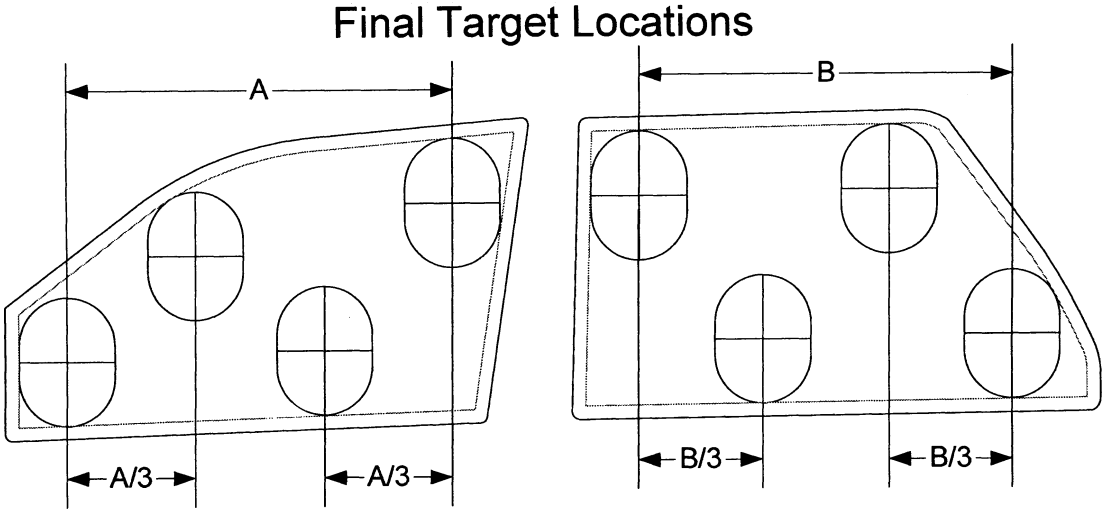

Figure 9

For all other side windows, except the front, a secondary target (the third target for these rear side windows) would be centered at a rearward horizontal distance B/3 from the upper-front primary target and moved vertically downward until contact is made with the offset line. Another secondary target (the fourth for these side windows) would be centered at a forward horizontal distance B/3 from the lower-rear primary target and moved vertically upward until contact is made with the offset line (see Figure 9).

An example of the target identification procedure applied to a daylight opening that is symmetric about the horizontal axis is provided below in Figure 10. The opening has six corners [77] and is a rear window. Under

[77] Note that although it may appear that there is only a single point of contact for the middle targets

Continued

the targeting procedure, the targets located in the lower-front and upper-rear quadrants are eliminated. Because of the symmetry, two of the targets centers are located along the quadrant boundaries. Targets located on a quadrant boundary as shown would be considered by the test procedure to be in the upper-front and lower-rear quadrants, so these targets would not be eliminated on the basis that they are not in the upper-front and lower-rear quadrants. However, the targets would be eliminated on the basis that they are not the uppermost and lowermost targets in the upper-front and lower-rear quadrants, respectively. Two primary targets remain as shown in Figure 10b after eliminating the targets as specified; the primary targets are the upper target in the upper-front quadrant and the lower target in the lower-rear quadrant. Finally, the secondary targets are located as shown in Figure 10c.

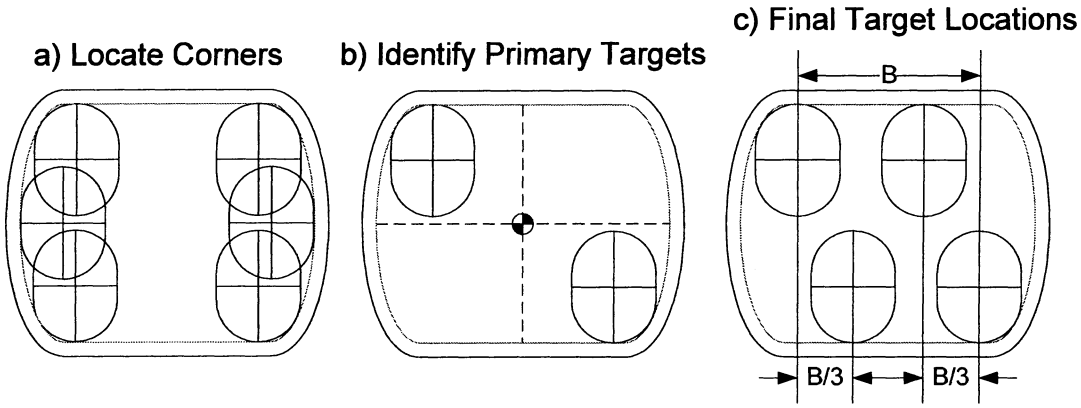

Figure 10

Because of potential daylight opening shapes and sizes, the possibility exists that, once targets are placed in the corners, no target centers are located in one or both of the primary target quadrants. If this occurs, the target whose center is closest to the primary target quadrants is used. Figure 11 shows an example of this. This is a representation of a rear window, so the primary quadrants are at the upper-front and lower-rear. Note that there are three potential primary targets located at the corners of the window opening. However, only the lower primary quadrant has a target center located within its boundary. The upper primary quadrant has no target center within its boundary. In this example, the most forward target becomes the second primary target because its center is closest to the boundary of the upper primary quadrant. The procedure for locating the secondary targets remains the same.

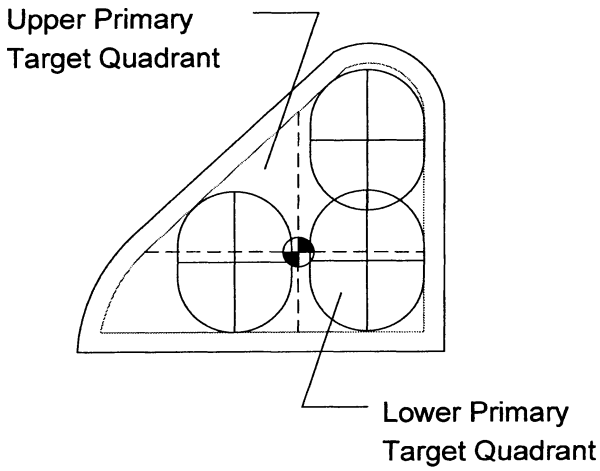

Figure 11

NHTSA requests comments on the proposed method for determining the impactor target locations. Are there better alternatives than using the geometric center of the daylight opening to determine the window quadrants, such as dividing the overall length and height of the daylight opening in half?

in Figure 9a, due to the relative curvature of the window and targets, there are two points of contact.

Would such a method be simpler and result in the same final target locations?

NHTSA also requests comment on the orientation of the target outline. Occupant orientation when in contact with the ejection mitigation system may vary; particularly for unbelted occupants. The targeting procedure described above maintains the long axis of the target outline aligned with the vehicle's vertical axis. Should the targeting procedure instead be performed with the target outline's long axis aligned with the vehicle's horizontal axis or some other orientation? We have not studied the sensitivity of the impactor displacement with the target outline orientation. Please provide data on the effect of alternative impactor orientations.

Part 2: Allowing Fewer Than Four Targets for Small Windows

The second part of the test procedure addresses what happens if, after conducting the first part of the test approach, the four targets substantially overlap each other, as would be the case involving smaller than typical side rear windows, such as ''sail panels'' that are installed in the rear of larger rear windows of some vehicles. However, for some two-door passenger cars, these sail panels can be large enough to be impacted. Since the impactor contact surface represents the averaged dimensions of the side and face of a 50th percentile head, a sail panel large enough to fit the impactor outline within the offset line could be the location of a partial head ejection.

This part of the test procedure calls for eliminating some of the four targets to avoid redundancy in testing, and describes which targets would be eliminated or considered for elimination, and the order in which they would be considered. This part involves measuring the horizontal (x-axis) and vertical (z-axis) distances between target centers. If the horizontal distance is less than 135 mm *and* the vertical distance is less than 170 mm, the agency would eliminate a target. Table 20 identifies which targets are compared, in priority order. In each case, both the target centers must be closer than 135 mm and 170 mm in the x and z directions, respectively, for a target to be eliminated.

TABLE 20—PRIORITY LIST OF TARGET DISTANCES TO BE CHECKED AGAINST HORIZONTAL AND VERTICAL LIMITS

Step	Measure distance of these target centers	Eliminate this target if horizontal and vertical distances are less than 135 mm and 170 mm, respectively *
1	Upper Secondary to Lower Secondary	Upper Secondary.
2	Upper Primary to Upper or Remaining Secondary	Upper or Remaining Secondary.
3	Lower Primary to Lower or Remaining Secondary	Lower or Remaining Secondary.
4	Upper Primary to Lower Primary	Upper Primary.

* The target centers must be closer than 135 mm and 170 mm in the x and z directions, respectively.

In step 1 of this procedure, we would determine the horizontal and vertical distance between the centers of the secondary targets. If the horizontal distance is less than 135 mm and the vertical distance is less than 170 mm, we would eliminate the upper secondary target. If only one distance is less than the specified value, we would not eliminate the target. In either case, we would proceed to step 2.

In step 2, we would measure the distance between the upper primary target and the upper secondary target (if it survived step 1) or the remaining secondary target. If the horizontal and vertical distances are less than the specified values, the secondary target is eliminated. If only one distance is less than the specified value, we would not eliminate the target. In either case, we would proceed to step 3.

In step 3, the process is repeated, except we would measure the distance between the lower primary target and the lower secondary or to the remaining secondary target. If the horizontal and vertical distances are less than the specified values, the secondary target is eliminated. If only one distance is less than the specified value, we would not eliminate the target.

In step 4, we would measure the distance between the upper primary target and the lower primary target. If the horizontal and vertical distances were less than the specified values, the upper primary target would be eliminated. If only one distance is less than the specified value, we would not eliminate the upper primary target.

The Technical Analysis accompanying this NPRM provides examples of the target comparison and elimination progression for illustration purposes.

The selection of the 135 mm and 170 mm dimensions is based on the agency's engineering judgment as to what would be excessive overlap between the targets, based on a small sample of window openings. The agency determined that this spacing between targets would ensure a wide and even distribution of targets across the ejection mitigation countermeasure, which effectuates a thorough evaluation of the countermeasure. Each value is approximately 75% of the maximum dimension of the impactor in that direction (170/226 = 75% and 135/177 = 76%).

The target elimination process proposed provides an objective and repeatable means of limiting the overlap between targets while maintaining coverage of the entire window opening. Thus, it is consistent with all of the agency's stated goals for a targeting procedure. The targets that are retained over those slated for elimination in Table 20 (above), and deemed ''priority'' targets, are important for the following reasons. NHTSA has given priority to the primary targets over the secondary targets since the primary targets assess the curtain at its extremes: at the foremost bottom portion of the curtain and at the top aft of the curtain, for the case of a front window, and the opposite corners in the case of a rear window. Further, of the two primary targets, the lower primary target has priority over the upper primary. This is because most ejection mitigation curtains now deploy from the roof rail downward, and gaps through which ejections may occur can form between the curtain and the window opening more readily than at locations close to the air bag curtain housing unit at the roof rail. Thus, if only the two primary targets remain after the elimination process, the lower primary target is likely to be the most demanding target in assessing the ability of the curtain to retain occupant excursions. For these reasons, NHTSA tentatively concludes that after the target elimination process is conducted, the lower primary target should prevail.

Finally, under the proposed test method, the long axis of the target outline is aligned with the z-axis. Because of the 25 mm offset, for window openings with a vertical

dimension of less than 276 mm (10.9 inches) no targets will fit in the window opening. The agency is considering rotating the impactor outline 90 degrees and performing the same targeting methodology, in order to fit a target(s) within the window opening.

Comments are requested on the following issues:

- Please comment on the concept of impacting a window in at least one location if it is large enough to fit a target outline within the offset line. Is there a better method of determining if a window opening is sufficiently large to be the site of a partial ejection, and therefore, a reasonable location for impact?
- Comments are requested on the proposed method for reducing the number of target locations for small windows. Specifically, are the 135 mm horizontal and 170 mm vertical limits reasonable?
- Please comment on a strategy of rotating the impactor headform by 90 degrees in the event no targets fit in the window opening when the impactor is oriented with a vertical long axis. If this horizontal impactor orientation results in no target outlines fitting within the window, should the impactor be allowed to be oriented at any angle necessary to fit inside the opening?

Part 3: Reconstituting Targets To Get to Three

If, after running the course of Parts 1 and 2 described above, the window area drops from having four crowded targets to having only two with a relatively substantial separation between them (more than 360 mm), we believe that a target should be reconstituted (added back) between the two. This added target would be centered such that it bisects a line connecting the centers of the two remaining targets. See drawing on the right in Figure 12 for an illustrated example. In the drawing, the total distance between the remaining targets was 429 mm; the original two secondary targets have been replaced by single target midway between the two primary targets.

The limit for adding back a target is 360 mm of separation between the remaining targets (see Figure 13). The 360 mm limit is based on engineering judgment as to what would be too much gap between targets and allow an ejection portal if the curtain was not sufficiently inflated or taut. Please comment on the proposed method for adding target locations if only two targets remain after the target reduction scheme is followed. Is the 360 mm distance between the remaining targets reasonable?

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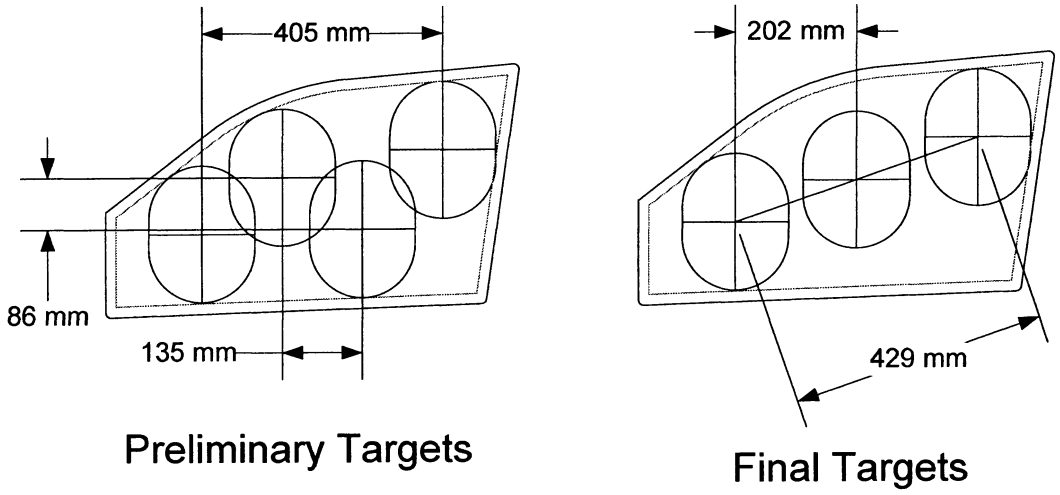

Figure 12 – Adding a target between the remaining targets.

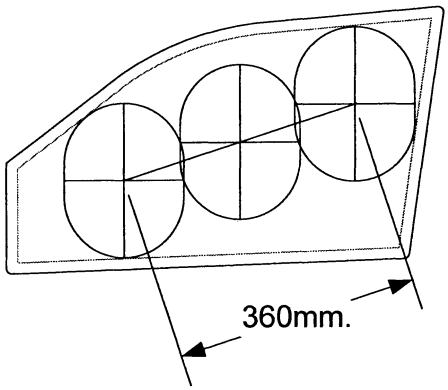

Figure 13 - Smallest distance between primary targets for which a center target is added.

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Summary of Procedure Identifying Target Locations

In summary, there are three main parts to the test procedure that identifies the test target locations for each daylight opening. The three parts are summarized below.

Part 1

• Find the corners of the window opening, then locate the geometric center of the daylight opening. Separate the opening into four quadrants, *i.e.,* lower-front, lower-rear, upper-front and upper-rear. Eliminate the target in certain quadrants, leaving two ''primary targets.''

• Measure the horizontal distance between the centers of the primary targets. Divide that distance into thirds. Identify the two ''secondary targets.''—For front windows, at the first ⅓, place a target and move it vertically upward until contact is made with the offset line. At the second ⅓, place a target and move it downward until contact is made with the offset line.—For rear windows, do the same, except that the first ⅓ target is moved downward, and the second ⅓ target is moved upward.

Part 2

• Evaluate whether some of the four targets should be eliminated because they excessively overlap. Determine whether target centers are closer than 135 mm and 170 mm in the horizontal and vertical directions, respectively.

Part 3

• If, after following the procedure given in part 2, there are only two targets remaining, determine the absolute distance between the centers of these targets. If this distance is at least 360 mm, locate a target so that the center of its outline bisects a line connecting the remaining targets.

e. How Should the Window Glazing Be Positioned or Prepared in the Test To Represent Real-World Circumstances?

We are proposing to allow windows to be in position (up and closed), but pre-broken. We are proposing to allow windows to be in position so as to not discourage the use of advanced glazing (laminated glazing) in vehicles, since our testing has shown that advanced

glazing may enhance the performance of current air bag curtain designs. Typically, advanced glazing has a multi-layer construction with three primary layers: a plastic laminate bonded between two pieces of glass. In the proposed test procedure, prior to running the headform impact test, we would undertake a procedure on all glazing that entails pre-breaking the glazing in a consistent fashion to simulate the breakage of glazing during a rollover. With advanced glazing, the procedure would likely result in the outside glass breaking without deforming the laminate. With tempered (non-advanced) glazing, the procedure would likely shatter the glazing into fragments, so manufacturers would be given the option of: (a) Running the procedure and shattering the glazing; or (b) having the glazing removed from the daylight opening, or if the glazing completely retracts into the vehicle structure, completely retracting the glazing, and simply bypassing the glazing-breakage procedure.

1. Window Position and Condition

The agency is proposing to have the windows in position (up and closed) in the impact test because, for the target population of this rulemaking, the front row window through which an occupant was ejected was closed or fixed prior to the crash 69 percent of the time. Nearly all of the closed or fixed front row ejection route windows (99 percent) were disintegrated after the crash. Table 21 shows these data for three seating rows. For many vehicles, the rear seat window is fixed. Our accident data show that the second and third row ejection route windows were closed or fixed about 94 and 100 percent of the time, respectively.[78] Combining all of the data, the ejection route windows were closed or fixed 72 percent of the time before the crash.

TABLE 21—PRE- AND POST-IMPACT WINDOW CONDITION FOR WINDOW THROUGH WHICH THE OCCUPANTS IN THE EJECTION MITIGATION TARGET POPULATION WERE EJECTED

Window location	Window condition				
	Pre-crash	Post-crash			
		Disintegrated (percent)	In Place (percent)	No Glazing (percent)	Total (percent)
Row 1	Closed or Fixed	68	1	0	69
	Open (Part. or Fully)	11	17	0	28
	No Glazing	0	0	3	3
	Subtotal	79	18	3	100
Row 2	Closed or Fixed	71	*23	0	94
	Open (Part. or Fully)	0	6	0	6
	No Glazing	0	0	0	0
	Subtotal	71	29	0	100
Row 3	Closed or Fixed	100	0	0	100
	Open (Part. or Fully)	0	0	0	0
	No Glazing	0	0	0	0
	Subtotal	100	0	0	100
All	Closed of Fixed	68	4	0	72
	Open (Part. & Fully	10	16	0	26
	No Glazing	0	0	2	2
	Total	78	20	2	100

*This result seems to suggest that 23 percent of the target population ejected from the second row went through a closed window that remained in place after the crash. This is a physical impossibility and represents ambiguity in NASS. These data are derived from an unweighted count of 18 NASS occupants of the approximately 1,200 occupants that make up the unweighted target population. The miscoding is likely a result of the fact that the NASS investigator has multiple side window ejection routes to properly code.

Table 22 shows the result of expanding the data set to include all vehicles exposed to a rollover crash, as opposed to just windows through which occupants were ejected. The restriction on the data is that an occupant needed to be seated next to the window opening. The data is separated into front row and rear rows, inclusive of the third row. It is comprised of 2.9 million weighted data points. We note that only windows disintegrated from vehicle structural deformation have been tabulated.[79] This expanded data set shows a higher percentage (86 percent) of front windows are closed or fixed prior to a rollover than was the case for windows which were ejection routes. It also shows that about half (47 percent (40 percent/86 percent)) of these closed or fixed front row windows were disintegrated after the crash. For the rear rows, the proportion of disintegrated windows, which were closed prior to the rollover, drops to 22 percent (22 percent/98 percent).

[78] The third row data is very limited. It is comprised of only 103 weighted ejections.

[79] Windows disintegrated due to occupant contact would add only about 0.5 percent to this data set.

TABLE 22—PRE- AND POST-IMPACT WINDOW CONDITION FOR VEHICLES EXPOSED TO A ROLLOVER WITH AN OCCUPANT ADJACENT TO THE WINDOW—1997 TO 2004 NASS CDS

Window location	Window condition			
	Pre-crash	Post-crash		
		Disintegrated (percent)	In place (percent)	Total (percent)
Front	Closed or Fixed	40	46	86
	Open (Part. or Fully)	3	11	14
	Subtotal	43	57	100
Rear	Closed or Fixed	22	76	98
	Open (Part. or Fully)	0	2	2
	Subtotal	23	77	100
All	Closed or Fixed	39	49	87
	Open (Part. & Fully	3	10	13
	Total	41	59	100

Request for Comments on Glazing Position and Condition

Although we believe that available data support a proposal allowing windows to be in place and pre-broken prior to testing, we recognize there are potential drawbacks to the proposal. On the issue of window position, the most obvious of these drawbacks is for those instances where manufacturers utilize advanced glazing in their design, when the window is partially or fully down the vehicle may have degraded occupant retention. This concern arises most frequently for first row windows, which are nearly always retractable. The implication of the data in Table 21 is that about 3 out of 10 occupants are ejected with the front window when it is partially or fully open prior to the crash. This becomes much less likely for the second and third rows.

The agency is contemplating alternatives to the approach of allowing windows to be in place and pre-broken. One option would be to test with all movable windows removed or rolled down, regardless of whether the window is laminated. Fixed laminated windows would continue to be kept in place, but pre-broken. This would assure that the ejection mitigation performance of vehicles with laminated windows is equal to those without laminated windows, when the windows happen to be rolled down. However, this would not provide an incentive to vehicle manufacturers to install advanced glazing in movable windows.

Another option would be to test the vehicle both with movable laminated windows down and with them up and pre-broken. The arithmetic or weighted average of the measurements could then be used to determine compliance with the displacement limit. (One possible weighting would represent the probability of windows up versus windows down.) We are also considering placing some higher displacement limit on the window down test for these systems that use both advanced glazing and an ejection mitigation air bag curtain to provide protection. *E.g.,* if we were testing with the window down, we are considering permitting a displacement of more than 100 mm.

We request comments and ask for information relating to the following questions:

- The agency has proposed allowing windows with advanced laminated glazing to remain up, but pre-broken during impact testing. We are also considering testing with all movable windows down or removed, regardless of whether they are laminated. Finally, we discussed requiring testing with laminated windows both up and down. Please comment on the relative merits of these different options. Please comment specifically on the effect these options will have on overall benefits of the standard.
- The extent to which manufacturers will avail themselves of advanced glazing to supplement air bag curtains is unknown. We are aware that some manufacturers currently provide laminated glazing as a theft prevention and noise reduction measure in more expensive vehicles. We believe that incorporation of advanced glazing for ejection mitigation will be relatively expensive compared to the implementation of side curtain air bags. Our preliminary analysis shows that the proposed requirements would add about $33 per light vehicle at a total cost of $568 million for the full curtain countermeasure. To what degree will manufacturers avail themselves of an advanced glazing option? What would be the costs associated with advanced glazing alone or in combination with side air bag curtains as opposed to the use of side air bag curtains alone?
- Our data analysis shows that for the target population of this proposal, about 30 percent of front windows will be rolled down prior to the crash. We are aware that vehicle manufacturers are researching and beginning to implement technology that senses an impending crash and roll the windows up. Should a windows-up ejection mitigation test option be restricted to only these vehicles?
- Advanced laminated glazing has considerably greater mass, particularly as compared to an air bag curtain. The inertial effects due to the mass of the advanced glazing and its retention by the vehicle structure are not accounted for in the proposed test procedure. To what extent might the advanced glazing mass degrade its real-world performance? Should NHTSA account for this in some way in our testing? If so, how?

2. Window Pre-Breaking Specification and Method

We are proposing a breaking specification and method that calls for punching holes in the glazing in a 50 mm horizontal and vertical matrix (''50 mm matrix''). A spring-loaded automatic center punch would be used to make the holes. The punch has approximately a 5 mm diameter before coming to a point. The first step in the process is to mark the surface of the

window glazing in a horizontal and vertical grid of points separated by 50 mm, with one point coincident with the geometric center of the daylight opening (see Figure 14). The initial target point of the punch would be the lowest and most forward mark made on the glazing. Holes would be punched in the glazing starting with the inside surface of the glazing, and starting with this initial lowest and most forward hole in the pattern. We would continue punching holes 50 mm apart, moving rearward on the vehicle. When the end of a row is reached, we would move to the most forward hole in the next higher row, 50 mm from the punched row. After completing the holes on the inside surface, we would repeat the process on the outside surface at the same impact points as the inside surface. These patterns are shown in Figure 14 below.

When punching a hole, we would place a 100 mm by 100 mm piece of plywood on the opposite side of the glazing as a reaction surface against the punch. The spring on the punch would be adjusted such that 150 N ± 25 N of force [80] would be required for activation. The force has been designed so as to not penetrate the inner laminated material. However, if a particular window were constructed such that the inner laminated material is penetrated or damaged, the procedure would not be halted or invalidated; the headform impact test would be conducted at the conclusion of the glazing breakage procedure. If punching a hole causes the glazing to disintegrate, as would likely occur when testing tempered glazing, the procedure would be halted and the headform impact test would be immediately conducted. (In the latter situation, the vehicle manufacturer would have opted not to have removed or completely retracted the tempered glazing and thereby bypass the window breaking process.)

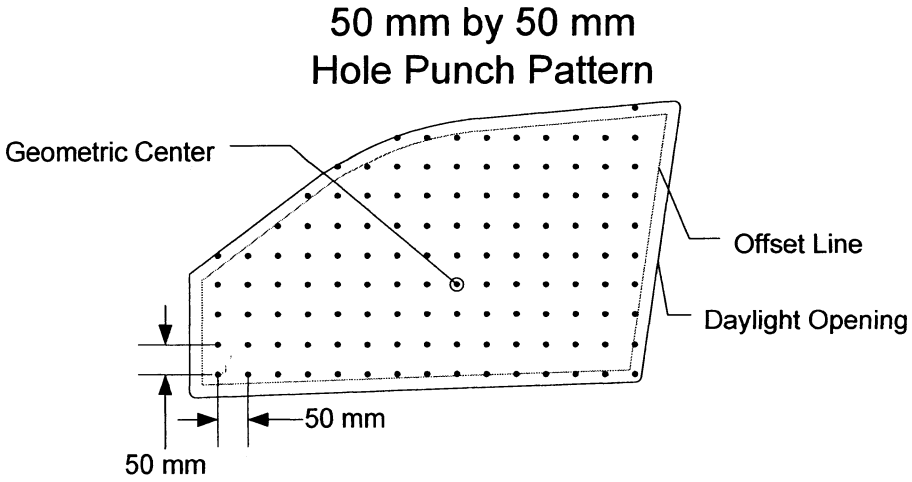

Figure 14

In developing the proposed glazing breaking specification and method, we considered and rejected a recommendation from an industry group called the Enhanced Protective Glass Automotive Association (EPGAA), which provided a test report entitled ''Laminated Glass Pre-breakage Repeatability Testing,'' (see docket for this rulemaking). The EPGAA evaluated whether different degrees of breakage affected laminated glazing strength. Four different degrees of breakage were tested and compared to glazing that had no breaks. The four were: 1 punched hole, 4 punched holes, 8 punched holes and completely pummeled with a ball-peen hammer. The 4-hole punch pattern was made by first locating the ejection headform contact point with the glazing at each impact location for that window opening (see Figure 15). Each side of the glass was punched with a spring activated center punch tool at each contact location. The EPGAA recommended that NHTSA use the 4-hole punch pattern, but NHTSA has tentatively decided to propose the 50 mm matrix pattern rather than the 4-hole pattern, as explained below.

[80] This force level worked well for the samples of advanced glazing tested by the agency.

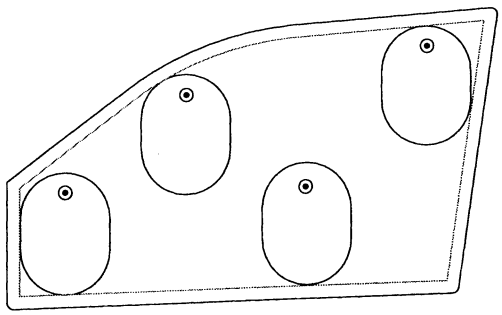

Figure 15

EPGAA's tests evaluated the strength of the glazing by using a ball impact test prescribed in FMVSS No. 205 and the American National Standards Institute (ANSI) in ''American National Standard, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, ANSI Z26.1.'' In the ball impact test, a 2.2 kg steel ball was dropped from 7.9 meters onto the glass, which was supported from underneath. At this height, the ball struck the glass at 45 km/h. A speed trap was used to measure the velocity of the ball after it passed through the glass. The reduction in speed was used to calculate the energy absorbed by the glass. This energy was converted to a mean breaking height through a potential energy conversion. EPGAA found that there was no statistical difference in the mean breaking height for the glazing broken under the various methods. Thus, the EPGAA concluded that the 4-hole pattern would be acceptable.

NHTSA reviewed EPGAA's data but determined that the EPGAA test results might not correlate with the ejection mitigation impactor test. The proposed impactor test is much slower than the ANSI/SAE Z26.1 ball impact test and the proposed impactor is much larger and massive. In addition, for most vehicles, the impactor load would be distributed by the air bag curtain. Finally, the glass is mounted differently in a vehicle than on the test jig used in the EPGAA study. Given all these differences, NHTSA performed follow-on testing to the EPGAA study, using the proposed 18 kg impactor with the laminated glazing pre-broken using the 4-hole pattern, as well as fully pummeled with a hammer. We also used the 50 mm matrix pattern to attempt to recreate the more fully broken pattern achieved by the fully-pummeled method in a more managed and objective manner.

In NHTSA's follow-on testing, we found that the breaking method for the glazing resulted in very different breakage patterns (see Technical Analysis) and in different displacement results. Table 23 shows the limited test results to date. For all tests except the Durango at 16 km/h at position A3, the fully-pummeled glazing exhibited more impactor displacement than either hole pattern. There was a statistically significant difference ($p = 0.024$) between the 4-hole pattern and the pummeled glazing. We have only one test using the 50 mm matrix pattern on a MY07 Jeep Commander. For this vehicle, there is a 7 mm reduction in displacement for the 50 mm matrix pattern and a 10 mm reduction for the 4-hole pattern over the pummeled glazing.

From the above data, we have tentatively concluded that the method of pre-breaking the laminated window has a discernable effect on the test results. Generally, the methods that result in more breakage also result in less displacement reduction of the impactor, *i.e.,* more overall displacement in the proposed compliance test. Our decision for this NPRM is to propose a method that results in more breakage than less, to replicate more demanding scenarios involving breakage of the advanced glazing. However, the most demanding method (pummeling the glazing) was also the method that was the least controllable and the most potentially difficult to repeat from laboratory to laboratory. Accordingly, we have tentatively decided to adopt the 50 mm matrix hole punching method, since it appears to be more controllable and repeatable than pummeling the window with a hammer, and yet yields a very extensive breakage pattern. Comments are requested on the method of pre-breaking the glazing.

The agency is continuing its research into window pre-breaking methods. Specifically, we are looking into a variation of the 50 mm matrix hole punch method where the holes on either side of the glass are offset by 25 mm. Initial indications are that this variation exhibits the potentially positive attribute of lessening the chances of penetrating the inner membrane between the glass layers. Comments are requested on this issue.

TABLE 23—IMPACTOR DISPLACEMENT DATA FOR LAMINATED GLAZING PRE-BROKEN BY DIFFERENT METHODS

Test conditions			Displacement (mm) vs. glass condition					
Vehicle	Speed (km/h)	Target	4-holes		Pummeled		50 mm matrix	
05 Trailblazer	20	A2	62		80			
05 Trailblazer	20	A3	96	98	107	110		
06 Durango	20	A2	71		101			
06 Durango	16	A3	145		142			
07 Commander	16	A2	48		58		51	

Request for Comments

Although testing by EPGAA showed no difference in the mean breaking strength for laminated windows regardless of the method used to pre-break them, ejection mitigation testing did show a significant difference between a 4-hole pattern and pummeling with a ball-peen hammer. The 50 mm matrix breaking method resulted in a very extensive fracture pattern of the window. The 4-hole pattern did not. Accordingly, we are proposing a 50 mm spacing breakage pattern through the use of a spring-loaded center punch with a 5 ± 2 mm diameter prior to the tip, adjusted to an activation load of 150 ± 25 N load.

We request comments on the following issues.

• The agency has proposed allowing windows with advanced laminated glazing to remain up, but pre-broken during impact testing. (As noted earlier, we are also considering different alternatives, including not having the windows up at all.) We have proposed a hole punch pattern with a 50 mm matrix spacing to break the window. Please comment on the appropriateness of the window breaking procedure. Specifically, is the window condition representative of what would be seen in the field as being caused by a crash prior to occupant ejection? Is it necessary to fracture the glazing more extensively than the proposed method? If so, what is the alternative method and its basis?

• Is the spring loaded automatic center punch sufficiently described by specifying an activation force of 150 ± 25 N? Is it necessary to specify the impact force generated when the spring tension is released? If so, what procedure should be used to determine the impact force? Is it sufficient to specify that the punch diameter be 5 ± 2 mm prior to the tip? Does there need to be a specification regarding the sharpness of the tip? If so, what should the specification account for?

f. Test Procedure Tolerances

The proposed regulatory text for this ejection mitigation standard has tolerances on various test parameters of the proposed test procedure. For example, the proposed text specifies that the target outline must be aligned within ±1 degree of the vehicle longitudinal plane when determining the proper target location. Tolerances were selected such that they would not affect the test results, yet not be so small as to be unusable. In some instances, we have based tolerances on those of other FMVSSs because those tolerances have been practicable and useful. For example, the tolerance on the impactor alignment with the vehicle lateral axis is based on a similar linear impactor tolerance in S5.2.5(c) of FMVSS No. 202a. Tolerance selection has been based on test experience and engineering judgment. Comments are requested on whether the tolerances assure an objective, repeatable and practical test procedure.

g. Impactor Test Device Characteristics

There are many possible ways of delivering the impactor to the target location on the ejection mitigation countermeasure. As previously discussed, the impactor used in agency research propels the shaft component of the impactor with a pneumatic piston. The shaft slides along a plastic (polyethylene) bearing (sleeve). This section explores the need to specify characteristics of the impactor to maximize the objectivity of the standard.

We have tentatively determined that certain characteristics of the impactor should be specified to enhance the repeatability of the test, *i.e.,* to increase the likelihood that the headform will be delivered to the countermeasure and interact with it in a repeatable manner. A specification we are considering in proposed S7.2 would limit the amount of energy the impactor may lose due to friction. All guided impactor designs will have some degree of velocity loss due to friction on the impactor shaft. To enhance the objectivity of the test procedure, we propose to specify that the ejection impactor must not lose more than 10 and 15 percent of the 24 and 16 km/h impact velocity, respectively, in 300 mm of unobstructed travel. The agency performed five speed trials with the ejection mitigation test device used for the agency's research.[81] We found that the average and standard deviation for the percentage velocity reduction was 8.2 ± 1.9 percent and 16.2 ± 4.4 percent, for the 24 and 16 km/h impact speeds, respectively; our research test device lost a higher percentage of energy at the lower impact speed. Comments are requested on the need for and merits of these proposed values. Should there be an upper and lower limit on each value?

Another specification under consideration relates to assuring that the projection of the impactor would not be unduly set off target when it impacts a countermeasure. The ejection mitigation countermeasure could impart off-axis loading on the impactor, *i.e.,* the loading may not just be in the direction of the impactor shaft. This off-axis loading may affect the impactor in several ways. If the impactor shaft and support mechanism is overly flexible, off-axis loading may allow the impactor headform to deviate unduly from its intended target. We have seen this in our testing when the headform strikes near the bottom of the curtain. The curtain makes contact predominately on the upper portion of the headform, which can cause a downward loading on the impactor and a change in its intended path. This off-axis loading on the headform may also allow the shaft bearing to be exposed to additional loading and potentially increase the friction on the shaft.

We are thus proposing specifications in S7.1.2 that would reduce the effects of off-axis loading on the impactor device. First, we are proposing to limit bending of the device in a static test. In the test, the impactor would be extended 300 mm past the position where the test impact velocity (24 or 16 km/h) is achieved. At that position, a 27 kg mass would be attached to the back of the headform. We would require that the headform's maximum vertical deflection, with the mass, must not exceed 20 mm. Second, we are proposing that, with this 27 kg mass attached, the average and standard deviation required to push the impactor over a 200 mm distance at a velocity of 50 (±13) mm per second must not exceed 570 N and 30 N, respectively.

Finally, in proposed S7.3 we set forth an additional way to assure the impact test device delivers the headform to the required target location on the side window opening. Briefly stated, this assessment would determine the accuracy of the headform in hitting a determined zone, similar to a pitcher in the game of baseball finding the strike zone. The assessment would be conducted by establishing a zone within which we would require the impactor to deliver the headform at test speed. The following describes one objective method of determining the ''strike zone,'' to use the baseball analogy. Comments are requested on whether other methods of determining the zone would be preferable and what those methods should be.

As shown in Figure 16, a zone could be established by first determining the ''ejection impactor targeting point,'' the intersection of the x- and y-axes on the outer surface of the headform. Next, the location of first contact between the impactor and the ejection mitigation countermeasure (*e.g.,* ejection mitigation

[81] This research test device has not been optimized for compliance test purposes. Thus, we believe that tighter tolerance can be attained with an optimized design.

air bag curtain) would be determined, based on the location of the target outlines using the methodology in the compliance test specified for identifying the target outlines. A 100 mm wide zone would be determined by defining two vertical longitudinal planes that are 50 mm on either side of the expected location of contact by the impactor with the countermeasure. These longitudinal planes define a portion of the strike zone. The other portion of the zone would be defined by locating the axis normal to and passing through the target outline center. As the impactor targeting point passes at test speed through the 100 mm wide zone (as it passes ''over the plate,'' using the baseball analogy), it must stay within ± 10 mm of the axis passing through the center of the target outline center (continuing the analogy, it must stay within the vertical zone bounded by the batter's knees and chest). This assessment would not be conducted with an ejection mitigation air bag curtain deployed, as the deployed curtain could obstruct accurate measurement of the impactor location and the effect of air bag interaction is assessed by the specification previously discussed.

Comments are requested on these proposals. We are considering making this assessment of the impactor to assure that the impactor used in the compliance test has the specified characteristics adopted by the standard. If the impactor was able to meet the specifications during the assessment, it would be assumed that the impactor has the characteristics enabling it to meet the specifications and that it had those characteristics during the compliance test of the countermeasure. Are there any other or different characteristics of the ejection impactor that should be specifically defined?

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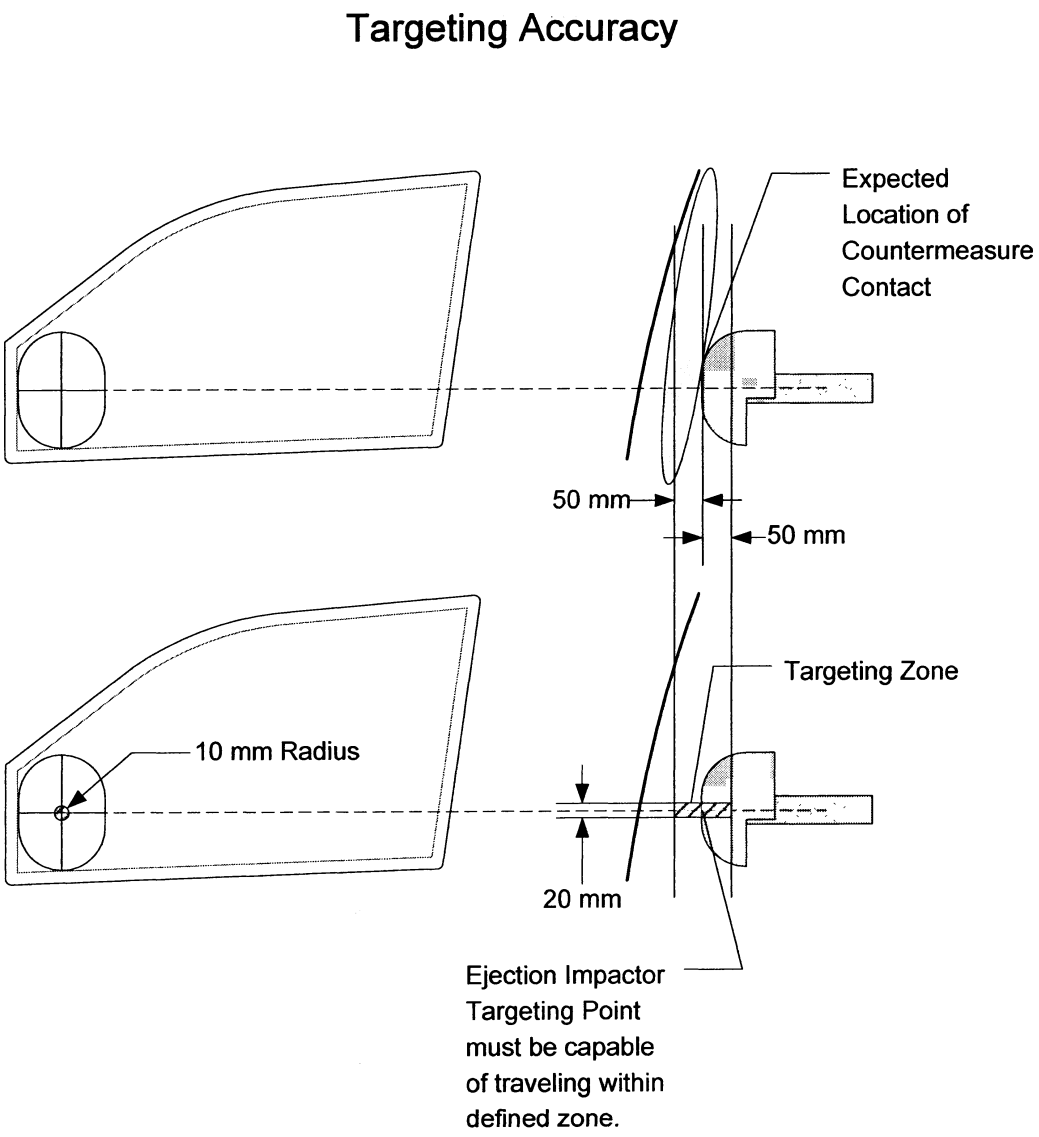

Figure 16

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h. Readiness Indicator

NHTSA is proposing a requirement for a readiness monitoring system with a readiness indicator for ejection mitigation systems that deploy in a rollover, such as that required for frontal air bags in S4.5.2 of FMVSS No. 208. The indicator would monitor its own readiness and would have to have a telltale clearly visible from the driver's designated seating position. We would permit vehicle manufacturers to use the same frontal air bag readiness indicator telltale currently used to meet S4.5.2 of FMVSS No. 208. We also propose that manufacturer would have to include in the vehicle owner's manual, or other written material accompanying the vehicle, a list of the elements of the system being monitored by the indicator, a discussion of the purpose and location of the telltale and instructions to the consumer on the steps to take if the telltale were illuminated. These proposals are intended to enhance the longevity and dependability of the ejection mitigation system over the life of the vehicle.

VI. Other Considered Performance Aspects of an Ejection Mitigation Standard

a. Rollover Sensor

1. Introduction

NHTSA has tentatively decided that the regulatory text for this NPRM will not specifically require a rollover sensor or specify attributes that the sensor must meet. As explained earlier in this preamble, deployable ejection mitigation countermeasures (ejection mitigation air bag curtains) are now being designed, developed, and implemented by industry and, SCI data suggest, are deploying satisfactorily in the field. To optimize the performance of ejection mitigation countermeasures at these early stages of development, we have decided to proceed with an ejection mitigation rulemaking absent a protocol for testing rollover sensors. Underlying our approach is that, even without an explicit requirement to provide a rollover sensor, manufacturers will provide sensor(s) with their ejection mitigation curtains. We have accounted for the cost of rollover sensors in our cost/benefit analysis for this rulemaking.

Our assumption that manufacturers will provide rollover sensors is based on several factors. First, as noted above, our SCI data for lateral rollovers for vehicles currently in the field with side curtain air bags intended for ejection mitigation show these systems have deployed in rollover crashes. These data show that the installation of rollover sensors is practicable and that the sensors are working in the field. Second, this NPRM would require information in the owner's manual or other written material accompanying the vehicle to describe the ejection mitigation countermeasure that deploys in the event of a rollover if the deployable countermeasure is provided. With customer expectations at stake, there is virtually no incentive for manufacturers to provide an ejection mitigation side curtain designed to meet this NPRM without providing the sensor to deploy it in a rollover crash. In addition, manufacturers would be required to provide written information to NHTSA, upon the agency's request, explaining the basic operational characteristics of their rollover sensor system. Finally, we would deploy the ejection mitigation side curtain in the compliance test only if the owner's manual or other written material accompanying the vehicle informs the owner that the vehicle is equipped with an ejection mitigation countermeasure that deploys in the event of a rollover. If the information is not present, we would perform the headform test without deploying the ejection mitigation side curtain. An example of this situation might be a vehicle that has a side curtain primarily for side impact protection, but that uses advanced glazing to meet the ejection mitigation requirements. In this case a rollover sensor system would not be necessary. Thus, the written information provided would not indicate that there is a deployable countermeasure and the agency would not deploy the side curtain when testing this vehicle.

The agency acknowledges that the presence of a rollover sensor does not guarantee optimal performance of the sensor in the field. However, as noted earlier in this preamble and discussed further below, we are concerned as to whether specifying performance features for the sensor could satisfactorily capture the myriad of rollovers occurring in the real-world.[82] In addition, vehicle rollover crash attributes and rollover sensing needs could change as ESC and other changes are incorporated into vehicles. Rather than specify performance requirements for the sensor that might address certain types of rollover crashes and exclude others that should be addressed, this NPRM provides manufacturers maximum design flexibility in developing sensors that can achieve optimum performance in rollover crashes likely to be encountered in the real world.

2. Alternative Approaches

The agency considered alternative approaches on whether requirements for a rollover sensor should be specified at this time. These are discussed below and in the Technical Analysis for this NPRM.

One option was to propose that the rollover sensors be provided as a piece of equipment and define such a piece of equipment (Equipment Definition Option). The Equipment Definition Option involves simply having the FMVSS define the item of equipment (the rollover sensor) and having the FMVSS require the installation of the item of equipment. This option would assure a rollover sensor is present in the vehicle. However, it has the limitation of having to definitively specify the item of equipment it would be requiring, which might necessitate adopting and applying an overly restricted view of what a deployable rollover is and perhaps what it is not. For example, we can contemplate rollovers that have such an extremely slow roll rate when it would not be necessary or desirable for the countermeasure to deploy. That being the case, a reasonable definition of a rollover sensor might include a roll rate specification as a function of roll angle. Developing such a definition requires vehicle roll angle versus rate data, which are not readily available to NHTSA. Another potential drawback of this option is that without a test or tests to assess compliance with the definition, enforcement of the requirement could be restricted. An approach for a compliance test could be for NHTSA to remove the sensor from the vehicle and subject the sensor to a performance test to assess whether a specified performance requirement is achieved, but the agency has limited information at this time on which to develop performance parameters or a compliance test.

A second considered approach was to specify a test(s) that would assure the presence of a rollover sensor on the vehicle (Presence Test Option). A rollover test would be performed and the countermeasure would or would not deploy. One option was to propose a test, with which both the agency and industry have experience, which is certain to deploy the countermeasure if a sensor were present and functioning. One such test would be the FMVSS No. 208 dolly test. However, the use of the FMVSS No. 208 dolly test as a rollover sensor test might be a somewhat incomplete solution due to the variation in real world rollover crashes. Even

[82] Several types of rollover crashes are described by Viano and Parenteau, ''Rollover Crash Sensing and Safety Overview,'' SAE 2004–01–0342, *supra.*

with an indefinite development time period, there would be difficulties in defining and developing any test(s), and in determining the real-world relevance of the test procedure(s). The agency does not have sufficient knowledge of any repeatable rollover test that merits selection as the test that replicates the breadth of real-world rollovers addressed by this rulemaking. Developing tests that assure good sensor performance would require additional research, which would delay the proposal and adoption of this FMVSS.

The third approach we considered was a ''phase-plane zone'' option suggested by the Automotive Occupant Restraints Council (AORC).[83] This option basically requires the rollover sensor to deploy a countermeasure if, prior to rolling more than 90 degrees about the lateral axis, the vehicle roll angle versus rate curve exceeds a threshold. The agency has no data to independently judge the AORC deployment threshold against ideal field performance. Therefore, we cannot assure that it represents the minimally acceptable performance. This option only considers roll angle and roll rate as sensor inputs, while AORC members indicated that many systems use other sensor inputs and that future sensors may be integrated into and/or use information from ESC systems. As discussed in the Technical Analysis for this NPRM, we would need some time to develop the potential test parameters and apparatuses for this approach.

NHTSA requests comments on the following issues:

- The agency has not included any regulatory requirements for sensor(s) that will deploy ejection mitigation countermeasures during a rollover. Comments are requested on the alternative approaches considered by the agency. Are there other alternatives that the agency has not considered? Are there particular performance attributes of a sensor system and algorithm that this FMVSS should require of all vehicles? Are there any particular sensor system performance tests that should be conducted? How should the sensor system be tested, *e.g.,* a test of the system or equipment separate from the vehicle, a test of the complete vehicle in a dynamic test, etc.? Please provide field studies to support your arguments.
- Please comment on the AORC proposal for minimum sensor performance and how the agency could test for such performance, including specifics about test devices. Please discuss the appropriateness of specifying the test parameters and leaving the specific apparatus undefined.

b. Quasi-static Loading in a Compliance Test

Films of occupant kinematics in vehicle rollover testing and in DRF testing indicate that ejection mitigation countermeasures can be exposed to quasi-static loading during a rollover, in addition to short-duration impacts that the headform test replicates. Quasi-static loading can occur when an occupant contacts the countermeasure and loads it throughout or nearly throughout an entire rollover event. Once an occupant contacts the ejection countermeasure, the occupant could impose a centrifugal force on the countermeasure. That force depends upon the rotational velocity, the radius from center of rotation to contact point on the countermeasure, and the portion of occupant mass loading the countermeasure.

The value for each of these variables will be rollover and vehicle specific. Assuming a roll rate of 250 deg./s (4.4 rad./s), a radius of 1.3 m and a mass equal to half the mass of a 50th percentile adult male (37 kg), the force is equal to 931 N (209 lb).

- The agency has not studied how ejection countermeasures perform when exposed to quasi-static loading, or whether the impact test alone would adequately facilitate the manufacture of ejection countermeasures that perform well when subjected to quasi-static loading in a rollover. NHTSA requests comments on the need for an additional test(s) that would impose quasi-static loading on the ejection countermeasure. What would be an appropriate load value and loading period? What would be an appropriate quasi-static test procedure?

VII. To Which Vehicles Would the Proposed Standard Apply?

We propose that this standard would apply to passenger cars, multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 lb) or less. Those are the vehicle classes to which the FMVSS No. 214 pole test applies. Comments are requested on whether the standard should exclude the vehicle types listed below, and whether other vehicle types not listed below should also be excluded.

Convertibles. NHTSA has tentatively determined that convertibles should not be excluded from the applicability of the standard because we believe there is potential benefit and because it is feasible to build countermeasures into this type of vehicle. First, approximately 17% of the target population fatalities are in side impacts or side impacts followed by a rollover. Even absent any roof structure, we believe that side curtain air bags and/or advanced glazing may be effective in reducing ejections in this side impact population and perhaps, to a lesser degree, in the side impact followed by a rollover population. We realize that occupants of convertibles in other rollover crashes of two or more quarter-turns are extremely vulnerable due to the lack of roof structure. This is particularly true if the convertible top is down or hardtop is removed. However, survival space may exist, particularly for convertibles with roll bars behind the seats such in the Mini Cooper and Porsche Boxster. The version in the Mini Cooper is recessed behind the rear seats and deploys in a rollover. Although we have no firm data on the percentage of convertibles driven with the top up, if they are and there is a roll bar type structure, ejection mitigation countermeasures may be effective.

On the issue of feasibility, although these vehicles do not have a permanent roof structure in which to house a roof-mounted ejection mitigation curtain, Porsche has indicated to NHTSA that it is developing a door-mounted curtain that would deploy upward toward the vehicle roof in a rollover.[84] Comments are requested on the feasibility of installing door-mounted ejection mitigation curtains in convertibles on a widespread basis, and if feasible, the costs and benefits associated with door-mounted ejection mitigation curtains. Please comment on the practicability of certifying convertibles to the proposed performance test with door-mounted ejection mitigation curtains and/or advanced glazing. Could advanced glazing alone be a sufficient ejection mitigation countermeasure in convertibles? If it is not practicable to meet the proposed requirements with any countermeasures, please indicate how the proposed performance requirement and test procedure could be adjusted to be more appropriate for convertibles, such as by changes to the displacement limit, impact velocity, target locations, etc.

Vehicles that have had the original roof modified. If a vehicle were altered or modified such that the original roof were replaced, raised or otherwise modified, the original ejection mitigation window curtain that was mounted in the header above the door would be affected by such modification. NHTSA proposes excluding vehicles

[83] July 12, 2006 meeting between NHTSA and AORC (NHTSA–2006–26467–11).

[84] NHTSA–2006–26467–10.

with modified roofs from the standard, and adopting FMVSS No. 214's definition of a ''modified roof.'' That standard defines ''modified roof'' as ''the replacement roof on a motor vehicle whose original roof has been removed, in part or in total.'' However, should vehicles with door-mounted upward-deploying side curtain air bags installed as original equipments be excluded from the ejection mitigation standard if the vehicle's roof is later modified? There might not be a need to exclude such vehicles from the ejection mitigation standard if the door-mounted ejection mitigation countermeasure would not be significantly affected by the modification to the vehicle's roof.

Vehicles with a lowered floor. NHTSA does not think there is a need to exclude from the standard vehicles that have had their floors lowered by a final-stage manufacturer or alterer. It does not appear that the ejection mitigation countermeasure would be significantly affected by the modification, or that it would be overly difficult for the manufacturer to certify the compliance of the vehicle. Comments are requested on this issue.

Vehicles that have no doors, or exclusively have doors that are designed to be easily attached or removed so that the vehicle can be operated without doors. Comments are requested on whether these vehicles are still being manufactured in the U.S. Assuming the vehicles are being manufactured, NHTSA proposes excluding the vehicles on practicability grounds. Comments are requested on this issue.

Walk-in vans. We propose excluding these vehicles on practicability grounds.

Police vehicles with security partitions. Considering that law enforcement vehicles are more likely to be involved in risky driving operations than other passenger vehicles, NHTSA would prefer that the vehicles provide ejection mitigation countermeasures. However, security partitions (*e.g.,* prisoner partitions) are necessary for the safety and security of the law enforcement officers, and they must be flush against the sides of the vehicle to prevent a prisoner's hand or article from intruding into the officer's compartment. We would like information as to whether police vehicles with security partitions should be excluded from the standard. Comments are requested on whether innovative partition designs exist that would permit the side curtain air bag to be deployed effectively without interference from a security partition. Alternatively, is it feasible to incorporate separate curtains for the front and rear passenger compartments? Is it feasible to incorporate a window curtain for the front compartment and advanced glazing for the rear compartment? Is it feasible to incorporate air bag curtains that deploy upwards (*e.g.,* as in the Volvo C70?) In addition, would advanced glazing alone be sufficient in these vehicles to meet the standard? The agency has tentatively decided not to exclude vehicles with partitions generally, because it appears that a partition other than a security (prisoner) partition could be made compatible with a window air bag curtain by allowing a space between the daylight opening and the partition edge. Comments are requested on these tentative determinations.

VIII. The Proposed Lead Time and Phase-In Schedules

Motor vehicle manufacturers will need lead time to develop and install ejection mitigation countermeasures and rollover sensor algorithms. Although inflatable side curtain air bags are being developed in new vehicles to meet the September 11, 2007 final rule (as amended June 9, 2008) incorporating a dynamic pole test in FMVSS No. 214, to meet the requirements proposed today these side curtains will have to be made larger to cover more of the window opening, will have to be made more robust to remain inflated longer, and will have to be considerably enhanced (by tethering and other means) to retain vehicle occupants within the vehicle. Moreover, rollover sensor algorithms will be needed to deploy the ejection mitigation countermeasures in rollover crashes, to augment the sensors needed to deploy the side curtains in side impacts.[85] Our tests of vehicles to the proposed ejection mitigation requirements found that vehicle manufacturers are at different stages with respect to designing inflatable ejection mitigation side curtains that meet the proposed requirements. Vehicle manufacturers also face unique manufacturing constraints and challenges, *e.g.,* each face differences in the technological advances incorporated in their current air bag systems, differences in engineering resources, and differences in the numbers and type of vehicles for which ejection mitigation systems will need to be incorporated. NHTSA believes that these differing situations can best be accommodated by phasing in the ejection mitigation requirements proposed today over a period of four years, and by allowing the use of advance credits.

We also believe that the phase-in of the ejection mitigation requirements should start after the date most vehicles will be certified as meeting the FMVSS No. 214 side impact pole test requirements.[86] This is in recognition of the potential for a side curtain system to meet both FMVSS No. 214 and the ejection mitigation requirements and that meeting both sets of requirements will place demands on manufacturers and air bag system suppliers to develop a ''new generation'' of side air bag curtains and sensors beyond those installed to meet the FMVSS No. 214 test requirements. Taking into account all available information, including but not limited to the technologies that could be used to meet the proposed testing requirements, the SAFETEA–LU provision that a final rule be issued by October 1, 2009, and the relatively low percentage of the fleet that has ejection mitigation countermeasures capable of meeting the proposed requirements, the agency is proposing to phase-in the new ejection mitigation requirements starting the first September 1 three years from the date of publication of a final rule. Assuming that a final rule would be issued in January 2011, NHTSA proposes that the phase-in would be implemented in accordance with the following schedule:

- 20 percent of each manufacturer's vehicles manufactured during the first production year beginning three years after publication of a final rule (for illustration purposes, that effective date would be September 1, 2014);
- 40 percent of each manufacturer's vehicles manufactured during the production year beginning, for illustration purposes, September 1, 2015;
- 75 percent of vehicles manufactured during the production year beginning, for illustration, September 1, 2016;

[85] The FMVSS No. 214 final rule/response to petitions for reconsideration acknowledged that current side air bag sensors will have to be developed further to sense when it would be appropriate to deploy in a crash situation involving impacts up to 32 km/h (20 mph). NHTSA provided manufacturers until September 1, 2014 to develop these sensors. 73 FR 32473, June 9, 2008, Docket No. NHTSA–2008–0104.

[86] The FMVSS No. 214 rule will be phased in and will apply to 80 percent of vehicles with a GVWR of 8,500 pounds or less manufactured on or after September 1, 2013. Advance credits may be used. All vehicles with a GVWR of 8,500 lb or less (except for altered and multistage vehicles and vehicles produced by limited line and small volume manufacturers) manufactured on or after September 1, 2014 must meet the upgraded FMVSS No. 214 requirements without use of advanced credits. All vehicles with GVWRs 8,500 to 10,000 lb (except for altered and multistage vehicles) manufactured on or after September 1, 2015 must meet the upgraded FMVSS No. 214 pole test requirements. All altered and multistage vehicles manufactured on or after September 1, 2016 must meet the upgraded FMVSS No. 214 requirements.

• And all vehicles (without use of advanced credits) manufactured on or after, for illustration, September 1, 2017.

NHTSA believes that the proposed phase-in would best address a number of issues. It would allow manufacturers to focus their resources in an efficient manner. Data obtained from the agency's 2008 model year New Car Assessment Program indicate that approximately 40 percent of 2008 model year vehicles are available with side air bags that are designed to deploy in a rollover and stay inflated for a duration longer than that needed to provide protection in a side impact not involving a rollover. However, this does not mean that these vehicles would be capable of complying with this NPRM. For example, the air bag curtain may not have sufficient window coverage or stay inflated long enough to meet the proposed requirements. Rather, these ejection mitigation systems are designed to the manufacturers' internal design criteria.

The agency believes that it would not be possible for manufacturers that produce large numbers of models of passenger cars and LTVs to simultaneously design and install ejection mitigation air bags meeting the proposed requirements in all of their vehicles at once. Manufacturers have limited engineering resources, and will have been using their resources to improve the performance of LTVs and passenger cars in the dynamic pole test and the moving deformable barrier vehicle-to-vehicle crash test of FMVSS No. 214. NHTSA seeks to provide vehicle manufacturers sufficient opportunity to adopt the best designs possible as quickly as possible. The agency tentatively concludes that a 4-year phase-in beginning three full years after publication of a final rule will provide the lead time needed while achieving the life-saving benefits of the final rule in as expeditious a manner as possible.

NHTSA further believes that the proposed phase-in would not be incompatible with the agency's efforts to upgrade FMVSS No. 216, ''Roof crush resistance.'' The roof strength upgrade will mainly require structural redesigns in the areas of the A- and B-pillars, side and front header, and roof cross beams, particularly for heavier vehicles that were not previously subject to the standard. Potential vehicle modifications could include the incorporation of higher strength or higher gauge steel, adding supporting materials in the pillars, and/or reinforcing the roof-pillar joints. NHTSA believes that any structural changes needed in response to the new roof crush resistance requirements will have an inconsequential impact on the ability to implement ejection mitigation countermeasures, such as rollover curtain air bags. Possible ancillary changes could include the need to accommodate larger air bag packaging and new curtain attachment points. Nonetheless, the agency is considering overlapping the phase-ins of both the roof crush resistance and ejection mitigation upgrades to afford vehicle manufacturers the opportunity to make needed modifications for compliance with both requirements at one time. Ultimately, the improved roof strength provided by FMVSS No. 216, in combination with the ejection mitigation countermeasures, will provide comprehensive protection for vehicle occupants involved in rollover crashes.

We also propose to include provisions under which manufacturers can earn credits towards meeting the applicable phase-in percentages if they meet the new ejection mitigation requirements ahead of schedule. In addition, as we have done with other standards, we are proposing a separate alternative to address the special problems faced by limited line and multistage manufacturers and alterers in complying with phase-ins. A phase-in generally permits vehicle manufacturers flexibility with respect to which vehicles they choose to initially redesign to comply with new requirements. However, if a manufacturer produces a very limited number of lines, a phase-in would not provide such flexibility. NHTSA is accordingly proposing to permit ''limited line'' manufacturers that produce three or fewer carlines the option of achieving full compliance when the phase-in is completed. Flexibility would be allowed for vehicles manufactured in two or more stages and altered vehicles from the phase-in requirements. These vehicles would not be required to meet the phase-in schedule and would not have to achieve full compliance until one year after the phase-in is completed. Also, as with previous phase-ins, NHTSA is proposing reporting requirements to accompany the phase-in.

IX. The Estimated Benefits and Costs of This Rulemaking

We are placing in the docket a Preliminary Regulatory Impact Analysis (PRIA) to accompany this NPRM.[87] The PRIA analyzes the potential impacts of the proposed ejection mitigation requirements. A summary of the PRIA follows. Comments are requested on the analyses.[88]

The agency believes that curtain air bags will be used to pass the proposed ejection mitigation test. We believe that most manufacturers will have to widen the side air bag curtains that they are providing to meet FMVSS No. 214's pole test requirements, or replace combination (combo) seat-mounted side air bags with a curtain to pass the impactor test of this NPRM. We assume that vehicle manufacturers would install a single-window curtain for each side of the vehicle, and that these window curtains would provide protection for both front and rear seat occupants.

We primarily examined two different types of countermeasures that are designed to meet the proposed headform requirements. One approach covers the opening with a wider curtain air bag (called ''full curtain'' in the PRIA). However, we believe that even if the window is completely covered with a curtain air bag, some partial ejections could occur through a potential gap along the bottom of the air bag between the air bag and vehicle's window sill. The second countermeasure entails the installation of laminated glazing in the front window openings to prevent ejections through test point A1 and the lower gap (called ''partial curtain plus laminated glazing'' in the PRIA). In addition, we also examined how manufacturers would design an ejection mitigation system if we change the test requirements in one of two ways that may allow different countermeasures to comply with the standard. First, we analyzed the effect of reducing the impact speed for the 1.5 second delay test from 24 km/h to 20 km/h for the front lower corner (called ''A1 full curtain'' in the PRIA).[89] Next we

[87] The PRIA may be obtained by contacting the docket at the address or telephone number provided at the beginning of this document.

[88] The analyses were based on information voluntarily submitted by manufacturers at the end of 2006. Since that time, various manufacturers have reported that product plans pertaining to other rulemakings have changed due to changed economic circumstances. Comments are requested on the estimates provided in this section and in the PRIA.

[89] Notwithstanding the examination of these changes to the test requirements, the goal remains coverage of the whole window opening. As part of the rulemaking effort, the agency tested a prototype curtain ejection mitigation system developed by TRW in a dynamic rollover fixture (DRF). The test results showed that in a near worst case ejection condition, an unrestrained small child could be ejected through a small window opening (target position A1) when the area is not fully covered, even when initially aimed at another part of the window (target position A2). For additional discussion, see a report titled ''NHTSA's Crashworthiness Rollover Research Program,''

Continued

analyzed the effect of reducing the number of target points to one, for both the 24 km/h and 16 km/h impact tests.

Benefits. The agency first identified the baseline target population and then estimated the fatality or injury reduction rate. The target population was defined as partially and completely ejected occupants in rollovers and certain side crashes. The agency's annualized injury data from 1997 to 2005 NASS CDS and fatality counts adjusted to 2005 FARS levels show that there are 6,174 fatalities and 5,271 MAIS 3+ non-fatal injuries for occupants ejected through side windows. We excluded from the estimate of this ejection mitigation rulemaking 649 fatalities and 243 MAIS 3+ non-fatal injuries already accounted for in the FMVSS No. 214 pole test rulemaking (September 11, 2007; 72 FR 51907). The most significant adjustment to the target population was for assumed full compliance with the Electronic Stability Control (ESC) final rule (April 6, 2007; 72 FR 17236), which reduced the target population by 3003 fatalities and 2,854 MAIS 3+ non-fatal injuries. Finally, after adjusting for anticipated compliance with today's proposed rule, we estimate that this NPRM being met by a full curtain would save 402 lives and prevent 310 serious injuries, annually.[90] For the estimated benefits, we assumed that the belt use rate observed in 2005 remains unchanged. The majority of the benefits are for unbelted occupants but the analysis shows that 13 percent of the benefits would be from belted occupants: 10 percent from rollovers and about 3 percent from side crashes considered.

Costs. Potential compliance costs for the linear headform test vary considerably and are dependent upon the types of the FMVSS No. 214 head/side air bags that will be installed by vehicle manufacturers to comply with the oblique pole test requirements. For vehicles with two rows of seats to be covered with a curtain air bag, we estimate an ejection mitigation system (consisting of 2 window curtains, 2 thorax air bags for the front seat occupants only, 2 side impact sensors and 1 rollover sensor) would cost about $299.44, when compared to a vehicle with no side air bags. This is $49.97 more than a vehicle with a side air bag system designed to meet the FMVSS No. 214 pole tests. The MY 2011 sales show that 25% of light vehicles will have a third row seat. When the first through 3rd row are covered with a curtain air bag, we estimated the cost per vehicle will increase by $61.92, when compared to a vehicle equipped with a FMVSS No. 214-curtain system.

The manufacturers' plans for MY 2011 head air bag sales show that about 1%, 44% and 55% of vehicles would be equipped with combination air bags, curtain air bags without rollover sensors and with rollover sensors, respectively.[91] Thus, manufacturers are planning to provide 55% of the MY 2011 vehicles with an expensive part of the cost of meeting the ejection mitigation test, the rollover sensor, which is estimated to cost $38.02. Given that 25% of light trucks have 3 rows of seats, we estimate the average cost per vehicle would increase by $54 if there were no voluntary compliance by manufacturers for MY 2011. Manufacturers' plans for MY 2011 indicate at least $20 per vehicle of costs toward this proposal. Thus, compared to the manufacturers' plans, this ejection mitigation proposal would add about $34 per light vehicle, at a total cost of $583 million for the full curtain countermeasure.

TABLE 24—TOTAL AND AVERAGE VEHICLE COSTS *

[$2007]

Costs	Ejection mitigation system	Weighted MY 2011 manufacturers' plans	Incremental costs
Per Vehicle Costs	$54	$20	$34.
Total Costs (17 million vehicles)	$920 million	$337 million	$583 million.

* The system costs are based on vehicles that are equipped with the FMVSS No. 214-curtain system. According to vehicle manufacturers' projections made in 2006, 98.7% of MY 2011 vehicles will be equipped with curtain bags and 55% of vehicles with curtain bags will be equipped with a roll sensor.

Cost per Equivalent Life Saved and Net Benefits. The PRIA estimated the net costs per equivalent life saved. For the full curtain countermeasure, the low end of the range is $1.6 million per equivalent life saved, using a 3 percent discount rate. The high end of the range is $2.0 million per equivalent life saved, using a 7 percent discount rate.

Net benefit analysis differs from cost effectiveness analysis in that it requires that benefits be assigned a monetary value, and that this value is compared to the monetary value of costs to derive a net benefit. When we assume that the percentage of MY 2011 air bag sales remain unchanged (*i.e.,* 1%, 44% and 55% of vehicles would be equipped with combination air bags, curtain air bags without rollover sensor and with rollover sensors, respectively), it resulted in $1,680 million net benefits using a 3 percent discount rate, and $1,217 million using a 7 percent discount rate. Both of these are based on a $6.1 million cost per life,[92] as shown below.

Analysis of Alternatives. The following tables show the estimated benefits, costs, cost per equivalent life saved, and net benefits for the three alternative countermeasures considered.

Summers, S., et al., 19th International Technical Conference on the Enhanced Safety of Vehicles,'' paper number 05–0279, 2005. These benefits estimates are based on lateral rollovers. We do not know the effectiveness of these bags in other rollover events, such as end-to-end or more complex rolls. We suspect that the effectiveness would decrease noticeably in non-lateral rollovers.

[90] The benefit estimate was made based on particular assumptions used in the analysis. When inputs that affect the analysis are uncertain, the agency makes its best judgment about the range of values that will occur through sensitivity analyses, as discussed in the PRIA. The sensitivity analyses showed that the ejection mitigation system would save as many as 581 lives in most favorable conditions and as little as 390 lives in least favorable conditions.

[91] Our analysis shows that most vehicles that are equipped with combination bags would be convertibles (about 1%). The agency asks for comments on whether it should exempt convertibles from the ejection mitigation requirement on practicability grounds.

[92] The Department of Transportation has determined that the best current estimate of the economic value of preventing a human fatality is $5.8 million (''Treatment of the Economic Value of a Statistical Life in Departmental Analyses,'' Tyler D. Duval, Assistant Secretary for Transportation Policy, February 5, 2008. The $6.1 million comprehensive cost was based on the $5.8 million statistical life.

TABLE 25—INCREMENTAL BENEFITS

Countermeasure	Weighted risk of ejection method		Uniform risk of ejection method	
	Fatalities	Serious injuries	Fatalities	Serious injuries
Full Curtain	402	310	390	296
A1 Full Curtain	391	301	372	283
Partial Curtain plus Laminated Glazing	494	391	490	386

TABLE 26—INCREMENTAL COSTS

[In 2007 economics]

Countermeasure	Per average vehicle	Total (In millions)
Full Curtain	$34	$583
A1 Full Curtain	34	583
Partial Curtain plus Laminated Glazing	88	1,494

TABLE 27—COST PER EQUIVALENT LIFE SAVED AND NET BENEFITS

Countermeasure	Total cost	Weighted risk of ejection method				Uniform risk of ejection method			
		Cost per equivalent life saved		Net benefits		Cost per equivalent life saved		Net benefits	
		3%	7%	3%	7%	3%	7%	3%	7%
Full Curtain	$583	$1.57	$1.98	$1,680	$1,217	$1.63	$2.04	$1,605	$1,158
A1 Full Curtain	583	1.62	2.03	1,615	1,166	1.68	2.11	1,534	1,101
Partial Curtain plus Laminated Glazing	1,494	3.27	4.11	1,292	723	3.30	4.14	1,271	706

The estimated benefits from the ejection mitigation systems considered show that the partial curtain plus front window laminated glazing system would result in most benefits (494 lives saved) followed by the full curtain and the A1 full curtain. However, the curtain plus glazing system would be the most costly system ($1,624 million) followed by the full curtain and the A1 full curtain. When the comprehensive saving (for preventing a loss of statistical life) was considered, the net benefit analysis showed that the full curtain would result in the highest net benefits.

In the PRIA's Sensitivity Analyses Section (Section VII), we analyzed costs and benefits that would result from the different assumptions used in the analysis. We seek public input on our analysis of costs and benefits under 100% belt use rate (one of NHTSA's goals), and also under the scenario where alcohol-related crashes are removed from the analysis.

X. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is economically significant and was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. NHTSA has placed in the docket a Preliminary Regulatory Impact Analysis (PRIA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized in section IX of this preamble.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this NPRM would not have a significant economic impact on a substantial number of small entities. Small organizations and small governmental units would not be significantly affected since the potential cost impacts associated with this proposed action should not significantly affect the price of new motor vehicles.

The proposed rule would indirectly affect air bag manufacturers and suppliers. NHTSA believes these entities do not qualify as small entities.

The proposed rule would directly affect motor vehicle manufacturers. The PRIA discusses the economic impact of the proposed rule on small vehicle manufacturers, of which there are six. We believe that the proposed rule will not have a significant economic impact on these manufacturers. The standard would employ static testing of the ejection mitigation system. Small vehicle manufacturers are likely to certify compliance using a combination of component testing by air bag suppliers and engineering analyses. Already much of the ejection mitigation system development work for these small vehicle manufacturers is done by air bag suppliers. Typically, air bag suppliers will supply larger vehicle manufacturers during the development and phase-in period, and do not have the design capabilities to handle all of the smaller manufacturers. This rulemaking proposal accounts for this limitation by proposing to allow small manufacturers and limited line manufacturers to comply with the

upgraded requirements at the end of the phase-in period, to reduce the economic impact of the rule on these small entities.

NHTSA notes that final-stage vehicle manufacturers buy incomplete vehicles and complete the vehicle. Alterers modify new vehicles, such as by raising the roofs of vehicles. In either case, NHTSA tentatively concludes that the impacts of a final rule on such entities would not be significant. Final-stage manufacturers or alterers engaged in raising the roofs of vehicles would not be affected by this NPRM, because it proposes to exclude vehicles with raised roofs from the ejection mitigation requirements. NHTSA does not believe at this point that the ejection mitigation system would be affected by modifications other than the modification of the vehicle roof. Additional information concerning the potential impacts of the proposed requirements on small entities is presented in the PRIA.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would 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.''

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's proposed rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: In some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's proposed rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

Executive Order 12778 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows.

The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year ($100 million adjusted annually for inflation, with base year of 1995). These effects are discussed earlier in this preamble and in the PRIA.

UMRA also requires an agency issuing a final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.'' The preamble and the PRIA identify and consider several alternatives to the proposal, and the resulting cost and benefits of various potential countermeasures. The alternatives considered were: (a) Exclusion of the front lower corner of the front side window area (test point A1); (b) a component test consisting of a single headform impact at the center of the side window opening area; and, (c) a full-vehicle dynamic test to evaluate a countermeasure's retention capability instead of the headform component test proposed by this NPRM. The countermeasures examined for alternatives (a) and (b) were various levels of partial window coverage (''partial curtain''). We also examined the potential countermeasure of a partial curtain in combination with the installation of laminated glazing in the front window openings to prevent ejections through test point A1 and the lower gap (''partial curtain plus laminated glazing''). However, as discussed in this preamble and in the PRIA, none of these alternative proposals and potential countermeasures would fully achieve the objectives of the alternative preferred by NHTSA. The agency believes that it has selected the least costly, most cost-effective and least burdensome alternative that achieves the objectives of the rulemaking. The agency requests comments on this issue.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

Have we organized the material to suit the public's needs?

Are the requirements in the rule clearly stated?

Does the rule contain technical language or jargon that isn't clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The proposal contains a collection of information, *i.e.,* the proposed phase-in reporting requirements, proposed requirements to place consumer information about the readiness indicator and about the sensor in the vehicle owner's manual (S4.2.3), and proposed requirements for providing information to NHTSA about a rollover sensor in a compliance test (S4.2.4). There is no burden to the general public.

The collection of information would require manufacturers of passenger cars and of trucks, buses and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the ejection mitigation requirements of this proposed FMVSS. The phase-in of the test requirements would be completed approximately seven years after publication of a final rule. The purpose of the reporting requirements would be to aid the agency in determining whether a manufacturer has complied with the ejection mitigation requirements during the phase-in of those requirements.

We are submitting a request for OMB clearance of the collection of information required under today's proposal. These requirements and our estimates of the burden to vehicle manufacturers are as follows:

- NHTSA estimates that there are 21 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less;
- NHTSA estimates that the total annual reporting and recordkeeping burden resulting from the collection of information is 1,260 hours;
- NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $0.

No additional resources would be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

Under the PRA, the agency must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each collection of information. The Office of Management and Budget (OMB) has promulgated regulations describing what must be included in such a document. Under OMB's regulations (5 CFR 320.8(d)), agencies must ask for public comment on the following:

(1) 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;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected; and,

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Organizations and individuals that wish to submit comments on the information collection requirements should direct them to NHTSA's docket for this NPRM.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

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, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. NHTSA has searched for, but has not found, any applicable voluntary consensus standards.

XI. Public Participation

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this proposed rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.
—Provide solid technical and cost data to support your views.
—If you estimate potential costs, explain how you arrived at the estimate.
—Tell us which parts of the proposal you support, as well as those with which you disagree.
—Provide specific examples to illustrate your concerns.
—Offer specific alternatives.
—Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
—Be sure to include the name, date, and docket number with your comments.

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments to the docket electronically by logging onto *http://www.regulations.gov* or by the means given in the **ADDRESSES** section at the beginning of this document.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit a copy from which you have deleted the claimed confidential business information to the docket.

When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that the docket receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by the docket at the address given above under **ADDRESSES**. You may also see the comments on the Internet (*http://regulations.gov*).

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List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements, Incorporation by reference.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR parts 571 and 585 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5(b) would be amended by redesignating paragraph (11) as paragraph (12), and by adding new paragraph (11) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(11) *Ejection Mitigation Headform Drawing Package.* Copies may be obtained by contacting: Reprographics Technologies, 9000 Virginia Manor Rd., Beltsville, MD 20705, telephone (301) 210–5600.

* * * * *

3. Section 571.226 would be added to read as follows:

§ 571.226 Standard No. 226; Ejection Mitigation.

S1. *Purpose and Scope.* This standard establishes requirements for ejection mitigation systems to reduce the likelihood of complete and partial ejections of vehicle occupants through side windows during rollovers or side impact events.

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg or less, except walk-in vans and modified roof vehicles.

S3. *Definitions.*

Ejection impactor means a device specified in S7.1 of this Standard No. 226 that is a component of the ejection mitigation test device and is the moving mass that strikes the ejection mitigation countermeasure. It consists of an ejection headform attached to a shaft.

Ejection impactor targeting point means the intersection of the y-axis of the ejection headform and the outer surface of the ejection headform.

Ejection mitigation countermeasure means a device or devices, except seat belts, integrated into the vehicle that reduce the likelihood of occupant ejection through a side window opening, and that requires no action by the occupant for activation.

Ejection propulsion mechanism means a device specified in S7.2 of this Standard No. 226 that is a component of the ejection mitigation test device consisting of a mechanism capable of propelling the ejection impactor and constraining it to move along its axis or shaft.

Limited-line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

Modified roof means the replacement roof on a motor vehicle whose original roof has been removed, in part or in total.

Row means a set of one or more seats whose seat outlines do not overlap with the seat outline of any other seats, when all seats are adjusted to their rearmost normal riding or driving position, when viewed from the side.

Seat outline means the outer limits of a seat projected laterally onto a vertical longitudinal vehicle plane.

Side daylight opening means, other than a door opening, the locus of all points where a horizontal line, perpendicular to the vehicle vertical longitudinal plane, is tangent to the periphery of the opening, including the area 50 millimeters inboard of the window glazing, but excluding any flexible gasket material or weather striping used to create a waterproof seal between the glazing and the vehicle interior.

Small manufacturer means an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States.

Target means target outline.

Target outline means the x-z plane projection of the ejection headform face as shown in Figure 1.

Walk-in van means a special cargo/mail delivery vehicle that has only one designated seating position. That designated seating position must be forward facing and for use only by the driver. The vehicle usually has a thin and light sliding (or folding) side door for easy operation and a high roof clearance that enables a person of medium stature to enter the passenger compartment area in an upright position.

Zero displacement plane means, a vertical plane parallel to the vehicle longitudinal centerline and tangent to the most outboard surface of the ejection headform when the headform is aligned with an impact target location and just touching the inside surface of a window covering the side daylight opening.

S4. *Phase-in, performance and other requirements.*

S4.1 *Phase-in requirements.*

S4.1.1 Except as provided in S4.1.3 of this Standard No. 226, for vehicles manufactured on or after [date first September 1 three full years after the publication date of the final rule; for illustration purposes, assume that the date is September 1, 2014] to [date that is the August 31 that is seven years after the publication date of the final rule; for illustration purposes, August 31, 2017], a percentage of each manufacturer's production, as specified in S8, shall meet the requirements of S4.2. Vehicles that are not subject to the phase-in may

be certified as meeting the requirements specified in this Standard No. 226.

S4.1.2 Except as provided in S4.1.3 of this section, each vehicle manufactured on or after September 1, 2017 [date provided for illustration purposes] must meet the requirements of S4.2.

S4.1.3 *Exceptions from the phase-in; special allowances.*

(a) Vehicles produced by a small manufacturer and by a limited line manufacturer are not subject to S4.1.1 of this Standard No. 226, but are subject to S4.1.2.

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2018 [dates provided in this section are for illustration purposes], after having been previously certified in accordance with part 567 of this chapter, and vehicle manufactured in two or more stages before September 1, 2018, are not required to meet the requirements of S4.2. Vehicles that are altered on or after September 1, 2018, and vehicles that are manufactured in two or more stages on or after September 1, 2018, must meet the requirements of S4.2.

S4.2 *Performance and other requirements.*

S4.2.1 When the ejection propulsion mechanism propels the ejection impactor into the impact target locations of each side daylight opening of a vehicle according to the test procedures specified in S5 of this Standard No. 226, the most outboard surface of the ejection headform must not displace more than 100 millimeters beyond the zero displacement plane.

S4.2.2 Vehicles that have an ejection mitigation countermeasure that deploys in the event of a rollover must have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and must be clearly visible from the driver's designated seating position. The same readiness indicator required by S4.5.2 of FMVSS No. 208 may be used to meet the requirement. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.2.3.

S4.2.3 *Written information.*

(a) Vehicles with an ejection mitigation countermeasure that deploys in the event of a rollover must be described as such in the vehicle's owner manual or in other written information provided by the vehicle manufacturer to the consumer.

(b) Vehicles that have an ejection mitigation countermeasure that deploys in the event of a rollover must include in written information a discussion of the readiness indicator required by S4.2.2, specifying a list of the elements of the system being monitored by the indicator, a discussion of the purpose and location of the telltale, and instructions to the consumer on the steps to take if the telltale is illuminated.

S4.2.4 *Technical Documentation.* For vehicles that have an ejection mitigation countermeasure that deploys in the event of a rollover, the vehicle manufacturer must make available to the agency, upon request, the following information: A discussion of the sensor system used to deploy the countermeasure, including the pertinent inputs to the computer or calculations within the computer and how its algorithm uses that information to determine if the countermeasure should be deployed.

S5. *Test procedures.*

S5.1 Demonstrate compliance with S4.2 of this Standard No. 226 in accordance with the test procedures specified in this standard, under the conditions of S6, using the equipment described in S7. In the impact test described by these procedures, target locations are identified (S5.2) and the zero displacement plane location is determined (S5.3). The glazing is pre-broken, fully retracted or removed prior to the impact test (S5.4). The countermeasure is deployed, if applicable, and an ejection impactor (see S7.1) strikes impact target locations at specified speeds and times (S5.5). The lateral displacement of the ejection impactor beyond the zero displacement plane is measured.

S5.2 *Determination impact target locations.* To identify the impact target locations, the following procedures are performed with the x and z axes of the target outline, shown in Figure 1 (provided for illustration purposes), aligned within ±1 degree of the vehicle longitudinal and vertical axes, respectively, and the x-z plane of the target outline within ±1 degree of a vehicle vertical longitudinal plane.

S5.2.1 *Preliminary target locations.*

(a) Determine the location of an offset-line within the daylight opening by projecting each point of the side daylight opening laterally onto a vehicle vertical longitudinal plane. Move each point by 25 ± 2 mm towards the center of the side daylight opening and perpendicular to a line tangent to the projection at that point, while maintaining the point on a vehicle vertical longitudinal plane.

(b) Place target outlines at any location inside the offset-line where the target outline is tangent to within ±2 mm of the offset-line at just two or three points (see Figure 2) (figure provided for illustration purposes).

S5.2.2 *Determination of primary target locations.* Divide the side daylight opening into four quadrants by passing a vertical line and a horizontal line, in a vehicle vertical longitudinal plane, through the geometric center of the daylight opening.

S5.2.2.1 *Front windows.* For any side daylight opening forward of the vehicle B-pillar, the primary quadrants are the forward-lower and rearward-upper.

S5.2.2.2 *Rear windows.* For any side daylight opening rearward of the B-pillar, the primary quadrants are the forward-upper and rearward-lower.

S5.2.2.3 The primary targets have outlines whose center is within the primary quadrants, regardless of the location of the primary quadrant outline. If there is more than one target outline center in each primary target quadrant, maintain the lowest target outline in the lower quadrants and the highest targets in the upper quadrants. If there is a primary quadrant that does not contain a target outline center, the target outline whose center is closest to the primary quadrant outline becomes the primary target (see Figure 3) (figure provided for illustration purposes).

S5.2.3 *Determination of secondary target locations.*

S5.2.3.1 *Front windows.* Measure the horizontal distance between the centers of the primary target outlines. For a side daylight opening forward of the B-pillar, place one secondary target outline centered rearward of the forward primary target by one-third of the horizontal distance between the primary target outlines and tangent with upper portion of the offset-line. Place another secondary target outline centered rearward of the forward primary target by two-thirds of the horizontal distance between the primary target outlines and tangent with the lower portion of the offset-line (see figure 4) (figure provided for illustration purposes).

S5.2.3.2 *Rear windows.* For side daylight openings rearward of the B-pillar, place one secondary target outline centered rearward of the forward primary target by one-third of the horizontal distance between the primary target outlines and tangent with lower portion of the offset-line. Place another secondary target outline centered rearward of the forward primary target by two-thirds of the horizontal distance between the primary target outlines and tangent with the upper portion of the offset-line (see Figure 4) (figure provided for illustration purposes).

S5.2.4 *Target adjustment.*

5.2.4.1 *Target elimination and reconstitution.*

5.2.4.1.1 *Target elimination.* Determine the horizontal and vertical distance between the centers of the targets. If the horizontal distance between the target centers is less than 135 mm and the vertical distance is less than 170 mm, eliminate the targets in the order of priority given in steps 1 through 4 of Table 1 (see Figure 5) (figure provided for illustration purposes). In each case, both the target centers must be closer than 135 mm and 170 mm in the horizontal and vertical directions, respectively. If the horizontal distance between the targets is not less than 135 mm or the vertical distance is not less than 170 mm, do not eliminate the target. Continue checking all the targets listed in steps 1 through 4 of Table 1.

TABLE 1—PRIORITY LIST OF TARGET DISTANCE TO BE CHECKED AGAINST HORIZONTAL AND VERTICAL LIMITS

Step	Measure distance of these target centers	Eliminate this target if horizontal and vertical distances are less than 135 mm and 170 mm, respectively *
1	Upper Secondary to Lower Secondary	Upper Secondary.
2	Upper Primary to Upper or Remaining Secondary	Upper or Remaining Secondary.
3	Lower Primary to Lower or Remaining Secondary	Lower or Remaining Secondary.
4	Upper Primary to Lower Primary	Upper Primary.

* The target centers must be closer than 135 mm and 170 mm in the x and z directions, respectively.

S5.2.4.1.2 *Target reconstitution.* If after following the procedure given in S5.2.4.1.1, there are only two targets remaining, determine the absolute distance between the centers of these targets. If this distance is greater than or equal to 360 mm, place a target such that the center of its outline bisects a line connecting the centers of the remaining targets.

S5.2.4.2 *Rearmost target location.*

(a) Except as provided in S5.2.4.2(b), if a side daylight opening extends rearward of a transverse vertical vehicle plane located 600 mm behind (1) the seating reference point of the last row seat adjacent to the opening, in the case of a vehicle with fewer than 3 rows, or (2) the 3rd row seat adjacent to the opening, in the case of a vehicle with 3 or more seating rows, the transverse vertical vehicle plane defines the rearward edge of the daylight opening for the purposes of determining target locations.

(b) When the last row seat adjacent to the opening, in the case of a vehicle with fewer than 3 rows, or the 3rd row seat adjacent to the opening, in the case of a vehicle with 3 or more seating, is not fixed in the forward facing direction, the side daylight opening may extend farther rearward then specified in S5.2.4.2(a) under the following conditions. With the seat in any non-forward facing orientation, the seat back set at an inclination position closest to the manufacturer's design seat back angle, and all other seat adjustments at any potential position of adjustment, determine the location of a vertical lateral vehicle plane located 600 mm behind the rearmost portion of the seat. The target area extends to this vertical plane if it is farther rearward than the plane determined in S5.2.4.2(a).

S5.3 *Determination of zero displacement plane.* The glazing covering the target location of the side daylight opening being tested is intact and in place in the case of fixed glazing and intact and fully closed in the case of movable glazing. With the ejection impactor targeting point aligned within ±2 mm of the center of any target location specified in S5.2, and with the ejection impactor on the inside of the vehicle, slowly move the impactor towards the window until contact is made with the interior of the glazing with no more than 20 N of pressure being applied to the window. The location of the most outboard surface of the headform establishes the zero displacement plane for this target location.

S5.4 *Window position.* Prior to impact testing, the glazing covering the target location must be removed from the side daylight opening, fully retracted, or pre-broken according to the procedure in S5.4.1, at the option of the vehicle manufacturer.

S5.4.1 *Window glazing pre-breaking procedure.*

S5.4.1.1 *Breakage pattern.* Locate the geometric center of the daylight opening, established in S5.2.2 of this Standard No. 226. Mark the surface of the window glazing in a horizontal and vertical grid of points separated by 50 ± 2 mm with one point coincident within ±2 mm of the geometric center of the daylight opening (see Figure 6) (figure provided for illustration purposes).

S5.4.1.2 *Breakage method.*

(a) Start with the inside surface of the window and forward-most, lowest mark made as specified in S5.4.1.1 of this Standard No. 226. Use a center punch to make a hole in the glazing. The punch tip has a 5 ± 2 mm diameter prior to coming to a point. The spring is adjusted to require 150 ± 25 N of force to activate the punch. Apply pressure to the center punch in a direction ±10 degrees perpendicular to the window surface.

(b) Use a 100 ± 10 mm × 100 ± 10 mm piece of rigid material as a reaction surface on the opposite side of the glazing to prevent to the extent possible the window surface from deforming by more than 10 mm when pressure is being applied to the hole-punch.

(c) Continue making holes by moving rearward in the grid until the end of a row is reached. Then move to the forward-most mark on the next higher row and make a hole. Continue in this pattern until all the holes on the inside surface of the glazing are made.

(d) Repeat the process on the outside surface of the window.

(e) If punching a hole causes the glazing to disintegrate, halt the breakage procedure and proceed with the headform impact test.

S5.5 *Impact speeds and time delays.*

(a) *Vehicles with an ejection mitigation countermeasure that deploys in a rollover.* Using the ejection propulsion mechanism, propel the ejection impactor such that it strikes:

(1) Any target location specified in S5.2 of this Standard No. 226, 6.0 ± 0.1 seconds after activation of an ejection mitigation countermeasure that deploys in the event of a rollover and at a velocity of 16 ± 0.5 km/h; and,

(2A) [Alternative 1 to paragraph (2)] Any target location specified in S5.2 of this Standard No. 226, 1.5 ± 0.1 seconds after activation of an ejection mitigation countermeasure that deploys in the event of a rollover and at a velocity of 24 ± 0.5 km/h.

(2B) [Alternative 2 to paragraph (2)] The target location struck in accordance with S5.5(a) that resulted in the greatest amount of displacement of the ejection impactor beyond the zero displacement plane, 1.5 ± 0.1 seconds after activation of an ejection mitigation

countermeasure that deploys in the event of a rollover and at a velocity of 24 ± 0.5 km/h.

(b) *Vehicles without an ejection mitigation countermeasure that deploys in a rollover.* Using the ejection propulsion mechanism, propel the ejection impactor such that it strikes the target location at a velocity of 16 ± 0.5 km/h and at a velocity of 24 ± 0.5 km/h. Do not deploy inflatable devices at any time during the test or activate any other ejection mitigation countermeasure.

(c) An ejection mitigation countermeasure that deploys in the event of a rollover is described as such in the vehicle's owner manual or in other written information provided by the vehicle manufacturer to the consumer.

S5.6 *Ejection impactor orientation.* At the time of launch of the ejection impactor the:

(a) x and z axes of the ejection headform must be aligned within ±1 degree of the vehicle longitudinal and vertical axes, respectively; and,

(b) y axis of the ejection headform must be within ±1 degree of the vehicle lateral axis.

S6. *General test conditions.*

S6.1 *Vehicle test attitude.* The vehicle is supported off its suspension at an attitude determined in accordance with S6.1(a) and (b).

(a) The vehicle is loaded to its unloaded vehicle weight.

(b) All tires are inflated to the manufacturer's specifications listed on the vehicle's tire placard.

S6.2 *Doors.*

(a) Except as provided in S6.2(b) or S6.2(c), doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

(b) During testing, any side door on the opposite side of the longitudinal centerline of the vehicle from the target to be impacted may be open or removed.

(c) During testing, any rear hatchback or tailgate may be open or removed for testing any target.

S6.3 *Steering wheel and seats.* During targeting and testing, the steering wheel and seats may be removed from the vehicle.

S6.4 *Convertible tops.* During testing, the top, if any, of convertibles and open-body type vehicles is in the closed passenger compartment configuration.

S6.5 *Temperature and humidity.*

(a) During testing, the ambient temperature is between 18 degrees C. and 29 degrees C., at any relative humidity between 10 percent and 70 percent.

(b) The headform specified in S7.1.1 of this Standard No. 226 is exposed to the conditions specified in S6.5(a) for a continuous period not less than one hour, prior to the test.

S7. s*Ejection mitigation test device specifications.* The ejection mitigation test device consists of an ejection impactor and ejection propulsion mechanism with the following specifications. The ability of a test device to meet these specifications may be determined outside of the vehicle.

S7.1 *Ejection impactor.* The ejection impactor has a mass of 18 kg ±0.05 kg. The shaft is parallel to the y axis of the headform.

S7.1.1 *Ejection headform dimensions.* The ejection headform has the dimensions shown in Figure 1 and is depicted in Ejection Mitigation Headform Drawing Package, dated 2007 (incorporated by reference; see § 571.5).

S7.1.2 *Static deflection.* The ejection headform must not deflect downward more than 20 mm when a 27 kg mass is attached to the posterior surface of the headform. The center of gravity of the attached mass is aligned with the axis of motion of the impactor and 100 mm rear of the impact face. The static deflection measurement is made with the ejection impactor attached to the ejection propulsion mechanism and extended 300 mm outboard of the theoretical point of impact with the countermeasure.

S7.2 *Frictional characteristics.*

S7.2.1 *Unobstructed velocity reduction.* If unobstructed, the ejection impactor must not lose more than 10 percent of the 24 km/h velocity and 15 percent of the 16 km/h velocity specified in S5.5 of this Standard No. 226 in 300 mm of outboard travel from the theoretical point of impact with the ejection mitigation countermeasure.

S7.2.2 *Obstructed push force.* The average force necessary to move the ejection impactor 225 mm rearward into the ejection propulsion mechanism at a rate of 50 (±13) mm per second, starting at a point 300 mm outboard of the theoretical point of impact with the countermeasure, must not exceed 570 N and have a standard deviation of no more than 30 N. The measurement is made with the 27 kg mass specified in S7.1.2 of this Standard No. 226 attached to the headform, excludes the force measured over the first 25 mm of travel and is recorded at a frequency of 100 Hz. The force is applied to the ejection headform with the skin removed.

S7.3 *Targeting accuracy.* Determine the distance ''D'' along the axis of travel of the ejection impactor from its launch point to the theoretical point of impact with the countermeasure, when moving at the speed specified in S5.5. Determine that the ejection mitigation test device can deliver the ejection impactor targeting point to within ±10 mm of an axis normal to and passing through the target outline center, as the unobstructed impactor passes through a zone defined by vertical longitudinal planes 50 mm forward and rearward of ''D.''

S8. *Phase-in Schedule for Vehicle Certification.*

S8.1 *Vehicles manufactured on or after September 1, 2014 and before September 1, 2016.* At anytime during the production years ending August 31, 2015, August 31, 2016, August 31, 2016, and August 31, 2017, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with this standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

S8.2 *Vehicles manufactured on or after September 1, 2014 and before September 1, 2015.* Subject to S8.8, for vehicles manufactured on or after September 1, 2014 and before September 1, 2015, the number of vehicles complying with S4.2 shall be not less than 20 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S8.3 *Vehicles manufactured on or after September 1, 2015 and before September 1, 2016.* Subject to S8.8, for vehicles manufactured on or after September 1, 2015 and before September 1, 2016, the number of vehicles complying with S4.2 shall be not less than 40 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S8.4 *Vehicles manufactured on or after September 1, 2016 and before September 1, 2017.* Subject to S8.8, for vehicles manufactured on or after September 1, 2016 and before September 1, 2017, the number of vehicles complying with S4.2 shall be not less than 75 percent of:

(a) The manufacturer's average annual production of vehicles manufactured in the three previous production years; or

(b) The manufacturer's production in the current production year.

S8.5 *Vehicles produced by more than one manufacturer.* For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each

manufacturer under S8.1 through S8.4, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S8.6.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S8.6 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S8.5.

S8.7 For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S8, do not count any vehicle that is excluded by this standard from the requirements.

S8.8 *Calculation of complying vehicles.*

(a) For the purposes of calculating the vehicles complying with S8.2, a manufacturer may count a vehicle if it is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2015.

(b) For purposes of complying with S8.3, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register** but before September 1, 2016 and,

(2) Is not counted toward compliance with S8.2.

(c) For purposes of complying with S8.4, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2017 and,

(2) Is not counted toward compliance with S8.2 or S8.3.

(d) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer, each vehicle that is excluded from having to meet the applicable requirement is not counted.

Figures to § 571.226.

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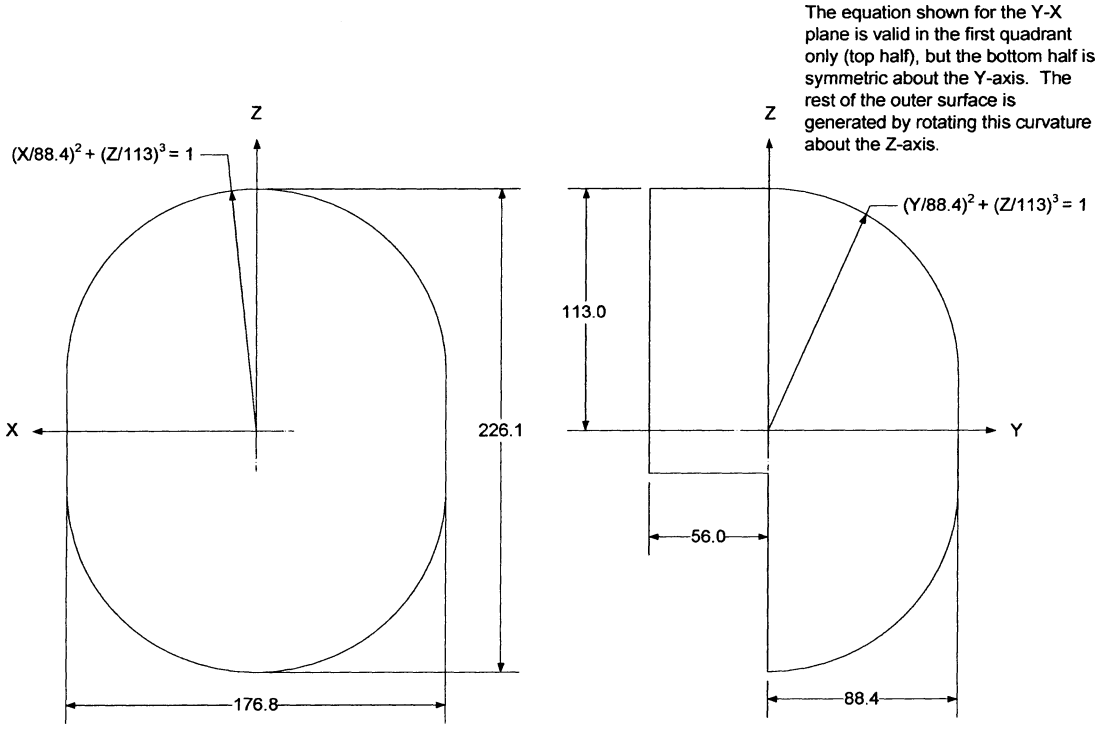

Figure 1 – Ejection Headform Face. All dimensions are millimeters.

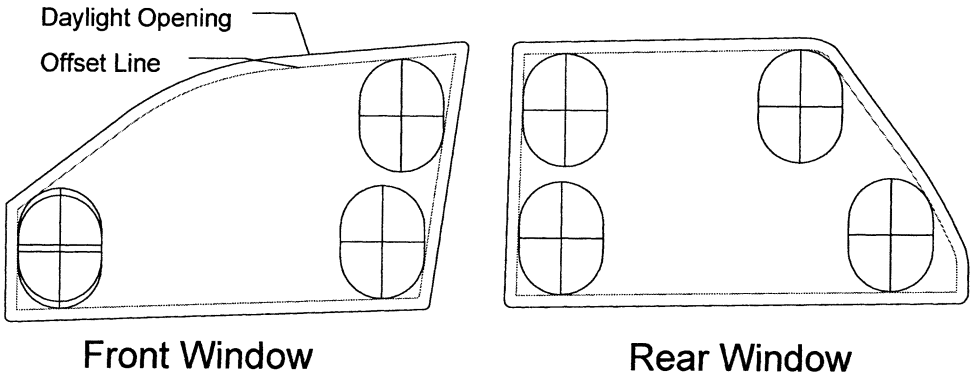

Figure 2

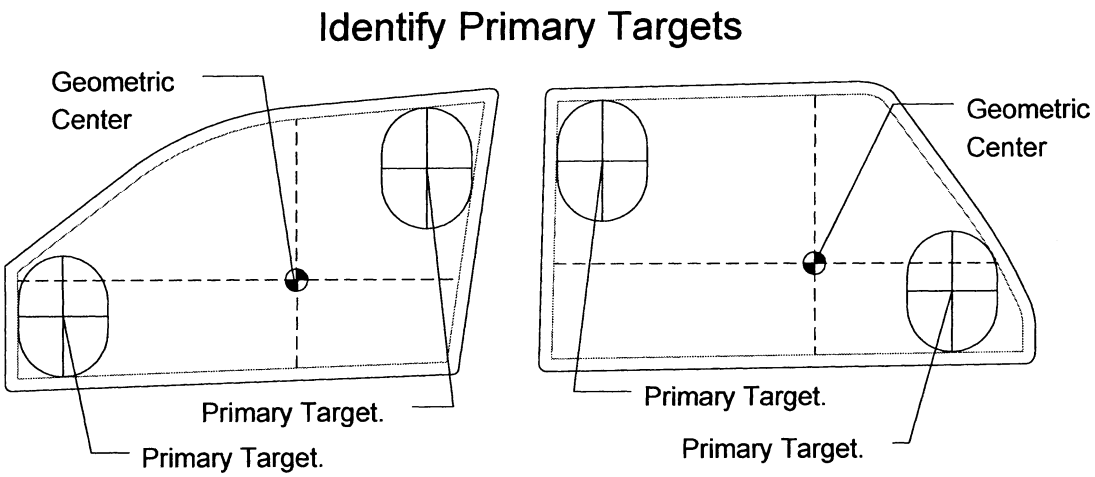

Figure 3

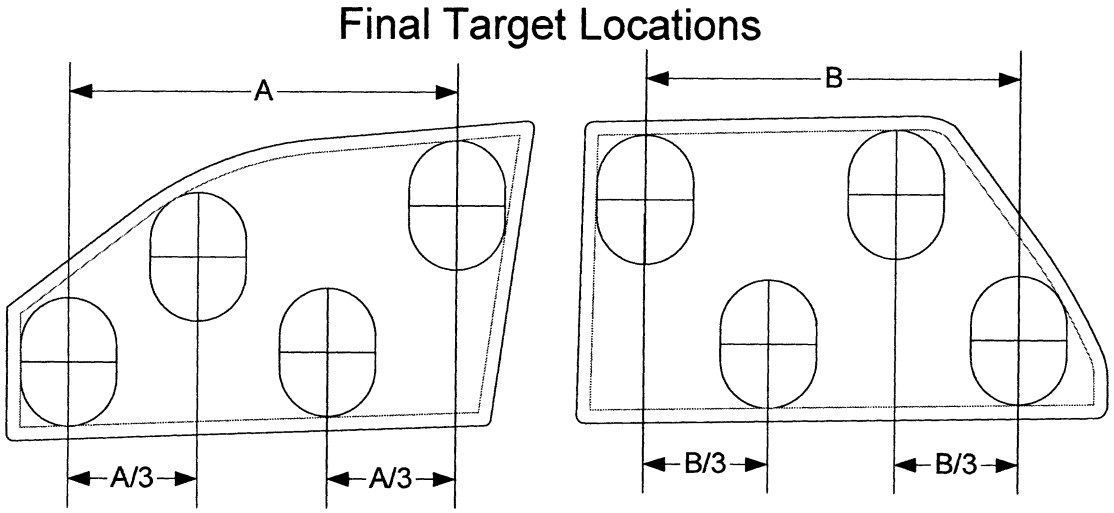

Figure 4

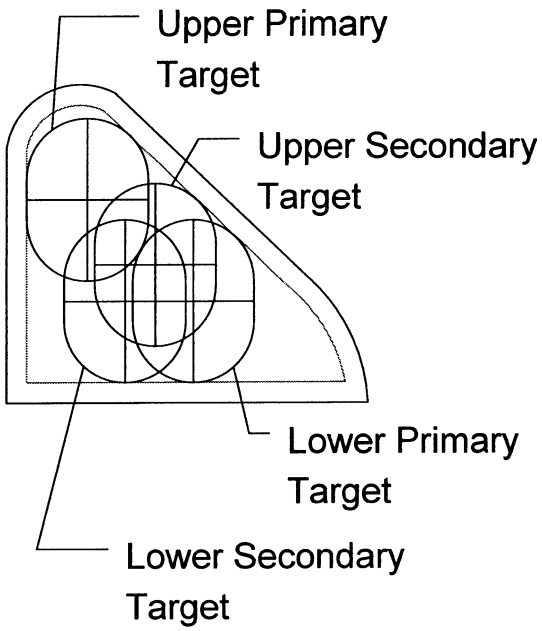

Figure 5

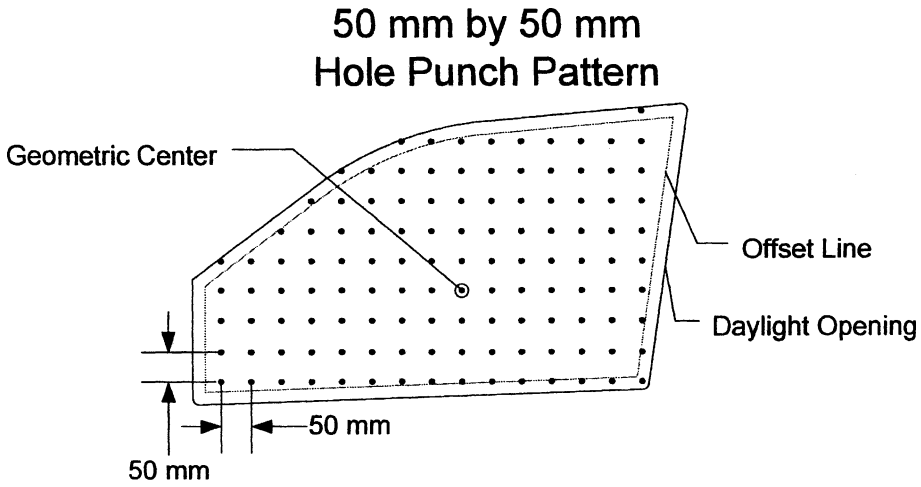

Figure 6

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PART 585—PHASE-IN REPORTING REQUIREMENTS

4. The authority citation for part 585 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

5. Part 585 would be amended by adding Subpart K to read as follows:

* * * * *

Subpart K—Ejection Mitigation Phase-in Reporting Requirements

Sec.

585.100 Scope.
585.101 Purpose.
585.102 Applicability.
585.103 Definitions.
585.104 Response to inquiries.
585.105 Reporting requirements.
585.106 Records.

§ 585.100 Scope.

This part establishes requirements for manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the ejection mitigation requirements of Standard No. 226, *Ejection mitigation* (49 CFR 571.226).

§ 585.101 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of Standard No. 226, *Ejection mitigation* (49 CFR 571.226).

§ 585.102 Applicability.

This part applies to manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less. However, this part does not apply to vehicles excluded by Standard No. 226 (49 CFR 571.226) from the requirements of that standard.

§ 585.103 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

(d) Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

§ 585.104 Response to inquiries.

At anytime during the production years ending August 31, 2015, August 31, 2016, and August 31, 2017, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the ejection mitigation requirements of Standard No. 226, *Ejection mitigation* (49 CFR 571.226). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.105 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.* (1) Within 60 days after the end of the production years ending August 31, 2011, August 31, 2012, August 31, 2013, and August 31, 2014, each manufacturer choosing to certify vehicles manufactured during any of those production years as complying with the ejection mitigation requirements of Standard No. 226 (49 CFR 571.226) shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 2015, August 31, 2016, and August 31, 2017, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the ejection mitigation requirements of Standard No. 226 (49 CFR 571.226) for its vehicles produced in that year. Each report shall provide the information specified in paragraph (d) of this section and in section 585.2 of this part.

(c) *Advanced credit phase-in report content*—(1) *Production of complying vehicles.* With respect to the reports identified in § 585.105(a), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that are certified as meeting the ejection mitigation requirements of Standard No. 226 (49 CFR 571.226).

(d) *Phase-in report content*—

(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that vehicles produced during the preceding years are treated under Standard No. 226 as having been produced during the production year being reported on, information on the number of passenger vehicles that meet the ejection mitigation requirements of Standard No. 226 (49 CFR 571.226).

§ 585.106 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.105 until December 31, 2020.

Issued on November 19, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–28177 Filed 12–1–09; 8:45 am]

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December 2, 2009

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0027; FRL–8983–6]

RIN 2060–AO94

National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating national emissions standards for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. These final emissions standards for new and existing sources are based upon EPA's final determination as to what constitutes the generally available control technology or management practices (GACT) for the source category.

DATES: This final rule is effective on December 2, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0027. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. 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 Public Reading Room under the heading ''Area Source National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asphalt Processing and Asphalt Roofing Manufacturing.'' The Public Reading Room is located at EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC and is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Outreach and Information Division, Office of Air Quality Planning and Standards (MC–C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–5124; *fax number:* (919) 541–0242; *e-mail address: johnson.warren@epa.gov.*

SUPPLEMENTARY INFORMATION: *Outline.* The information in this preamble is organized as follows:

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I. General Information

A. Does This Action Apply to Me?

The regulated categories and entities potentially affected by the final standards include:

Category	NAICS code [1]	Examples of regulated entities
Petroleum Refineries	324110	Area source facilities that refine asphalt.
Asphalt Shingle and Coating Materials Manufacturing	324122	Area source facilities that manufacture asphalt roofing materials.

[1] 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. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11559 of subpart AAAAAAA (NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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 this final action will be posted on the TTN's policy and guidance page for newly final 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), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 1, 2010. 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.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section 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, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) 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), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the Clean Air Act (CAA) requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have a number of small businesses. Determining what constitutes GACT initially involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices employed by those sources are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for certain source categories listed pursuant to section 112(c)(3) and (k) by November 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). An additional rulemaking will be published in a separate **Federal Register** notice for the remaining source category due in November 2009.

III. Summary of Major Changes Since Proposal

The final rule contains several revisions and clarifications to the proposed rule made in response to public comments. We explain the reasons for the following changes in detail in the summary of comments and responses (section V of this preamble):

- Revised the emission limits for asphalt roofing manufacturing lines using emissions data supplied by the industry;
- Revised the initial compliance requirements to specify that compliance tests must be conducted while manufacturing the product with the greatest polycyclic aromatic hydrocarbons (PAH) and particulate matter (PM) emissions and to allow facilities to use process knowledge to demonstrate initial compliance for saturator-only lines;
- Revised the initial compliance requirements to clarify procedures for using previously-conducted emission tests to demonstrate compliance;
- Revised the equations for calculating asphalt charging rate and clarified the procedures for determining production rate;
- Revised the continuous compliance requirements to allow for monitoring of parameter ranges (instead of maintaining the parameter below a maximum value) and use of equipment manufacturer specifications when establishing parameter values, and to remove the option to use a continuous emissions monitor (CEMS);
- Revised the continuous compliance requirements to allow facilities to monitor the indicator light of electrostatic precipitators (ESPs) as an option to monitoring voltage;
- Defined PM as the material collected using EPA Method 5A; and
- Added definitions for ''built-up roof operation'' and ''hot-mix asphalt operation'' and clarified the definition of ''saturator'' with regard to impregnation vats.

IV. Summary of Final Standards

A. Do the Final Standards Apply to My Source?

The final subpart AAAAAAA standards apply to each existing and

new area source facility that processes asphalt and/or manufactures roofing products using saturation and/or coating processes that apply asphalt to a substrate. The standards do not apply to research or laboratory facilities, as defined in section 112(c)(7) of the CAA.

B. When Must I Comply With the Final Standards?

All existing area source facilities subject to this final rule are required to comply with the rule requirements no later than December 2, 2010. New sources are required to comply with the rule requirements by December 2, 2009 or upon startup of the facility, whichever is later.

Because the majority of existing sources in this category are already well-controlled, we believe that one year is a reasonable amount of time to allow existing sources to conduct compliance testing and prepare compliance demonstrations showing compliance with the final rule.

C. What Are the Final Standards?

As discussed in section II.C of this preamble, the two production operations for which this category was listed are: (1) Asphalt processing (refining) operations; and (2) roofing product manufacturing operations.

For asphalt processing, the final standards require the owner or operator to limit PAH emissions to 0.003 lb/ton of asphalt charged to the asphalt refining (blowing still) operation. Alternatively, owners or operators may comply with a PM emissions limit of 1.2 lb/ton of asphalt charged to the asphalt refining operation. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the PAH emission limit. The final standards for new refining operations are the same as for existing sources.

For asphalt roofing product manufacturing operations, we examined the process operations and other factors and determined that it was appropriate to establish subcategories that reflect the unique emission characteristic profiles of the different process types (equipment configurations). We developed three subcategories based upon the various process types used in the industry: (1) Production lines that use a coater only, (2) production lines that use a saturator only, and (3) production lines that use both saturators and coaters.

For existing coater-only production lines, the final standards require the owner or operator to limit PAH emissions from all coating mixers and coaters to 0.0002 lb/ton of product manufactured. Alternatively, owners or operators may choose to comply with a PM emission limit of 0.06 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

For existing saturator-only production lines, the final standards require the owner or operator to limit PAH emissions from all saturators (and wet loopers) to 0.0007 lb/ton of product manufactured. Alternatively, for saturator-only production lines, owners or operators can comply with a PM emissions limit of 0.30 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

For existing combined saturator and coater production lines, the final standards require the owner or operator to limit PAH emissions from all saturators, wet loopers, coating mixers, and coaters to 0.0009 lb/ton of product manufactured. The final standards for combined saturator and coater production lines alternatively allow owners or operators to comply with a PM emissions limit of 0.36 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

The final standards for new roofing product manufacturing operations for all subcategories are the same as those for existing sources.

D. What Are the Initial and Continuous Compliance Requirements?

The final standards require an initial compliance assessment of the process emissions or control device outlet concentration to demonstrate initial compliance with the applicable standard, and to establish monitoring parameter values (*e.g.,* temperature, pressure drop) for the process or control device that will be monitored to demonstrate continuous compliance. For PM control devices used on asphalt roofing lines, the final rule allows owners or operators to establish monitoring parameter operating ranges based upon equipment manufacturer guarantees.

For existing sources, the final standards require owners or operators to conduct the initial compliance assessment by May 31, 2011. Owners or operators of new sources are required to conduct the initial compliance assessment by June 1, 2010 or within 180 days after startup, whichever is later.

For existing and new blowing stills and asphalt roofing manufacturing lines, the final standards require owners or operators to demonstrate initial compliance by conducting emission tests or by using the results from an emission test conducted in the past five years that meets the specified criteria in the final rule. Specifically, owners or operators can use the results of the previously-conducted test only if the emission measurements were made using the test methods specified in Table 3 of the final rule. *See* 40 CFR 63.11562(d). Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the emissions test reliably demonstrate compliance despite any process changes. *Id.* For existing and new asphalt processing and asphalt roofing manufacturing lines that do not require a control device to comply with the emission limits, the final rule allows owners or operators to use process knowledge and engineering calculations, instead of compliance test results, to demonstrate initial compliance. For example, an owner or operator could use a mass-balance approach (*e.g.,* based upon asphalt throughput, asphalt content of the product manufactured) to demonstrate that the emission limits would not be exceeded.

Continuous compliance with the final emission limits is demonstrated by monitoring parameters and process conditions established during the initial compliance assessment. The final standards require owners and operators to demonstrate continuous compliance based upon a 3-hour averaging period. If a thermal oxidizer is used to comply with the emission limits, the final standards require that the 3-hour average combustion zone temperature of each affected thermal oxidizer be maintained at or above the operating limit established during the initial compliance assessment. For PM control devices, the final standards require that the average 3-hour pressure drop and inlet gas temperature values be maintained within the range of established values. As an alternative to monitoring temperature and pressure drop, the final rule allows owners or operators to use a leak detection system for a filtration-based PM control device. If an ESP is used as the PM control device, the final standards require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial

compliance test. As an alternative to monitoring the ESP voltage, the final rule allows owners or operators to monitor the device's indicator and warning lights on the device that signify when the ESP must be cleaned. For other types of control devices, the final standards allow the owner or operator to establish approved monitoring parameters and to maintain the value of those parameters within the operating values established during the initial compliance assessment. In cases where add-on control devices are not needed to comply with the final standards, owners or operators are required to establish a range of operating values for process parameters based upon written equipment manufacturer specifications, verify that the equipment is operating within that range during the initial compliance assessment, and maintain the 3-hour average of those parameters within the established values. During periods of startup and shutdown, the final standards require owners and operators to demonstrate compliance over a 24-hour averaging period. As is explained below, the final rule does not establish separate standards for malfunctions and the 3-hour averaging period applies during such events. Thus, consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the emission standards of this rule apply at all times.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

Affected new and existing sources are required to comply with certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Table 5 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility is required to submit an initial notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the compliance assessment. Facilities are also required to submit semi-annual compliance summary reports.

F. What Are the Title V Permitting Requirements?

This final rule exempts the asphalt processing and asphalt roofing manufacturing area source category from title V permitting requirements unless the affected source is otherwise required by law to obtain a title V permit. For example, sources that have title V permits because they are major sources under the criteria pollutant program would maintain those permits.

V. Summary of Comments and Responses

We received a total of six comment letters from industry trade associations, an environmental advocacy group, State/local regulatory agency groups, and a control device equipment vendor on the proposed rule during the comment period. One commenter, an industry trade association, expressed support for the following provisions in the proposal package:

- The roofing line subcategory designations;
- The definition of the affected source for asphalt processing and asphalt roofing manufacturing operations;
- The PAH and PM GACT emission standards for new and existing sources;
- The definitions of ''asphalt flux,'' ''asphalt processing operation,'' and ''blowing still;''
- The use of PM emissions as a surrogate for PAH emissions;
- The use of certain previously-conducted emission tests to demonstrate initial compliance with the emission limitations; and
- The exemption from title V permitting requirements.

We acknowledge the commenter's support for these provisions. Sections V.A. through V.H. contain summaries of the remaining comments that we received and our responses to those comments.

A. Source Category Listing

Comment. One commenter asserted that the Agency used inaccurate PAH emissions data for 1990 to list asphalt processing and asphalt roofing manufacturing area sources under CAA section 112(c)(3). The commenter asserted that urban area source PAH emissions in the industry in that baseline year were significantly lower than EPA's estimates and provided a copy of a report previously submitted to the Agency that the commenter contended supports that assertion. The commenter's report concludes that, by combining asphalt roofing manufacturing and asphalt processing into a single source category and using the outdated data, the EPA's PAH emissions estimate for the two categories is overstated by nearly two orders of magnitude. Based upon this information, the commenter stated that EPA should not be issuing GACT standards for asphalt processing and asphalt roofing manufacturing area sources under CAA section 112(c)(3).

Response. We listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. As explained in more detail below, we included this source category on the section 112(c)(3) area source category list based upon emissions data for the 1990 baseline year. The asphalt processing and asphalt roofing manufacturing source category was listed for its contributions toward meeting the requirement that we list sufficient categories and subcategories of area sources to ensure that area sources representing 90 percent of area source emissions of PAH are subject to regulation under CAA section 112.

While Congress required EPA to list sufficient categories or subcategories of area sources to ensure that areas sources representing 90 percent of the area source emissions of the 30 Urban HAP are subject to regulation under section 112 of the Clean Air Act, it left it to EPA's discretion to determine which categories and subcategories of sources to include on the list. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from asphalt processing and asphalt roofing manufacturing area sources in 1990. EPA listed the asphalt processing and asphalt roofing area source category on the basis of that emissions data. EPA continues to believe that it was reasonable to rely on that data and that it acted appropriately in including the asphalt processing and asphalt roofing area source category on the list on the basis of that data.

There is nothing in the comments that persuades EPA that the asphalt processing and asphalt roofing manufacturing area source category should not be included in the source category list. The report submitted along with the comments clearly reflects the Commenter's preference that a different source category, asphalt concrete manufacturing, be included on the list instead of asphalt processing and asphalt roofing manufacturing and that the inclusion of that source category would have also resulted in a cumulative percentage contribution in excess of 90 percent. This, however, misses the point. As stated above, Congress left it to EPA's discretion to

determine which categories and subcategories to include on the list. Congress did not require EPA to establish a rank order of such categories and subcategories and then move from the highest ranking source category or subcategory to lower ranking categories or subcategories until a cumulative total of 90 percent was reached. Thus, as long as EPA had some basis for including a particular category or subcategory of area sources on the list, which is the case here, it can choose to include that category or subcategory even if there are other potential source categories or subcategories that arguably may contribute more to cumulative emissions.

In this particular instance, EPA questions the accuracy of the emission factors used in the report submitted by the commenter. Specifically, the emissions factors in the commenter's report are based primarily on emissions data from 1998 and 1999 (with some reliance on 1994 data). The report takes these emission factors that are based on post-1990 data and applies them to 1990 production rates. As the commenter points out in its comments, PAH emissions in the asphalt processing and asphalt roofing manufacturing industry have declined since 1990. As a result, emission factors developed using emissions data from years after 1990 are likely to underestimate actual emissions in 1990.

Moreover, even if EPA were to accept, for argument's sake, the revised emissions estimates set forth in the report submitted by the commenter, it would, for the reasons described below, continue to believe that the asphalt processing and asphalt roofing manufacturing category belongs on the 112(c)(3) source category list. First, EPA believes that it is most appropriate to consider asphalt processing and asphalt roofing manufacturing as a single source category rather than two separate source categories, as the commenter contends, because a single facility often includes both types of operations. Indeed, 90 percent of the facilities affected by the final rule conduct both asphalt processing and asphalt roofing manufacturing operations at the same site. We also believe that asphalt processing and asphalt roofing manufacturing operations are closely linked, regardless of co-location, because the purpose of blow stills at asphalt processing operations is to prepare asphalt flux, obtained from refineries, for use in manufacturing roofing products (*e.g.,* shingles, roll roofing). Second, while the commenter contends that asphalt concrete manufacturing should be included on the list instead of asphalt processing and asphalt roofing manufacturing, the fact is that, on a per facility basis, the asphalt processing and asphalt roofing manufacturing sources are larger PAH emissions sources than the asphalt concrete industry sources. As a result, EPA's regulation of the 75 sources in the asphalt processing and asphalt roofing manufacturing area source category is far more cost efficient and far more feasible from an implementation perspective than regulating the 3600 facilities engaged in asphalt concrete manufacturing. Finally, as explained above, Congress afforded EPA discretion in selecting the source categories to regulate to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B). Without the asphalt processing and asphalt roofing manufacturing source category, we will not meet this requirement. In conclusion, Congress required EPA to list sufficient categories and subcategories of sources of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation under CAA section 112. EPA has discretion to identify the categories and subcategories on the list and properly included asphalt processing and asphalt roofing manufacturing on the list. Nothing in the comments contradicts this.

B. GACT Limits

Comment. One commenter noted that EPA stated in the proposal notice that ''[w]e believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the proposed standards using existing controls * * *'' and that ''* * * no additional air pollution control devices would be required.'' The commenter was concerned that such proposals are merely paperwork exercises and are not responsive to Congress' intent in establishing the area source program under the Clean Air Act which the commenter believed should result in reductions in emissions from area sources of hazardous air pollution. Moreover, the commenter recommended that, ''* * * in this rule and in future area source proposals, EPA incorporate provisions that will provide additional public health protection from the adverse effects of emissions of hazardous air pollutants from area sources.''

Response. The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (*i.e.,* sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to the area source category's current emission and control status. Such a comparison is flawed.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 HAP listed are subject to regulation. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from asphalt processing and asphalt roofing manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources that reflect GACT for the source category. As Congress itself recognized, to qualify as being generally available, a GACT-based standard would most likely be based upon an existing control technology or management practice: ''[A]n equipment standard would require neighborhood dry cleaning establishments to employ the commercially available systems associated with the lowest *measured* emissions * * * S. Rep. 101–128, at 171–172 (emphasis added). Thus, it is both reasonable and consistent with Congressional intent that the GACT-based standards being finalized today codify the use of the existing effective PAH control approach being used by sources in the category. For all of these reasons, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

Comment. One commenter asserted that, although section 112(d)(5) does

authorize EPA to issue GACT standards in lieu of MACT standards, the Agency's decision to do so is subject to familiar administrative law requirements. The commenter maintained that to be non-arbitrary, the decision must—at a minimum—be supported by a rational explanation. The commenter stated that EPA has provided no explanation whatsoever for its apparent decision to issue GACT standards pursuant to CAA section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (3) and, for this reason alone, its decision is arbitrary and capricious.

The commenter also claimed that the proposed standards are based solely on cost and are thus unlawful and arbitrary. The commenter asserted that CAA section 112(d)(5) does not direct EPA to set standards based on what is cost effective; rather, according to the commenter EPA must establish GACT based on the ''methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts.'' The commenter stated that because cost effectiveness is not relevant under CAA section 112(d)(5), the reliance on cost effectiveness as the sole determining factor in establishing GACT renders the proposed standards unlawful.

Response. As the commenter acknowledged, in section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, section 112(d)(5), which is titled ''Alternative standard for area sources,'' provides:

> With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. *See* CAA section 112(d)(5).

There are two critical aspects to section 112(d)(5). First, section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to section 112(c). The commenter does not dispute that EPA listed the asphalt processing and asphalt roofing manufacturing area source category pursuant to section 112(c). Second, section 112(d)(5) provides that for area sources listed pursuant to section 112(c)(3), EPA ''may, in lieu of'' the authorities provided in section 112(d)(2) and 112(f), elect to promulgate standards pursuant to section 112(d)(5).

Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as maximum available control technology (MACT)). Section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. *See* section 112(d)(3). Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' *See* Webster's II New Riverside University (1994). Thus, section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of GACT, instead of issuing MACT standards pursuant to section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

The commenter argues that EPA must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. The commenter is incorrect. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c), and that is precisely what EPA has done in this rulemaking.

Although EPA need not justify its exercise of discretion in choosing to issue a GACT standard for an area source listed pursuant to section 112(c)(3), EPA still must have a reasoned basis for the GACT determination for the particular area source category. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

See Senate Report on the 1990 Amendments to the Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category.

Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states—provide EPA the authority to issue ''[a]lternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source category at issue here under section 112(d)(5) and in doing so provided a reasoned basis for its selection of GACT for this area source category. As explained in the proposed rule and below, EPA evaluated the control technologies and management practices that reduce PAH emissions at asphalt processing and asphalt roofing manufacturing facilities. In its evaluation, EPA used information from an industry survey, discussed options for controlling PAH emissions with the industry trade associations, and reviewed operating permits to identify the emission controls and management practices that are currently used to control PM and PAH emissions.

In our evaluation, we determined that all blow stills used to process asphalt are currently controlled using thermal oxidation. We also found that the majority of roofing manufacturing lines were controlled using some type of PM control device (*e.g.,* fiber-bed filters). Additionally, we determined that, due to market-driven process changes, the majority of roofing manufacturing facilities no longer use organic felt as the substrate for roofing materials. This process change significantly reduced the amount of asphalt used to manufacture a given quantity of roofing products.

EPA disagrees with the commenter's assertions that EPA based its GACT determination solely on its estimate of cost effectiveness and that cost effectiveness is not relevant in determining what constitutes GACT. The Agency's consideration of cost effectiveness in establishing GACT and the Agency's views on what is a cost-effective requirement under section 112(d)(5) are relevant. The U.S. Court of Appeals for the DC Circuit has stated that cost effectiveness is a reasonable measure of cost as long as the statute does not mandate a specific method of determining cost. *See Husqvarna AB* v.

EPA, 254 F.3d 195, 201 (DC Cir. 2001) (finding EPA's decision to consider costs on a per-ton-of-emissions removed basis is reasonable because CAA section 213 did not mandate a specific method of cost analysis). Further, we did not base our GACT determination solely on our estimate of cost effectiveness. Rather, we first carefully evaluated the methods, practices and techniques that are commercially available and appropriate for application by sources in the asphalt processing and asphalt roofing manufacturing area source category. Only then did we consider costs and economic impacts to determine what constitutes GACT for the source category. In doing so, we determined that, because sources in the asphalt processing and asphalt roofing manufacturing area source category currently have relatively low emissions of PAH based upon the use of existing controls, requiring additional controls would result in very high costs for only a modest incremental improvement in control. Finally, we believe the consideration of costs and economic impacts is especially important for determining GACT for the asphalt processing and asphalt roofing manufacturing area source category because of the number of existing sources that would need to retrofit controls on asphalt roofing manufacturing operations if the existing controls on those operations were determined inadequate.

Even though we are not required to provide a specific rationale for why we chose to establish GACT-based standards, rather than MACT-based standards, EPA did in fact provide a rationale for doing so in the proposed rule. In the proposal, we explained that the facilities in the asphalt processing and asphalt roofing manufacturing area source category are already well controlled for PAH, the urban HAP for which the source category was listed pursuant to section 112(c)(3). *See* 74 FR 32826–32828. Consideration of costs and economic impacts is especially important when an area source category is comprised of sources that are already well-controlled. In such circumstances, a MACT floor determination, where costs cannot be considered, could result in very high costs for only a modest incremental improvement in control efficiency for sources in the area source category. EPA concluded that this would be the case were it to establish MACT-based emission standards for the asphalt processing and asphalt roofing manufacturing area source category.

Comment. One commenter stated that EPA did not provide an explanation for its decision to narrowly focus the proposed rule on just PAH emissions. The commenter went on to make the following points. The commenter noted that in the 2003 NESHAP for the asphalt processing and asphalt roofing manufacturing major source category, the EPA stated that the major source category emits a variety of HAP. The commenter added that the preamble to the 2003 major source NESHAP (68 FR 22976, 22976 (Apr. 29, 2003)) stated that approximately 98 percent of emissions from the processing of asphalt and the manufacture of asphalt roofing consist of formaldehyde, hexane, hydrochloric acid (HCl), phenol and toluene. A combination of several different organic HAP comprise the remaining two percent of the total HAP emissions. The commenter said that in 2003, the EPA found that exposure to these HAP could result in both ''chronic health disorders (*e.g.,* irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the blood and liver) and acute health disorders (*e.g.,* respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea).'' *Id.* The commenter also noted that EPA classified two of the HAP (formaldehyde and polycyclic organic matter (POM)) as probable human carcinogens.

The commenter stated that Section 112(d) requires that emission standards be developed for each HAP listed in section 112(b). Assuming arguendo that the Agency does not have to set separate standards for each HAP when issuing standards under section 112(d)(5), the commenter stated that the Agency still has an obligation to address all the HAP that a category emits when it sets GACT standards. Thus, the commenter asserted that EPA had an obligation to address the HAP emitted by asphalt processing and asphalt roofing manufacturing sources beyond PAH, especially in light of the fact that PAH is such a limited component of the HAP emitted by the source category. Further, the commenter added that the Agency's failure to even consider non-PAH HAP and to explain its failure to address these HAP is arbitrary and capricious.

The commenter also noted that EPA failed to address all sources of HAP emissions in the asphalt processing and asphalt roofing manufacturing source category. The commenter pointed out that EPA noted in the 2003 major source NESHAP that, in addition to the blowing stills and roofing manufacturing operations addressed in the proposed rule, asphalt storage and process tanks, asphalt loading racks, sealant applicators, and adhesive applicators are also sources of HAP emissions. The commenter stated that the Agency's failure to acknowledge these emission sources and consider commercially available technology for reducing emissions from these sources was unlawful.

Response. Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP emitted from area sources that pose the greatest threat to public health in the largest number of urban areas (the ''Urban HAP'') and identify the area source categories emitting such pollutants that are or will be listed pursuant to section 112(c)(3). Section 112(c)(3), in relevant part, provides:

> The Administrator shall * * *, pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section.

Thus, section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 Urban HAP are subject to regulation. Section 112(d)(1) requires the Administrator to promulgate regulations establishing emissions standards for each area source category of HAP listed for regulation pursuant to section 112(c).

EPA identified the 30 Urban HAP that posed the greatest threat to public health in the Integrated Urban Air Toxics Strategy (Strategy). In the Strategy and subsequent **Federal Register** notices, EPA listed the area source categories necessary to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), and one of those categories was the Asphalt Processing and Asphalt Roofing Manufacturing area source category.

We have interpreted sections 112(c)(3) and 112(k)(3)(B) together to require EPA to regulate only those Urban HAP emissions for which an area source category is listed pursuant to section 112(c)(3), not all urban HAP or all section 112(b) HAP emitted from a listed area source category. As stated above, section 112(k)(3)(B) addresses the strategy to control HAP from area sources in urban areas and the focus of the strategy as it relates to control of area sources is on the 30 HAP that pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) specifically references section 112(k)(3)(B) as the basis for selecting area sources for listing to satisfy the Agency's responsibility for regulating urban HAP emissions from area sources.

Under these provisions, area sources categories are listed because they emit one or more of the 30 listed Urban HAP and the Agency has identified the category as one that is necessary to satisfy the requirement to subject area sources representing 90 percent of the area source emissions of the 30 Urban HAP to regulation.

EPA listed the Asphalt Processing and Asphalt Roofing Manufacturing area source category pursuant to sections 112(c)(3) and 112(k)(3)(B), based on the category's emissions of PAH, which is an urban HAP. Thus, consistent with the requirements of sections 112(c)(3) and 112(k)(3)(B), we must regulate the PAH emissions from the Asphalt Processing and Asphalt Roofing Manufacturing area source category, as these are the urban HAP emissions for which the category was listed to meet the 90 percent requirement in sections 112(c)(3) and (k)(3)(B). *See* 112(c)(3) (EPA must ''ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants * * * are subject to regulation.''). We recognize that the source category emits other section 112(b) HAP, including other urban HAP; however, as stated above, sections 112(c)(3) and 112(k)(3)(B) do not require the Agency to regulate the area source category for any HAP other than those for which the category was listed. As to the other urban HAP emitted from this category, we have identified other area source categories that emit these urban HAP and subjecting those area source categories to regulation will satisfy the requirement to subject to regulation area sources that account for 90 percent of the area source emissions of those urban HAP.

While the Agency is not required to regulate all section 112(b) HAP from area sources listed pursuant to section 112(c)(3) and 112(k)(3)(B), section 112 of the CAA does not preclude EPA from regulating other HAP from these area sources at our discretion and in appropriate circumstances. Section 112(d)(5) states that for area sources listed pursuant to section 112(c), the Administrator may, in lieu of section 112(d)(2) ''MACT'' standards, promulgate standards or requirements ''applicable to sources'' which provide for the use of GACT or management practices ''to reduce emissions of hazardous air pollutants.'' This provision does not limit EPA's authority to regulate only those urban HAP emissions for which the category is needed to achieve the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3). In fact, in two other area source rules, in addition to regulating the urban HAP that were necessary to satisfy the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3), we regulated additional section 112(b) HAP. Specifically, in the chemical manufacturing area source rule and the paint and allied products area source rule, although not required, we exercised our discretion to regulate other section 112(b) HAP beyond the urban HAP for which the categories were listed under section 112(c)(3) and (k)(3)(B), including non-urban section 112(b) HAP. The chemical manufacturing area source rule and the paints and allied products area source rule both involve specific circumstances which EPA believes justify regulating organic and metal section 112(b) HAP in addition to the specific urban HAP needed to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), which served as the basis for the listing of the categories. In the chemical manufacturing area source rule, which establishes standards for 9 area source categories, we regulated such HAP because the emission standards designed to control the urban HAP for which the categories were listed were equally effective at removing other urban and non-urban metal and organic HAP, and demonstrating compliance for total HAP was less burdensome than demonstrating compliance for speciated HAP for those sources required to install add-on controls. In the paint and allied products area source rule, we included emission standards for HAP beyond the urban HAP for which the category was listed because the emission standards designed to control those urban HAP would also control other urban and non-urban metal and organic HAP.

As noted above, the asphalt processing and asphalt roofing manufacturing area source category was listed solely due to emissions of PAH. By contrast, both the chemical manufacturing and the paint and allied products area source categories were listed for multiple urban HAP (*i.e.,* 1,3-butadiene; methylene chloride; 1,3-dichloropropene; hexachlorobenzene; acetaldehyde; hydrazine; chloroform; quinoline; ethylene dichloride; and HAP metal compounds (arsenic, cadmium, chromium, lead, manganese, and nickel) for chemical manufacturing, and benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel for paint and allied products). For sources in these area source categories, it was reasonable to develop emission limits for non-urban HAP in part because the cost of estimating compliance for each urban HAP for which the categories were listed was overly burdensome. However, this same rationale is not appropriate in this rule because EPA listed the asphalt processing and asphalt roofing manufacturing source category based on the emissions of a single HAP (PAH). The co-control scenario also plays out differently in the context of the asphalt processing and asphalt roofing manufacturing area source category. Specifically, where an add-on control device like those used by facilities complying with the major source NESHAP (*e.g.,* a thermal oxidizer or a fiber-bed filter) is needed to comply with the final standards for the asphalt processing and asphalt roofing manufacturing area source category, the control device will achieve co-control of certain HAP other than PAH. For example, a thermal oxidizer will effectively control total HAP, total hydrocarbon (THC) and PM emissions and a fiber-bed filter will effectively control PM emissions. An emission limit based on the use of a thermal oxidizer (*e.g.,* a limit on total HAP or total THC) would, however, necessitate all emissions from regulated operations being routed to a thermal oxidizer or similar control device. At present, based on the available information, facilities only use thermal oxidizers to control emissions from asphalt processing operations. Thermal oxidizers are not currently used to control emissions from asphalt roofing manufacturing operations. As a result, such limits would require facilities to retrofit to route emissions from asphalt roofing manufacturing operations to a thermal oxidizer or similar control device. Such retrofits would increase the cost of complying with the standards to a level that is unacceptable for a GACT-based standard. We estimate that 29 existing facilities currently have a thermal oxidizer and the remaining 46 would need to install new controls. Even when assuming a best case scenario, whereby facilities would only need to install new ductwork to route emissions to an existing thermal oxidizer, we estimate that such facilities would have an estimated initial capital cost of $58,000 and annual maintenance costs adding up to $11,000. We believe that these estimates are unrealistically low, however, because the existing thermal oxidizers would also require supplemental fuel, and, in many cases, an upgrade of the control unit, in order to handle the increased emissions loading. We estimate that it would cost an average facility in excess of $1 million to install new thermal oxidation controls, with annual costs of just over

$910,000 per year per facility for fuel and maintenance. In actuality, though, the costs could be much greater depending on the configuration of the facility.

These cost concerns are further exacerbated by the fact that the benefits arising from co-control will be realized without EPA establishing specific emission limits for the co-controlled HAP. We therefore believe that we have appropriately exercised our discretion in regulating only the PAH emissions from the asphalt processing and asphalt roofing manufacturing area source category.

The commenter further asserts that we failed to regulate all sources of HAP emissions. For the reasons described above, this rule establishes emissions standards for PAH only. To the extent the commenter is asserting that we failed to address all sources of PAH emissions, we disagree. We are required to regulate only those sources of PAH emissions that formed the basis of our listing decision. EPA based the listing of the asphalt processing and asphalt roofing manufacturing area source category solely on emissions from asphalt blowing (processing) and saturation of felt (using saturators, wet loopers, and coaters). Based on our review of the record supporting the listing decision, the record does not include emissions from asphalt loading racks, asphalt storage tanks, adhesive storage tanks, adhesive applicators, sealant storage tanks or sealant applicators. As a result, we did not establish PAH emission limits for those sources, as these emission sources were not part of the listed source category.

Comment. One commenter stated that a significant problem with the proposal is that it would establish GACT standards that are actually more stringent—and significantly so—than the MACT standards for the industry. The commenter stated that they know of no other GACT standards that are more stringent than the corresponding MACT standards for the same industry. The commenter asserted that it makes no sense to have smaller area sources subject to more stringent standards than larger major sources. The commenter added that the very term ''maximum achievable control technology'' on its face indicates that the CAA section 112(d)(2) standards should be more stringent—they are the ''maximum achievable'' standards in contrast to the CAA section 112(d)(5) standards that are merely ''generally available.''

The commenter stated that for MACT, CAA section 112(d)(3) provides minimum levels of stringency, also known as the MACT ''floor'' levels. Thus, according to the commenter, the MACT standard for existing sources must be at least as stringent as the performance achieved by the average of the best performing 12 percent of sources in the category. The commenter stated that for new sources, the standard must be at least as stringent as that achieved by the best controlled similar source. In the subpart LLLLL asphalt processing and asphalt roofing manufacturing MACT rulemaking, the commenter noted that EPA concluded only six years ago that the average of the best performing 12 percent (*i.e.,* the 94th percentile of performance) was equivalent to the subpart UU NSPS limits. 66 FR 58617–20 (Nov. 21, 2001) (subpart LLLLL MACT proposal). The commenter stated that there have not been changes in the industry since publication of the final MACT standards in 2003 that would be expected to have rendered the assumptions for the MACT standards invalid. Thus, the commenter asserted that there is no basis for determining that any standards more stringent than the NSPS or MACT standards are ''generally available.''

The commenter stated that ''The legislative history is replete with support for the proposition that GACT standards are to be less stringent than MACT standards. The Senate Report for the 1990 CAA Amendments states that ''[t]he Administrator may require area sources to install MACT, but also has the option to impose less stringent emissions limitations reflecting generally available control technology.'' Senate Report 101–228, in Congressional Research Service, A Legislative History of the Clean Air Act Amendments of 1990 (''A Legislative History'') 8338, 8490 (emphasis added). *See also* floor statement of Sen. Moynahan (''Clearly, this [GACT] requirement is less demanding than the maximum achievable control technology required for major point sources'') (April 3, 1990 Senate floor debate on S. 1630, in A Legislative History 6946, 7083); House Energy and Commerce Committee Markup of H.R. 3030 (The Waxman amendment requires EPA to regulate 90 percent of the area source emissions of each hazardous air pollutant. EPA may elect to establish controls based on ''generally available control technology'' in lieu of the more stringent controls based on ''maximum achievable control technology'' that would apply to major sources.'' (Apr. 12, 1990 Clean Air Facts description of committee markup, in A Legislative History 2446, 2561).

Another commenter added that the preamble did not contain any explanation for EPA's decision to impose more stringent requirements on smaller, lower-emitting facilities than on major sources. The commenter also cited rationale in Senate Report 101–228 that indicates the Congress intended GACT standards for area sources to be less stringent than MACT standards for major sources. The commenter also noted that EPA has taken the position that GACT is a less stringent standard in the preamble to the area source rulemaking for perchloroethylene dry cleaning facilities (58 FR 49354, 49356).

Response. As described in detail below, we disagree with the commenters' basic premise that a GACT-based standard will always be less stringent than a previously-promulgated MACT-based standard, particularly in circumstances such as those here where the relevant MACT-based standard is more than 6 years old. Further, in this particular instance, the major source MACT-based NESHAP and the area source GACT-based standards are not directly comparable because they regulate different pollutants and different collections of process equipment. The MACT standards regulate total HAP with no speciation. The MACT also covers additional process equipment (*i.e.,* asphalt, adhesive, and sealant storage tanks, and adhesive and sealant applicators) that are not covered under the GACT-based standards.

In assessing what constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category, we evaluated the control technologies and management practices that reduce PAH emissions at the asphalt processing and asphalt roofing manufacturing facilities that compose the source category. In our evaluation, we used information from an industry survey, discussed options for controlling PAH emissions with the industry trade association, and reviewed operating permits to identify the emission controls and management practices that are currently used to control PM and PAH emissions. In our evaluation, we determined that all of the blow stills used by facilities in the source category to process asphalt are currently controlled using thermal oxidation. We also found that the majority of roofing manufacturing lines was controlled using some type of PM control devices (*e.g.,* fiber-bed filters). Additionally, we determined that due to market-driven process changes, the majority of roofing manufacturing facilities no longer use organic felt as the substrate for roofing materials. The process change of no longer using organic felt as a substrate has significantly reduced the amount of

asphalt used to manufacture a given quantity of roofing products. For all of these reasons, it is understandable that the GACT standard for this category is different than the MACT standard. After considering all of this information, we then considered costs and economic impacts in order to determine what actually constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category.

While MACT-based standards for a given source category would most likely be more stringent than GACT-based standards for the same sources if the standards were developed at the same point in time, that is not the case here. Here, the GACT standards are based upon more recent process equipment, control device, and emissions data that were analyzed to support development of these standards, specifically. In contrast, the MACT standards were based upon data collected in 1995. Additionally, the GACT-based standards focus on the HAP (PAH) and processes (blowing stills and saturators, wet loopers, coaters, and coating mixers) for which this area source category was listed. The MACT-based standards were developed using a floor analysis for total HAP over a wider span of process equipment. Under such circumstances, the previously established MACT standard cannot reasonably be considered dispositive of the question of what constitutes GACT. Rather, as with any GACT determination, in determining what constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category, we first carefully evaluated the methods, practices and techniques that are commercially available and appropriate for application by sources in the asphalt processing and asphalt roofing manufacturing area source category. We then considered costs and economic impacts to determine what constitutes GACT. The GACT-based standards in this final rule reflect the Agency's determination, based on this evaluation, of GACT for the asphalt processing and asphalt roofing manufacturing area source category.

Comment. One commenter did not believe that the proposed standards represent a GACT level of control because EPA used unrepresentative data, did not account for variability in establishing the emission limits, and determined the emission limits using the average.

In developing the proposed GACT standards, the commenter noted that EPA used data from only one source in each source category. The commenter also stated that not only is the data too sparse, but it is not representative of GACT because the data were collected to support a MACT rulemaking (*i.e.,* the data were collected at the best-controlled sources in the industry). The commenter submitted PM emissions data from member companies for coater-only lines, saturator-only lines, and lines containing coaters and saturators. The commenter noted that there are numerous subpart UU NSPS compliance tests available documenting PM emissions from industry sources. The commenter added that, because the PM data have been collected to demonstrate compliance with air permits and the subpart UU NSPS, the data would meet the quality assurance and quality control standards required by State air pollution control agencies.

The commenter stated that the standards should consider the variability in emissions due to: operational distinctions between different facilities or units (*i.e.,* roofing lines); between-test variability (*i.e.,* variability in measurements made at the same facility or unit at different times); and within-test variability (*i.e.,* measurement variations in individual test runs).

The commenter stated that EPA and the courts have recognized the importance of using representative data and accounting for such variability between facilities, processes, and test results. In *Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999), the U.S. Court of Appeals for the DC Circuit stated in a MACT case (under CAA section 129): ''It is reasonable to suppose that if an emissions standard is as stringent as 'the emissions control that is achieved in practice' by a particular unit, then that particular unit will not violate the standard. This only results if 'achieved in practice' is interpreted to mean 'achieved under the worst foreseeable circumstances.' ''

The commenter stated that, in approving EPA's decision to account for variability in a CAA section 112 case by not setting the standards based upon the lowest emission limits, the court correctly pointed out that ''even the best performing sources occasionally have spikes.'' *Mossville Environmental Action Now* v. *EPA,* 372 F.3d 1232, 1242 (DC Cir. 2004). Similarly, the commenter noted that, under the technology-based NSPS, the DC Circuit's decisions ''evince a concern that variables be accounted for, that the representativeness of test conditions by [sic] ascertained, that the validity of tests be assured and the statistical significance of results determined.'' *National Lime Ass'n* v. *EPA,* 627 F.2d 416, 452–53 (DC Cir. 1980). *See also Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 396 (DC Cir. 1973), cert. denied, 417 U.S. 921 (1974) (remanding NSPS in part due to ''the lack of any indication of statistical reliability'' in test results used to set standards).

Moreover, the commenter asserted that a single test almost by definition cannot be representative of conditions found throughout an industry. The commenter said that the DC Circuit has held under CAA section 111, ''a uniform standard must be capable of being met under most adverse conditions which can reasonably be expected to recur * * *'' National Lime Ass'n, 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). Without accounting for variation among different emissions tests, the commenter stated that it cannot be determined with a significant degree of statistical confidence that even a single unit will not be able to meet the standard over a reasonable period of time, when one can expect adverse conditions to be present.

The commenter noted that the courts have recognized this same basic principle in reviewing technology-based effluent standards under the Clean Water Act. As the Fifth Circuit stressed in reviewing ''best practicable technology'' or ''BPT'' standards under Clean Water Act section 304(b)(1):

> The same plant using the same treatment method to remove the same toxic does not always achieve the same result. Tests conducted one day may show a different concentration of the same toxic than are shown by the same test on the next day. This variability may be due to the inherent inaccuracy of analytical testing, *i.e.,* ''analytical variability,'' or to routine fluctuations in a plant's treatment performance.

Chemical Manufacturers Ass'n v. *EPA,* 870 F.2d 177, 228 (5th Cir. 1989). The commenter said that the Fifth Circuit upheld the standards because EPA expressly stated that they should be achievable ''at all times apart from instances of upsets,'' and because the Clean Water Act contains an ''upset defense.'' *Id.* at 230. *See also American Petroleum Institute* v. *EPA,* 540 F.2d 1023, 1035–36 (10th Cir. 1976) (''Even in the best treatment systems, changes occur in ability to treat wastes * * * [V]ariability factors present[] a practical effort to accommodate for variations in plant operations''); *FMC Corp.* v. *Train,* 539 F.2d 973, 985 (4th Cir. 1976) (variability factors account for ''the fact that even in the best treatment systems changes continually occur in the treatability of wastes''). *See also* 47 FR 24534, 24546 (1982) (in setting general

pH effluent limitation under the Clean Water Act, EPA pointed out that it ''traditionally has recognized that it must take variability into account in establishing effluent limitations, and in recognition that 100 percent compliance is theoretically impossible, the Agency has generally set daily effluent limitations which would be met approximately 99 percent of the time'').

The commenter noted that EPA pointed out in its brief in the *Sierra Club* v. *EPA MACT* case under CAA section 129 (discussed above), that simply trying to set a technology-based emission standard by considering a very limited dataset ''ignores the critical distinction between an emission level that is 'observed' on a particular occasion versus an emission level the Administrator determines is 'achieved in practice' through performance because it is capable of being met continuously under the range of operating conditions that can reasonably be expected.'' EPA brief at 35. Limited test results—the ''observed'' emissions levels—bear no relationship at all to what a variety of differently configured plants (or even a single unit) can achieve on a continuous basis. This is because each test produces a very limited sample of data. It does not provide a full enumeration of the available data for the unit's performance over a long period of time. *See* Natrella, Environmental Statistics, supra, chapter 1.

The commenter stated that EPA inappropriately ignored basic statistical principles for environmental standard-setting. The commenter said that in any normally distributed set of data, 50 percent of the data points will be higher than the mean. Even assuming that the data were representative, a standard that 50 percent of sources do not meet would lead to a level of control more stringent than that generally available.

The commenter stated that the use of the average uncontrolled emissions derived from a single test at a saturator/wet looper and a single test at a coater/coating mixer at one facility (the Tamko Frederick, MD facility) is inappropriate for setting standards. The commenter further stated that even assuming this is actually a median data point, 50 percent of the emission sources will have emissions higher than this source.

The commenter noted that a paper published in a peer-reviewed journal showed that the emissions from uncontrolled coaters are variable (the standard deviation was 169 percent of the mean). The commenter stated that if the assumption is made that the data are distributed according to the t-Density function, this means that more than 33 percent of sources would be expected to have uncontrolled emissions of greater than 0.83 pounds/ton of product. To meet the 0.03 pound PM/ton of product standard, the commenter said that the cleanest of these sources (at 0.83 lbs/ton) would have to have unvarying emissions, and continuous control efficiencies of greater than 96 percent efficiency.

The commenter also stated that EPA has inappropriately used average values in converting the emissions data to pounds of PM emitted per ton of product manufactured and in assessing the removal performance of high-efficiency air filter (HEAF) in calculating the proposed standards.

The commenter suggested that a valid and reasonable approach to calculate representative emissions for such a small data set is to add two standard deviations to the mean (x) of the 3 stack testing runs. Assuming data are normally distributed, the commenter said that approximately 97.8 percent of sources in a normally distributed population would fall below this x + 2 standard deviations envelope.

The commenter stated that because of EPA's flawed analysis, the proposed PAH and PM GACT emission standards for asphalt roofing manufacturing are too stringent and that EPA's assertion that the GACT standards can be met is incorrect.

Response. We agree with the commenter that, as a general matter, it is desirable to have as robust a data set as possible when establishing emission limits. We also note, however, that EPA must often work with the data it has even though we might prefer to have additional data. We had a reasonable set of data upon which to base the proposed rule and it is within our discretion to determine whether it is appropriate to seek additional data before proposing to take a particular action. *See, Natural Resources Defense Council* v. *EPA,* 529 F.3d 1077 (D.C. Cir. 2008) (Recognizing that it is within EPA's discretion to determine when it is appropriate to rely on existing data rather than exercising its authority under section 114 of the Clean Air Act to obtain additional or new data.) In addition to actually having sufficient data upon which to base the proposed rule, we faced time constraints that precluded obtaining even more data due to the fact that we were trying to meet a court-ordered deadline for issuing the proposed rule. Finally, the rulemaking process itself is one of the primary ways in which EPA obtains relevant information.

We agree with the commenter that additional roofing line emissions data would be helpful in establishing the GACT-based limits for this area source category. We also agree that variability in emissions is one of several important factors that need to be considered in establishing the GACT limits and that we had a less than desirable amount of data with which to consider statistical variability at proposal. The additional data provided with the industry comments, in combination with the data EPA relied on in developing the proposed rule, provides a robust data set for use in assessing both the actual performance of sources and the variability in that performance with the result that the final emission limits will be more statistically sound than those contained in the proposed rule. Consequently, the final GACT-based limits have been revised to take into account the additional data submitted by the commenter for asphalt roofing lines. Additionally, we considered the standard deviation of the data in establishing the revised emission limits. We are adding one standard deviation to the average of the data to account for variability. We considered adding two standard deviations to the average but we did not believe this approach was representative of GACT because the resulting emission limits were above the limits that most facilities already achieve. For the combined coater/saturator roofing lines, we are establishing the emission limits as the sum of the emissions limits for the coater-only and saturator-only lines. We used this approach for the combined coater/saturator roofing lines because the emissions are additive (*i.e.,* the process units are in series).

The revised GACT limits for new and existing coater-only production lines are 0.0002 lb PAH/ton of product manufactured (or 0.06 lb PM/ton of product manufactured). For new and existing saturator-only production lines, the revised GACT limit is 0.0007 lb PAH/ton of product manufactured (or 0.30 lb PM/ton of product manufactured). For new and existing combined saturator and coater production lines, the revised GACT limit is 0.0009 lb PAH/ton of product manufactured (or 0.36 lb PM/ton of product manufactured).

C. Initial Compliance Requirements

Comment. One commenter contended that EPA proposed a very short compliance deadline for existing sources—only one year from issuance of the final rule. *See* section 63.11560(a). The commenter noted that the proposed one-year compliance deadline is premised upon EPA's assumption that sources will not have to install or modify air pollution control equipment

to meet the standards. The commenter stated that this assertion is not true; however, as shown by the subpart UU NSPS test data in a report submitted by the commenter, a number of facilities have been operating above the proposed PM standards in the GACT proposal. Thus, according to the commenter, contrary to the proposal's justification, if the final standards are anywhere near the level of the proposed standards, the commenter stated that a number of facilities will need to make significant improvements to and/or reconstruct existing PM control equipment or install new equipment altogether to meet the proposed GACT limits.

The commenter stated that NSPS subpart UU and MACT Method 5A testing data show that 20—50 percent of the potential GACT regulated sources surveyed by EME Solutions would be in non-compliance with the proposed GACT limits. Given that these sources will have to perform engineering testing(s) to assess compliance status, analyze results, design/develop solutions to the reason(s) for potential noncompliance, fabricate and install the solutions, and then perform compliance testing; eighteen months is much too short a time period.

The commenter noted that the proposal also recognizes that there are uncontrolled sources in the industry. For example, many coating mixers are not currently controlled. Even if a facility has existing PM control equipment, the commenter contended that it will be necessary to install ducting to vent the currently-uncontrolled affected sources to the controls.

The commenter also noted that many States require a construction permit to make modification to emissions control technology already in place. The permitting alone can take 9 months or longer.

In addition, the commenter stated that the subpart LLLLL MACT standards provided a 3-year compliance date for existing sources, even though they were less stringent than the proposed GACT standards. The commenter said that there is no logical rationale for having a three-year compliance date for the MACT standards yet only a one-year compliance date for more stringent GACT standards. The commenter stated that for all these reasons, the final rule should provide that a facility has three years from the date of issuance of that rule to comply with the GACT standards.

For all these reasons, the commenter believed that a three-year compliance deadline is appropriate, and that the proposed section 63.11560(a) should be amended by substituting the term ''three years'' where ''one year'' is currently found in the bracketed language.

Response. We disagree with both the commenter's basic premise that existing sources will need three years to comply with the final standards and the assumptions underlying that premise. The commenter assumes that either new control devices will need to be installed, or existing controls upgraded, to comply with the PAH or PM emission limits. We believe that this assumption is incorrect. In this final rule, we revised the emission limits based on our assessment of additional data and to account for variability. As a result, we believe that no new add-on controls will be needed to comply with the final GACT standards. Consequently, we believe that the proposed compliance deadline of one year is adequate. If an owner or operator believes that additional time beyond the one year compliance period is needed to install controls, the owner or operator can request a compliance extension from the Administrator (or a State with an approved title V permit program), as authorized by CAA section 112(i)(3)(B) and specified in section 63.6(i)(4)(i)of the NESHAP General Provisions.

Comment. One commenter noted that the deadline for conducting performance tests for existing sources stated in the proposal preamble was incorrect because it said that the performance test must be conducted within 180 days after publication of the final rule in the **Federal Register**, rather than 180 days after the compliance date as specified in the regulatory text. The commenter said that the preamble to the final rule should clarify that the preamble to the proposal was in error because the rule language specifies that existing facilities must demonstrate initial compliance within 180 calendar days after the compliance date.

The commenter also noted that EPA uses multiple terms for the same requirement (*i.e.,* ''performance testing,'' ''compliance testing''). The commenter asserted that the use of multiple terms for the same requirement can cause confusion when interpreting the regulatory requirements. The commenter recommended that EPA refer to this testing as ''compliance testing'' throughout the final GACT rule.

Response. We agree with the commenter and have corrected the inconsistencies in the final rule.

Comment. One commenter stated that either one or both of the asphalt density calculations have been improperly derived. The commenter said that either the calculations in English units or in metric units are inaccurate; as they do not give the same answer after the unit conversions are made. The commenter requested that EPA revise these equations as appropriate.

Response. We agree with the commenter and we have corrected the English-unit values for the constants K_1 and K_2 in the asphalt density equations of the final rule.

Comment. One commenter believed that the requirement in the proposed rule (section 63.11562(h)(1)) to conduct the compliance tests under conditions that represent normal operation and not during periods of startup, shutdown, or malfunction is overly broad. The commenter stated that there can be a significant range of ''normal operation,'' and the requirement as stated can lead to confusion among regulators and the regulated community.

The commenter added that some asphalt roofing manufacturing facilities would find it impossible to meet the proposed requirement to manufacture a certain product during compliance testing because they do not manufacture such products. The commenter noted that the proposal also differs from the approach taken in the subpart LLLLL MACT rule. The commenter suggested that the final rule require that the test be performed while manufacturing the roofing product that is expected to result in the greatest amount of HAP emissions.

Response. We agree with the commenter's suggestion that compliance tests be performed while manufacturing the roofing product that is expected to result in the greatest amount of PAH emissions. As a result, the final rule specifies that initial and subsequent compliance tests must be conducted while manufacturing the product that has the highest PAH and PM emissions. We have also eliminated the requirement that compliance tests be conducted under conditions that represent normal operation and not during periods of startup, shutdown or malfunction. We believe that this change addresses both aspects of the comment. Requiring that the compliance test be conducted while manufacturing the product that has the highest PAH and PM emissions eliminates the need to specifically reference normal operating conditions. We are appropriately requiring compliance testing during those periods when the facility is manufacturing the product that has the highest PAH and PM emissions.

Comment. One commenter stated that it would be helpful if EPA explained how the production rate is determined. The commenter questioned if the production rate was based on actual

daily production, monthly production, the daily average of monthly production or some other calculation. The commenter also questioned how the production rate would be determined in plants that run continuously, so that production spans more than one calendar day.

Response. The production rate to be used in determining compliance with the asphalt roofing manufacturing emission limits is the production rate at which the roofing line was operating during the compliance test. If a facility is demonstrating initial compliance with the emission limits using the average of three 1-hour emission tests, the production rate used for the compliance demonstration would be the average rate over the 3-hour period (in terms of pounds of product manufactured). The final rule clarifies that the production rate used for determining compliance must be the average production rate utilized during the compliance test.

Comment. One commenter supported EPA's decision to set the PM standards based upon filterable PM emissions, as is clear from the choice of Method 5A to measure PM emissions. The commenter noted that the data upon which the standards were based were of filterable PM emissions, so it would be inappropriate to include condensable particulate for compliance purposes. The commenter asserted that doing so would be inconsistent with the basis of the standards.

The commenter believed that the preamble to the final rule should make it clear that in measuring PM emissions, the rule contemplates only filterable PM (the ''front half''), and that it would be inappropriate to also require measurement of condensable PM (the ''back half''). The commenter also recommended adding a definition for PM to section 63.11566. The commenter said that the definition should state that ''Particulate matter (PM) means the filterable particulate matter as measured using the front half of Method 5A.'' Should States require that the front half and back half meet these stringent standards, this would result in a regulation far stricter than that mandated by the CAA. The commenter stated that facilities might be required to install thermal oxidizers to comply, a decision that would result in increased emissions of greenhouse gases to reduce already low emissions of PAH.

Response. The data upon which the alternative PM emission limits are based were collected using EPA Method 5A of Appendix A of 40 CFR 60 (Determination of Particulate Matter Emissions from the Asphalt Processing and Asphalt Roofing Industry). Using Method 5A, PM in vent gas samples taken from the source is collected on a glass fiber filter maintained at a temperature of 42 ± 10 °C (108 ± 18 °F). The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water. Consequently, we agree with the commenter that it would be inappropriate to establish emission limits that include contributions from PM that is captured in the sampling train downstream of the Method 5A filter since we do not have data that reflect those contributions. Therefore, for purposes of this final rule, we are defining PM to include any material determined gravimetrically using EPA Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing And Asphalt Roofing Industry (40 CFR 60, Appendix A).

Comment. One commenter noted that the proposal allows the use of the results of performance testing conducted during the past five years to show compliance and indicates that a source must be able to demonstrate that ''the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.'' The commenter requested further explanation of this provision, because it is likely that most process adjustments would trigger a re-test.

Another commenter stated that the rule should specify that only emission increases resulting from a process change that is above a de minimis level would prevent a previous test from being used.

Response. We clarified the final rule preamble by removing the term ''with or without adjustment'' because that language was unclear. While we agree that there are many types of process changes that could increase PAH and PM emissions such that the previously-conducted test would not be valid, we believe that some changes would not invalidate the results of the previously-conducted test.

We included the option to use existing tests to provide flexibility to the affected facilities. We intend that it is the responsibility of the owner or operator to demonstrate that the process adjustment or change did not invalidate the results of the previously-conducted test. Consequently, we are not including de minimis emissions levels in the final rule.

Comment. One commenter noted that some facilities have conducted required PM compliance testing under various state-managed air permit programs. The commenter said that, in some cases, the methodologies used in these tests are somewhat different than Method 5A. However, the commenter noted that in all cases the methods are approved by a State agency prior to use and typically are carefully evaluated by state experts. The commenter asserted that preventing a facility from using a legitimate, accepted test previously used to establish compliance will result in unnecessary costs and potential conflicts with existing, state-issued, air permit terms and conditions. The commenter asserted that in this scenario requiring the prior test to conform exactly to Method 5A does not provide any additional benefit to the environment, and it merely adds cost, uncertainty and confusion.

Response. We disagree with the commenter that the final rule should provide a blanket allowance for the use of state-approved test methods in lieu of EPA Method 5A. The final rule, through reference to the NESHAP General Provisions, allows owners or operators to petition the Administrator to use alternative test methods and procedures. The EPA retains the authority to approve alternative test methods based on site-specific information. This mechanism can be used to obtain approval to use the results of a previously conducted test, as well as to obtain approval to use an alternative test method in the future.

Comment. One commenter supported EPA's decision to allow facilities to use ''process knowledge and engineering calculations'' in lieu of a performance test to demonstrate initial compliance at a roofing line that does not include a saturator. The commenter noted that companies often have the necessary information and data to show that they will be in compliance with the emission standards if they operate their plants in such a way as to meet specified parameters. However, the commenter questioned why the option was limited to roofing lines that do not include a saturator. The commenter noted that the proposal offers no explanation for this limitation. The commenter asserted that the same principles apply to roofing lines with saturators and asphalt processing operations.

Response. In the proposal, we limited the option to use process knowledge and engineering calculations because we believed that a coater-only line was the only equipment configuration that could potentially demonstrate compliance without using an add-on control device. However, we agree with the commenter that the technical basis for allowing the option does not

preclude application of the option to lines containing saturators. Therefore, the final rule does not limit to coater-only lines the use of process knowledge and engineering calculations, in lieu of an emissions test, to demonstrate initial compliance. However, we are clarifying that the option is applicable only to roofing lines that do not need a control device to comply with the GACT limits.

D. Continuous Compliance Requirements

Comment. Two commenters stated that the pressure drop monitoring requirement for control devices in the final rule should specify that the pressure drop must be maintained in the range established during the initial compliance test, rather than below a maximum limit. The commenters noted that if the filter develops a tear or it is removed after the initial test, the pressure drop would decrease. In this scenario, the commenters said that the filter removal or tear would not cause a violation of the operating limit but the air pollution control device would not be operating properly. A third commenter noted that filters become more efficient and remove more particulates as their differential pressure increases.

Another commenter stated that as long as the ability of the blower to move air is not impeded (*i.e.,* as long as the operating limit of the technology is not exceeded), increased pressure drop actually improves PM removal efficiency. The commenter said that the key to PM filtration technology is not the pressure drop but the velocity of air moving through the capture and control system. The commenter said that pressure drop is actually a surrogate for air flow measurement. The commenter stated that the design maximum pressure drop is based on the ability of the blower providing air flow for capture of the emissions at the source (the air flow captures the PM emissions and transports the PM to the filtration). The commenter noted that the proposed approach of maintaining the pressure drop below a maximum level is contrary to the way filtration-based PM control technology used in asphalt roofing lines works.

Response. We agree with the commenters that requiring that the pressure drop be maintained within a predetermined range and monitored to ensure that this is the case is a better indicator of control system performance than requiring the pressure drop be maintained below a maximum level. The final rule, therefore, specifies that the pressure drop and temperature must be maintained within the range established by the initial compliance assessment.

Comment. One commenter recommended that the pressure drop temperature compliance parameters be based upon the specifications of the manufacturer of the filtration technology. The commenter said that many years of Method 5A compliance testing has demonstrated that as long as the inlet emissions stream does not exceed the manufacturer's temperature and pressure drop limits, and the control technology is operated as specified by the manufacturer, the technology will remove the PM from the stream as guaranteed. The commenter stated that many States have recognized the validity of this approach to deliver compliance with PM emissions limits by requiring that, in both construction and operating permits, emissions sources operate control technologies as per manufacturing requirements. The commenter said that language in the permit either incorporates or references the manufacturer's written operating requirements as compliance parameters.

The commenter stated that limiting the allowable pressure drop to levels below manufacturer's guaranteed performance limits will force facilities to replace and dispose of expensive filtration media well before the end of its guaranteed performance which would result in the increased generation and disposal of solid wastes, with no net increase in reduction of PM and PAH emissions. Also, the commenter said that if the compliance test did not occur late in the expected life of the filter media, the pressure drop measured will be low because the pressure drop is lower for new filtration media than for old filtration media.

The commenter added that the inlet temperature to the filtration technology is dominated by ambient conditions (*e.g.,* when outside temperatures are high, the inlet temperatures of emissions stream to the filtration technology will be high). Thus, the commenter said that if a facility cannot time the compliance test to occur during the hottest time of the year, the source will surely experience higher inlet temperatures during high temperature time periods. The commenter stated that member companies have already experienced this problem in operating under the subpart LLLLL asphalt processing and asphalt roofing manufacturing MACT. The commenter noted that facilities in the industry have received notices of violations for inlet temperatures that exceeded those measured during the performance test, then re-tested at the elevated temperature. The commenter said that these re-tests showed that they still did not exceed the MACT PM emission limits. The commenter also provided a graphical figure that shows a consistent correlation between temperature and emissions does not exist.

The commenter recommended that facilities be allowed two options for establishing and monitoring pressure drop and temperature in the final rule. Under the commenter's first option, the parameters would be based upon manufacturer's specifications. The source would conduct an initial compliance test. The PM emissions from the control device would need to be shown to be below the final GACT limits. As long as the pressure drop was below the manufacturer's requirements, the source would be considered to be in compliance with the pressure drop compliance parameter. Under the commenter's second option, the parameter values would be established as under the proposal, but a measurement that did not exceed that value by a certain percent would not be considered to be a deviation (the commenter suggested 30 percent for pressure drop and 10 percent for temperature). The commenter stated that EPA has allowed a similar buffer over parameters measured during the performance test in existing MACT standards, including Subpart N for Chromium Electroplating, at section 63.343, allowing a buffer on differential pressure, and Subpart NNN for Wool Fiberglass, at section 63.1382, allowing production rate to exceed 20 percent above the tested rate for up to 10 percent of the operating time in a semiannual period.

Another commenter, a control device equipment vendor, asserted that filters will perform adequately when operated within the design and pressure limits imposed by the manufacturer. The commenter added that filtration equipment will operate adequately at temperatures within the limits specified by the equipment manufacturer.

Response. We agree with the commenters that equipment manufacturer specifications for filter media performance are appropriate for use in establishing monitoring parameter ranges, particularly considering the difficulty in conducting emission tests that capture the performance of the control device at the high and low end of its operating range. Consequently, we are adopting the commenter's first option in that the final rule allows owners or operators to use equipment manufacturer performance specifications for filter media in establishing monitoring parameters.

Comment. One commenter was very concerned about the way the proposal would have facilities set their compliance parameter limits for pressure drop and temperature through an initial compliance test. The commenter believed that EPA's proposed approaches lack a technical basis and would result in numerous potential violations of the operating limits even when PM and PAH emissions are well below the emission standards. The commenter suggested alternative methodologies that are more appropriate for establishing parameter limits.

The commenter noted that the proposal would treat all ''deviations'' from the operating parameter limits (*i.e.,* all exceedances of parameter limits) as potential violations of the emission standards. The commenter thought that this approach was excessively harsh, particularly because several factors make it almost certain that established operating parameter limits will be exceeded at times even when a facility is not exceeding the GACT emission standards, and is operating its processes and control equipment well.

For example, the commenter stated that an exceedance of a temperature parameter limit does not mean that a facility is exceeding the emission standard; the ambient temperature has a significant effect on the temperature monitored and the amount of emissions is actually controlled by the temperature of the asphalt in the coating mixer, coater, and/or saturator. For that reason, the commenter noted that the preamble to the Subpart UU (NSPS for asphalt processing and asphalt roofing manufacturing) states that ''periods of temperature excursions * * * would not, of themselves, constitute a violation of the numerical emission limits. The commenter noted that even if the temperature is measured at the coater or saturator, an exceedance of the temperature parameter limit does not mean that the source is exceeding the standards.

The commenter asserts that the same is true for deviations from a set pressure drop parameter limit. As discussed above, it would not be at all surprising for a roofing line to exceed its pressure drop limit but still emit fewer PM or PAH emissions than the actual emission standard allows.

Consequently, the commenter stated that EPA should follow an approach similar in some ways to one that EPA established in its subpart NNN fiberglass MACT standards. The subpart NNN wool fiberglass standards consider whether an affected source is operating outside of its parameter limits for more than 5 percent of the time during a 6-month block reporting period. The commenter believes that EPA should borrow from this approach, and require that the facility conduct a new compliance test if a roofing line has operated outside of the established parametric limits, as we have proposed them, for more than 5 percent of the time in any semiannual reporting period. The commenter said that this would essentially be a combination of the approaches taken by the wool fiberglass MACT standards and the subpart UU NSPS for asphalt roofing manufacturing. If the re-test shows the line to be emitting more PAH or PM than the standard allows, commenter said that the facility could be judged to be in violation of the GACT standard. If the re-test shows that emissions do not exceed the standard, commenter said that there would be no violation.

Response. We acknowledge the difficulty in establishing appropriate monitoring parameter ranges for filtration-based PM control devices. As noted in earlier responses to comments above, the final rule allows owners or operators to establish a range of parameter values for monitoring using manufacturer performance specifications. The EPA believes that allowing the use of manufacturer specifications provides owners or operators sufficient flexibility in establishing appropriate parameter ranges. Consequently, we are not including a re-test provision in the final rule. The parameter ranges established by the facility and approved by the delegated authority are not-to-exceed values. A parameter exceedance would be a violation of the monitoring requirements but not necessarily a violation of the emission limits. Additionally, we are not including the re-test provision because we do not believe it is possible in all cases to replicate the conditions that caused the exceedance during a re-test.

Comment. One commenter noted that some of the ESP units currently in operation in the industry are not provided with voltage meters, nor are they easily modified to add meters for the voltage reading. The commenter said that such ESPs are typically provided with a green indicating light. The commenter said that this light is used to assess the operation of the unit and determine when cleaning is needed. The commenter added that the light burns a solid green during normal operation and the light flashes as the cells gradually become dirty; the dirty cells are then replaced with clean spares.

The commenter stated that contractors have been contacted to provide proposals to modify the existing units to add the required voltage indicators. The commenter said that current estimates are around $50,000 to modify the exiting units to add voltage meters and another $25,000 to $50,000 to add controls to automatically provide the 3-hour average voltage (cost varies depending upon the current automation capability of a facility). The commenter said that the high cost of these modifications is not reasonable, given that the use of the indicating light ensures that the ESP will operate properly. The commenter therefore believed that routine monitoring and logging of the ESP monitoring light is the only reasonable method to verify the operation of an ESP that does not have voltage meters and that EPA should allow this method of compliance.

Response. We agree with the commenter that requiring retrofits for voltage monitors is not cost efficient. We also believe that monitoring the ESP instrumentation (*e.g.,* indicator light) provides sufficient monitoring of the ESP performance. Therefore, the final rule allows owners or operators to monitor the ESP instrumentation as an option to monitoring voltage. Additionally, the final rule specifies that failure to service the ESP within one hour of the potential problem is an exceedance of the monitoring standards, which is consistent with previously promulgated area source rules (*e.g.,* area source NESHAP for iron and steel foundries, and area source NESHAP for aluminum, copper and other nonferrous foundries).

Comment. One commenter stated that CEMs are not suitable for asphalt fumes for continuous sampling of PM. The commenter noted that EPA Method 5A is used for stack PM sampling of asphalt fumes and Method 5A requires that the emission stream be cooled to allow the fume aerosols to condense and this PM portion is then recovered from the sample train with an after test solvent wash. The commenter stated that a continuous analyzer does not exist that will perform this PM sampling.

Response. We agree with the commenter and the CEMS option has been removed from the final rule.

Comment. One commenter supported the proposed provision that, for periods of startup and shutdown, would allow owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. The commenter advocated, however, that EPA adopt a similar 24 hour averaging approach for determining compliance with the temperature requirements of the rule. Another commenter expressed concerns with the proposed provision

that, for periods of startup and shutdown, allows owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. Specifically, the commenter expressed concern regarding the public health impacts of excess emissions during SSM episodes.

Response. We appreciate the one commenter's support of the provision that, for periods of startup and shutdown, allows owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. However, we reject the commenter's suggestion that the 24-hour averaging period be extended to temperature. As stated elsewhere in this preamble, we have modified the rule to require that the owner/operator establish a temperature range for the inlet gas temperature to the PM control device during the initial compliance assessment and to then maintain the 3-hour average inlet gas temperature within that range during operations. We believe that these changes, which allow the owner/operator to establish a temperature range, obviate any need for a longer averaging time for temperature.

We proposed the use of a 24-hour averaging period for determining compliance with the emission standards to account for emissions generated during periods of startup and shutdown based on the format we chose for the emission standards, *i.e.,* lbs of emissions per ton of product produced. During periods of startup and shutdown, the process will continue to produce emissions. Even though emissions during such periods will be less than those that occur during normal operations when measured on an hourly basis, *i.e.,* pounds of emissions per hour of operation, production during such periods will be very limited. As a result, it will be very difficult, if not impossible, to demonstrate compliance with a standard stated in terms of pounds of emissions per ton of product produced if a 3-hour averaging period is used. Specifically, emissions generated during periods of startup and shutdown will be less on an hourly basis than those generated during normal operations for a number of reasons. First, during periods of startup, the temperature of the asphalt is raised until it reaches the optimal temperature for use when producing product. Similarly, during periods of shutdown, the temperature of the asphalt is being reduced from the temperature which is optimal for production. As the temperature of the asphalt increases, the rate of volatilization also increases, resulting in increased PAH emissions as measured on a pounds per hour basis. As a result, during startup, PAH emissions, as measured on a pounds per hour basis, increase until the temperature of the asphalt reaches the optimal temperature for production after which the temperature is maintained at a steady state. During shutdown, the reverse process occurs, *i.e.,* as the process is shut down, the asphalt cools, the rate of volatilization decreases and hourly PAH emissions decrease. Second, during startup and shutdown, the asphalt usage rate, and hence the hourly PAH emission rate, fluctuates. During startup, the asphalt usage rate gradually increases until it reaches the rate present during normal production. As a result, during startup, the hourly PAH emission rate gradually increases until it reaches the rate that exists during periods of normal production. During shutdown, the reverse occurs, *i.e.,* the hourly asphalt usage rate gradually decreases from the rate present during normal production. Thus, except for the very start of the shut-down period, the hourly PAH emission rate is lower than during periods of normal production. The rate of production, *i.e.,* the amount of product produced on an hourly basis, also fluctuates during periods of startup and shutdown. At the commencement of startup, no product is being produced as the asphalt is being brought up to the proper temperature for normal production. The rate of production then gradually increases until the process reaches, and is maintained at, the rate of normal production. During shutdown, the rate of production is gradually reduced from its normal rate to zero. Thus, in light of the production-based format of the standard and the emission characteristics described above that occur during startup and shutdown at asphalt processing and asphalt roofing manufacturing facilities, we concluded that it was appropriate to provide a longer averaging period for determining compliance during periods of startup and shutdown. We chose a 24-hour averaging period because, based on the exercise of our best engineering judgment, we determined that this was an appropriate period since the record indicates that the startup and shutdown processes can take up to 9 hours to complete. We also considered establishing a 16-hour averaging period as this represents two normal 8-hour shifts, but concluded that this would not provide adequate time for conditions to normalize. The final rule, therefore, allows sources to determine compliance with the emission standard based on a 24-hour averaging period, as opposed to a 3 hour period.

We acknowledge the one comment regarding the health concerns associated with emissions that are generated during start-up and shut-down events; however, the GACT standards are technology-based standards as opposed to health- or risk-based standards. For the reasons described above, we think a 24-hour averaging period during periods of startup and shutdown is reasonable and the commenter has provided no evidence to the contrary.

In the proposed rule, we proposed to also apply the 24-hour period for measuring compliance to malfunction events. We are not adopting this approach in the final rule. Rather, the final rule requires compliance with the standard based on a 3-hour average at all times, except as explained above, for periods of startup and shutdown, in which case the rule provides that owners and operators demonstrate compliance with the standard over a 24-hour averaging period. In re-examining the record for this rulemaking, we recognized that the data in the record supporting a longer averaging period related solely to startup and shutdown events. Moreover, in contrast to startup and shutdown events which are routine and distinct operating modes, a malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' 40 CFR 63.2. As discussed above, EPA has properly accounted for different periods of operation, including periods of startup and shutdown, in establishing the standards in this rule. Since a malfunction is not a distinct operating mode, malfunction emissions do not need to be factored into the development of CAA section 112(d) standards, which, once promulgated, apply at all times. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008). Thus, the final rule does not establish a different averaging period for use in measuring compliance during malfunction events. Further, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take into account malfunctions in setting CAA section 112(d) standards. Because, by definition, malfunctions are sudden and unexpected events, it would be difficult to set a standard that would account for the myriad of different emissions that could occur during malfunctions. In addition, the type, frequency, and duration of the malfunctions may differ significantly between sources. Finally, setting an emissions standard that accounts for all

different potential types of malfunctions would allow a source to emit excessive quantities of uncontrolled pollution and would not provide an incentive for sources to minimize the occurrence of malfunctions.

E. Title V Permitting

Comment. One commenter argued that the Agency's proposal to exempt the asphalt processing and asphalt roofing manufacturing area source category from title V requirements is unlawful and arbitrary. The commenter stated that section 502(a) of the CAA authorizes EPA to exempt area source categories from title V permitting requirements if the Administrator finds that compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' 42 U.S.C. section 7661a(a). The commenter noted that EPA did not claim that title V requirements are impracticable or infeasible for any of the source categories it proposes to exempt, but that EPA instead relied entirely on its claim that title V would be ''unnecessarily burdensome.''

Response. Section 502(a) of the CAA states, in relevant part, that:

> * * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. *See* 42 U.S.C. section 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.,* area) sources of air pollution from the requirements of title V. The commenter correctly noted that EPA based the proposed exemptions solely on a determination that title V is ''unnecessarily burdensome,'' and did not rely on whether the requirements of title V are ''impracticable'' or ''infeasible'', which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible *or* unnecessarily burdensome.'' *See* CAA section 502 (emphasis added). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or.'' For the reasons explained in the preamble to the proposed rule, we believe that it is appropriate to exempt sources in the asphalt processing and asphalt roofing manufacturing area source category, which are not otherwise required to have a title V permit, from title V permitting and, on that basis, have retained the exemption in the final rule.

Comment. One commenter stated that in order to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, among other things, that the ''burden'' of compliance is unnecessary. According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why, for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for any of the categories it proposes to exempt.

Response. The EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. *See* CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. *See* 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' *See* 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, rather than on an individual basis, support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show * * * that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. The EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the July 9, 2009 proposed rule for the asphalt processing and asphalt roofing manufacturing area source category. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the asphalt processing and asphalt roofing manufacturing area source category and, on that basis, proposed to exempt the

category from title V. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the July 9, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking. (*See* 74 FR 30386).

Moreover, if the comment was framed as a request to reopen our interpretation of the term ''unnecessarily burdensome'' in CAA section 502, which it is not, we would deny such request because we have a court-ordered deadline to complete this rulemaking by November 16, 2009. In any event, although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term ''unnecessarily burdensome'' in section 502, as set forth in the Exemption Rule, is reasonable.

Comment. One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level.

The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that likewise, it is difficult or impossible for citizens to bring enforcement actions.

The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt without title V permits. The commenter also added that likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt.

The commenter concluded that EPA does not even acknowledge these benefits of title V, far less explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response. Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under the asphalt processing and asphalt roofing manufacturing area source rule, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. The EPA reasonably applied the four factors to the facts of the asphalt processing and asphalt roofing manufacturing area source category, and the commenter has not identified any flaw in EPA's application of the four factor test.

Moreover, as explained in the proposal, we considered implementation and enforcement issues in evaluating the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. *See* 70 FR 32829–32830.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that State-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. *See* 74 FR 32822, 32829. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources and that these additional programs will supplement and enhance the success of compliance with this NESHAP. *See* 74 FR 32822, 32829–32830. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by area sources with this NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under this NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, which we dispute, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of the NESHAP. Furthermore, the fourth factor is one factor that we evaluated in

determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemptions for the asphalt processing and asphalt roofing manufacturing source category.

Comment. One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for the asphalt processing and asphalt roofing manufacturing area source category. The commenter stated that in its proposal EPA proposed ''using parametric monitoring'' of either process changes or add-on controls. 74 FR at 32828.'' The commenter further stated that ''EPA argues that its proposed standard, by including these requirements, provides monitoring ''sufficient to assure compliance'' with the proposed rule. *Id.* at 32829.'' The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason as well, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response. The EPA used the four-factor test described above to determine if title V requirements were unnecessarily burdensome for the asphalt processing and asphalt roofing manufacturing area source category. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source category. *See* 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. *See* 70 FR 75323.

The commenter asserts that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule,'' and that ''EPA has failed to provide any evidence whatsoever to demonstrate that the monitoring requirements in [the asphalt processing and asphalt roofing manufacturing area source category rule] 'assure' compliance.'' However, the commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring requirements are sufficient to assure compliance with the standards in the rule.

We considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring requirements in this area source rule can assure compliance. Compliance with the emission limits is determined during the initial assessment and continuous compliance with the final emission limits is demonstrated by monitoring parameters and process conditions established during the initial compliance assessment. For the reasons described above and in the proposed rule, the first factor supports exempting this area source category from title V requirements. Assuming for argument's sake that the first factor alone is not sufficient to support the exemption, *i.e.,* that a single factor cannot alone support the exemption, a proposition that EPA rejects, the four factors when considered in combination do support the exemption. As we explained in the preamble to the proposed rule, the four-factor balancing test requires EPA to examine the factors in combination and determine whether the factors, viewed together, weigh in favor of exemption. *See* 74 FR 32828. As explained above, we determined that the factors, weighed together, support exemption of the area source categories from title V.

Comment. According to one commenter EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 32829). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to the asphalt processing and asphalt roofing manufacturing area source category—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in the proposed asphalt processing and asphalt roofing manufacturing area source category NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response. The commenter takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition of title V permitting requirements is unnecessarily burdensome for the source category. The commenter also mischaracterizes the first of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. While EPA recognizes that requiring a title V permit can generally offer additional compliance options, for the asphalt processing and asphalt roofing manufacturing area source category, EPA concluded that requiring title V permits would be unnecessarily burdensome because the final rule already contains provisions sufficient to assure compliance.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping, and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule and are sufficient to allow the public the opportunity to obtain knowledge about the source, consistent with the goal in title V permitting. For example, in the Initial Notification, the source must identify its size, whether it must meet any of the GACT requirements in the rule, and how it plans to comply with the rule requirements. Also, in the notification of compliance status, the

source must certify how it is achieving compliance and that it has complied with all of the requirements of the final rule. The source must keep records to document on going compliance with the emission standards finalized in this rule. The source must also submit semi-annual compliance reports to the delegated authority. This information is available to the public once the source has filed the reports with the delegated authority.

The EPA believes that these requirements in the rule itself, including the requirement to provide information about the source's compliance that is available to the public, provide sufficient basis to assure compliance, and that the title V requirements, if applicable to these sources, would not offer significant improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination. Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA must evaluate whether any improvement in compliance above what the rule requires justifies the costs associated with title V permitting requirements. The EPA reviewed the area source category at issue and determined that approximately 30 of the 75 sources that would be subject to the rule currently have a title V permit. As stated in the proposal (74 FR 32829), EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, 72 FR 32290, June 12, 2007, EPA ICR Number 1587.07. Based on this information, EPA determined that there is a significant cost burden to the industry to require title V permitting for all the sources subject to the rule. In addition, in analyzing factor one, EPA found that imposition of the title V requirements offers no significant improvements in compliance. In considering the third factor, we stated in part that, ''Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.'' *See* 74 FR 32829.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the area source category. The EPA found it reasonable, after considering all four factors, to exempt the asphalt processing and asphalt roofing manufacturing area source category from the permitting requirements in title V. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the asphalt processing and asphalt roofing manufacturing area source category, the comments provide no basis for the Agency to reconsider its proposal to exempt the category from title V.

Comment. According to one commenter, ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter stated that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, however, the Agency's argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter stated that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary does not suffice to show that title V compliance is unnecessarily burdensome.

Response. The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable. In addition, our determination to exempt the asphalt processing and asphalt roofing manufacturing area source category from title V is specific to this rule, and is not, as the commenter suggests, reflective of a general view that title V requirements are unnecessary. We review the facts of each area source category individually in determining whether to exempt the category, or a portion of the category, from the requirements of title V pursuant to section 502. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. The EPA believes that these programs will be sufficient to assure compliance with the rule. The EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. The EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source standard.

The commenter argues that EPA cannot exempt these area sources from title V permitting requirements because ''t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). The application of the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—in determining whether to exempt an area source category from title V is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome for the asphalt processing and asphalt roofing manufacturing area source category.

Furthermore, we disagree that the basis for excluding the asphalt processing and asphalt roofing manufacturing area source category

from title V requirements is generally applicable to any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the source category at issue in this rule.

Comment. One commenter stated that EPA concedes that the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment, citing 74 FR 32830. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare and the environment. The commenter stated that, instead, EPA offered only the conclusory assertion that ''the level of control would remain the same'' whether title V permits are required or not (74 FR 32830).

The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons provided earlier in its comments, and that, therefore, EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: ''to assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA.'' The commenter stated that those benefits—of which EPA's proposed rule deprives the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary.

The commenter concluded that, for the reasons given above, the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response. Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). The EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome,'' as requiring consideration of the four factors discussed above. The EPA applied these four factors to the area source category subject to this rule and concluded that requiring title V for this area source category would be unnecessarily burdensome.

In addition to determining that title V would be unnecessarily burdensome on the asphalt processing and asphalt roofing manufacturing area source category, as in the Exemption Rule, EPA also considered whether exempting the area source category would adversely affect public health, welfare or the environment. As explained in the proposal preamble, we concluded that exempting the asphalt processing and asphalt roofing manufacturing area source category from title V would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information that exemption of the asphalt processing and asphalt roofing manufacturing area source category from title V will adversely affect public health, welfare or the environment.

F. Definitions

Comment. Two commenters noted that the definition of saturator in the proposed rule implies that an impregnator vat is a saturator. The commenters noted that the distinction is important because emission limits in Table 2 of the proposed rule are different for coater-only lines and saturator-only lines. Consequently, the commenters said that EPA should clarify the definition of saturator. One of the commenters also noted that it would be helpful if EPA further explained what is meant by ''hot mix asphalt plant operations used in hardstand,'' ''operations where asphalt may be used in the fabrication of a built-up roof,'' ''asphalt roofing facility'' and ''wet looper.''

Response. We agree with the commenters and the final rule clarifies the definition of saturator with regard to impregnation vats and wet looper, and adds definitions for ''hot mix asphalt plant operations,'' ''built-up roofing operations,'' and ''asphalt roofing facility.''

G. Cost Impacts

Comment. One commenter stated that the EPA's assertions that all facilities will be able to meet the proposed standards using existing controls, that only 50 percent of facilities would need to install monitoring equipment, that the only additional costs would be for reporting and recordkeeping, and that the proposed rule would not impose a significant adverse impact on any facilities, large or small are not supported by information collected by the commenter.

Although it may be possible for some sources to modify existing control equipment to meet the emission limits, the commenter stated that it is unlikely that every source, especially the 11 small businesses, will be able to meet the standards under the worst foreseeable circumstances, the standard that is required for continuous compliance. (*See* Section V of these comments for a discussion of variability and *Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999).

For the proposed GACT standards, the commenter noted that EPA estimated an average cost of $3000 per facility. The commenter believed that the compliance cost will be at least an order of magnitude greater than the EPA cost estimates. Accordingly, the commenter developed a cost estimate by assuming that 25 percent of existing lines will need to install controls equivalent to those EPA identified in 2001 as ''beyond the MACT floor.'' The commenter's industry-wide cost estimates, not adjusted for inflation, are:

- $12,921,000 in capital costs (19 lines × $680,000 in capital costs),
- $11,951,925 in installation costs (19 lines × $629,000 in installation costs),
- $6,971,011.33 in annual operating costs (19 lines × $367,000 in annual operating costs), and
- $234,000 (EPA's estimate of annual cost of $3000 per facility for monitoring, recordkeeping and reporting for 78 lines).

In addition, the commenter noted that facilities will bear the costs of performance testing. Under the proposal, the commenter said that facilities would have to continue re-testing until they conduct a test on one of the hottest days of the year. The commenter stated that these performance test costs will be significant—approximately $10,000 per test.

The commenter noted that these costs will not be incurred by individual facilities as ''industry-wide average costs.'' The commenter said that some facilities will bear only the $3000

annual recordkeeping and reporting costs; others will incur the $1,310,000 in capital costs and $367,000 in operating costs for each line at the facility and a further $3000 in monitoring, recordkeeping and reporting costs. In addition, the commenter said that most facilities will incur costs of at least $10,000 for each performance test required. The commenter stated that EPA did not account for these costs for performance testing.

Response. The commenter's assertions regarding control cost estimates are based upon the assumption that new control devices will be needed to comply with the GACT standards which we believe is not the case. Considering that all asphalt processing operations and the vast majority or asphalt roofing manufacturing operations are currently controlled, and considering the revised GACT emissions limits (which incorporate both the additional data provided by the commenter and the variability in the underlying emissions data) and the allowance for owners or operators to use manufacturer specifications when establishing monitoring parameter ranges for roofing lines in the final rule, we continue to believe that no new add-on control devices will be needed to comply with the GACT standards. Therefore, we do not believe that it is necessary to revise our approach for estimating control device costs. Additionally, we disagree with the commenter with regard to consideration of the costs of conducting compliance tests. We took into account the cost of conducting compliance tests in developing the final standards. In the Information Collection Request (ICR) prepared for this rulemaking, we assumed that 25 percent of the industry would need to conduct a new test (at a cost of $6,000) to demonstrate compliance with the GACT emission limits. We believe that this approach is reasonably conservative.

H. Miscellaneous

Comment. One commenter stated that in order for these rules to be implemented properly, EPA should provide sufficient additional funds to State and local clean air agencies. The commenter stated that in recent years, Federal grants for State and local air programs have amounted to only about one-third of what they should be, and budget requests for the last two years have called for additional cuts. According to the commenter, additional area source programs, which are not eligible for title V fees, will require significant increases in resources for State and local air agencies beyond what is currently provided. The commenter claims that without increased funding, some State and local air agencies may not be able to adopt and enforce additional area source rules.

Response. State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, the issue of funding for these resources is beyond the purview of today's rulemaking. The EPA today is promulgating standards for the Asphalt Processing and Asphalt Roofing Manufacturing area source category that reflect what constitutes GACT for the Urban HAP for which the source category was listed. GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT. Although the resource issue cannot be resolved through today's rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. The EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

VI. Summary of Impacts of the Final Standards

A. What Are the Air Impacts?

Since 1990, in addition to a lessening of air impacts due to the increased use of add-on controls in response to Federal and State permitting requirements, the asphalt processing and asphalt roofing manufacturing industry has further reduced its air impacts by reducing the amount of asphalt used to manufacture roofing products (reformulation), largely through the use of inorganic substrates which do not require the asphalt-intensive step of saturating the substrate. These process improvements have reduced the generation rate of PAH emissions by approximately 0.0015 lbs/ton of product manufactured before controls are applied. In addition to the PAH emission reductions, the process improvements undertaken by the industry since 1990 have resulted in reductions of approximately 0.02 lbs of total HAP, 0.29 lbs of THC, and 0.58 lbs of PM per ton of product manufactured.

We believe that the final standards codify, and thereby lock in, the reductions in PAH emissions, and the concomitant reductions in total HAP, THC, and PM emissions resulting from co-control, that have been achieved by the asphalt refining and asphalt roofing manufacturing industry since 1990 by requiring compliance with the level of control that can be achieved via the use of current GACT as applied to the reduced amount of asphalt used by the industry to produce asphalt roofing products.

B. What Are the Cost Impacts?

While some asphalt processing and asphalt roofing manufacturing facilities may need to conduct emissions tests to demonstrate compliance with the final standards, based on the available information, we believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the final standards using existing controls. Therefore, no additional air pollution control devices would be required. We have assumed that 38 facilities (50 percent) will need to install a pressure drop monitoring system for existing controls. Compliance with the final rule will not require any other capital expenditures. We do not expect compliance with the final rule to result in any new control device operational and maintenance costs because, absent any data to demonstrate otherwise, we have assumed that existing facilities are already following the manufacturer's instructions for operating and maintaining air pollution control devices and systems.

The annual cost of monitoring, reporting, and recordkeeping for this final rule is estimated at approximately $3,000 per facility per year for the first 3 years following promulgation. The costs are expected to be less than 1 percent of revenues. The annual cost estimate includes 8 hours per facility per year for preparing semiannual compliance reports.

The annual cost estimate includes 12,442 labor hours for the first 3 years following promulgation. This total includes 173 hours industry-wide for preparation of the Initial Notification in the first year and 173 hours industry-wide for preparation of the Notification of Compliance Status in the first year. The average total labor hour burden in the first year is 71 hours per facility,

which include 15 hours per facility for monitoring activities.

Information on our cost impact estimates on the sources expected to be subject to the final rule is available in the docket for this final rule. (*See* Docket ID No. EPA–HQ–OAR–2009–0027).

C. What Are the Economic Impacts?

The only measurable costs attributable to these final standards are associated with the monitoring, recordkeeping, and reporting requirements. These final standards are estimated to impact a total of 75 area source facilities. We estimate that 11 of these facilities are owned by small businesses. Our analysis indicates that this final rule would not impose a significant adverse impact on any facilities, large or small, because, even for the smallest sources, these costs are less than 1 percent of the individual company revenues.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

No detrimental secondary impacts are expected to occur from the asphalt processing and asphalt roofing manufacturing sources complying with the final rule because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PAH and PM emissions collected and there are no additional energy impacts associated with the operation of control devices or monitoring systems for the asphalt refining and asphalt roofing manufacturing sources. We expect no increase in the generation of wastewater or other water quality impacts. None of the control measures considered for this final rule generate a wastewater stream.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because OMB determined that it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final 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 recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP would require asphalt processing and asphalt roofing manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status, and to conduct continuous parametric monitoring and submit semi-annual compliance reports according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 4,147 labor hours per year at a total cost of $224,085 or approximately $3,000 per facility. 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. EPA displays OMB control numbers various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. We will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the final asphalt processing and asphalt roofing manufacturing area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 for NAICS 324122); (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. This final rule is estimated to impact all new and existing asphalt processing and asphalt roofing manufacturing area source facilities. We estimate that 11 facilities are owned by small entities. Although some small entities may incur capital costs to install additional monitoring equipment (*e.g.,* a pressure drop monitoring system for existing controls), we have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 1 percent of revenues for any individual facility. The costs are so small that the impact is not expected to be significant. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next year, and consequently, we did not estimate any impacts for new sources.

This final rule will not have a significant economic impact on a substantial number of small entities; however, EPA has, nonetheless, tried to reduce the impact of this final rule on small entities. The standards represent practices and controls that are common throughout the asphalt processing and asphalt roofing manufacturing industry. The standards also require only the essential monitoring, recordkeeping, and reporting needed to demonstrate and verify compliance. These final standards were developed based, in part, on information concerning small businesses included in the data provided by ARMA, as well as

information obtained through online permit database searches, consultation with small business representatives on the state and national level, and consultation with industry representatives that are affiliated with small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost of the rule is estimated at $224,085/yr. This final rule is not expected to impact State, local, or Tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule contains no requirements that apply to such governments, imposes no obligations upon them, and would 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 rule does not impose any requirements on state and local governments and therefore creates no substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did solicit comment from State program officials. A summary of these comments and EPA's response to these comments is provided in section V of this preamble.

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 final action imposes no requirements on 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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on 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 is based solely on technology performance. It is also not ''economically significant''.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this final rule will not likely have any significant adverse energy effects because no additional pollution controls or other equipment that consume energy will be needed to comply with the final rule.

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, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking involves technical standards. The EPA has decided to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5A, and 23 in conjunction with the final rule. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified.

Under §§ 63.7(f) and 63.8(f) of subpart A of the 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.

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, any 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 any 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.

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 December 2, 2009.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is to be amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart AAAAAAA to read as follows:

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

Applicability and Compliance Dates

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63.11559 Am I Subject to this Subpart?
63.11560 What are my Compliance Dates?

Standards and Compliance Requirements

63.11561 What are my Standards and Management Practices?
63.11562 What are my Initial Compliance Requirements?
63.11563 What are my Monitoring Requirements?
63.11564 What are my Notification, Recordkeeping, and Reporting Requirements?

Other Requirements and Information

63.11565 What General Provisions Sections Apply to this Subpart?
63.11566 What Definitions Apply to this Subpart?
63.11567 Who Implements and Enforces this Subpart?

Tables

Table 1 of Subpart AAAAAAA—Emission Limits for Asphalt Processing Operations
Table 2 of Subpart AAAAAAA—Emission Limits for Asphalt Roofing Manufacturing Operations
Table 3 of Subpart AAAAAAA—Test Methods
Table 4 of Subpart AAAAAAA—Operating Limits
Table 5 of Subpart AAAAAAA—Applicability of General Provisions to Subpart AAAAAAA

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

Applicability and Compliance Dates

§ 63.11559 Am I Subject to this Subpart?

(a) You are subject to this subpart if you own or operate an asphalt processing operation and/or asphalt roofing manufacturing operation that is an area source of hazardous air pollutant (HAP) emissions, as defined in § 63.2.

(b) This subpart applies to each new or existing affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) *Asphalt processing.* The affected source for asphalt processing operations is the collection of all blowing stills, as defined in § 63.11566, at an asphalt processing operation.

(2) *Asphalt roofing manufacturing.* The affected source for asphalt roofing manufacturing operations is the collection of all asphalt coating equipment, as defined in § 63.11566, at an asphalt roofing manufacturing operation.

(c) This subpart does not apply to hot mix asphalt plant operations that are used in the paving of roads or hardstand, or operations where asphalt may be used in the fabrication of a built-up roof.

(d) An affected source is a new affected source if you commenced construction or reconstruction after July 9, 2009.

(e) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(f) An affected source is an existing source if it is not new or reconstructed.

(g) This subpart does not apply to research or laboratory facilities, as defined in section 112(c)(7) of the Clean Air Act.

(h) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11560 What are my Compliance Dates?

(a) If you own or operate an existing affected source, you must be in compliance with the applicable provisions in this subpart no later than December 2, 2010. As specified in § 63.11562(f), you must demonstrate initial compliance within 180 calendar days after December 2, 2010.

(b) If you own or operate a new affected source, you must be in compliance with the provisions in this subpart on or before December 2, 2009 or upon startup, whichever date is later. As specified in § 63.11562(g), you must demonstrate initial compliance with the applicable emission limits no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

Standards and Compliance Requirements

§ 63.11561 What are my Standards and Management Practices?

(a) For asphalt processing operations, you must meet the emission limits specified in Table 1 of this subpart.

(b) For asphalt roofing manufacturing lines, you must meet the applicable emission limits specified in Table 2 of this subpart.

(c) These standards apply at all times.

§ 63.11562 What are my Initial Compliance Requirements?

(a) For asphalt processing operations, you must:

(1) Demonstrate initial compliance with the emission limits specified in Table 1 of this subpart by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart; or

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section.

(2) Establish the value or range of values of the operating parameters specified in Table 4 of this subpart:

(i) Using the operating parameter data recorded during the compliance emission tests; or

(ii) Using the operating parameter data recorded during a previously-conducted emission test.

(b) For asphalt roofing manufacturing lines that use a control device to comply with the emission limits in Table 2 of this subpart, you must:

(1) Demonstrate initial compliance by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart; or

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section.

(2) Establish the value of the operating parameter specified in Table 4 of this subpart for thermal oxidizers:

(i) Using the operating parameter data recorded during the compliance emission tests; or

(ii) Using the operating parameter data recorded during a previously-conducted emission test.

(3) Establish the value or range of values of the operating parameters

specified in Table 4 of this subpart for control devices other than thermal oxidizers:

(i) Using the operating parameter data recorded during the compliance emission tests;

(ii) Using the operating parameter data recorded during a previously-conducted emission test; or

(iii) Using manufacturer performance specifications.

(c) For asphalt roofing manufacturing lines that do not require a control device to comply with the emission limits in Table 2 of this subpart, you must:

(1) Demonstrate initial compliance by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart,

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section; or

(iii) Using process knowledge and engineering calculations as specified in paragraph (e) of this section.

(2) Establish the value or range of values of the operating parameters specified in Table 4 of this subpart:

(i) Using the operating parameter data recorded during the compliance emission tests;

(ii) Using the operating parameter data recorded during a previously-conducted emission test; or

(iii) Using process knowledge and engineering calculations as specified in paragraph (f) of this section.

(d) If you are using a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart for existing sources, as specified in paragraphs (a)(1)(ii), (b)(1)(ii), or (c)(1)(ii) of this section, the following conditions must be met:

(1) The emission test was conducted within the last 5 years;

(2) No changes have been made to the process since the time of the emission test;

(3) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(4) The data used to establish the value or range of values of the operating parameters, as specified in paragraphs (a)(2)(ii), (b)(2)(ii), or (c)(2)(ii) of this section, were recorded during the emission test.

(e) If you are using process knowledge and engineering calculations to demonstrate initial compliance as specified in paragraph (c)(1)(iii) of this section, you must prepare written documentation that contains the data and any assumptions used to calculate the process emission rate that demonstrate compliance with the emission limits specified in Table 2 of this subpart.

(f) If you are using process knowledge and engineering calculations to establish the value or range of values of operating parameters as specified in paragraph (c)(2)(iii) of this section, you must prepare written documentation that contains the data and any assumptions used to show that the process parameters and corresponding parameter values correlate to the process emissions.

(g) For existing sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2010.

(h) For new sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

(i) For emission tests conducted to demonstrate initial compliance with the emission limits specified in Tables 1 and 2 of this subpart, you must follow the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) You must conduct the tests while manufacturing the product that generates the greatest PAH and PM emissions to the control device inlet, or exiting the process if you are not using a control device to comply with the emissions limits specified in Tables 1 and 2 of this subpart.

(2) You must conduct a minimum of three separate test runs for each compliance test specified in paragraphs (a)(1)(i), (b)(1)(i), and (c)(1)(i) of this section according to the requirements specified in § 63.7(e)(3). The sampling time and sample volume of each test run must be as follows:

(i) For asphalt processing operations, the sampling time and sample volume for each test run must be at least 90 minutes or the duration of the coating blow or non-coating blow, whichever is greater, and 2.25 dscm (79.4 dscf).

(ii) For asphalt coating operations, the sampling time and sample volume for each test run must be at least 120 minutes and 3.00 dscm (106 dscf).

(3) For asphalt processing operations, you must use the following equations to calculate the asphalt charging rate (P).

(i) $P = (Vd)/(K' \Theta)$

Where:

P = asphalt charging rate to blowing still, Mg/hr (ton/hr).
V = volume of asphalt charged, m^3 (ft^3).
d = density of asphalt, kg/m^3 (lb/ft^3).
K′ = conversion factor, 1000 kg/Mg (2000 lb/ton).
Θ = duration of test run, hr.

(ii) $d = K_1 - K_2 T_i$

Where:

d = Density of the asphalt, kg/m^3 (lb/ft^3)
$d = K_1 - K_2 T_i$
K_1 = 1056.1 kg/m^3 (metric units)
= 66.6147 lb/ft^3 (English Units)
K_2 = 0.6176 kg/(m^3 °C) (metric units)
= 0.02149 lb/(ft^3 °F) (English Units)
T_i = temperature at the start of the blow, °C (°F)

(4) You must use the following equation to demonstrate compliance with the emission limits specified in Table 2 of this subpart:

E = [(C)*(Q)/(P)*(K)]

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton).
C = concentration of particulate matter, g/dscm (gr/dscf).
Q = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = the average asphalt roofing production rate or asphalt charging rate over the duration of the test, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg [7000 (gr/lb)].

§ 63.11563 What are my Monitoring Requirements?

(a) You must maintain the operating parameters established under § 63.11562(a)(2), (b)(2), (b)(3), and (c)(2) as specified in Table 4 of this subpart.

(b) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan for each monitoring system that addresses the following:

(1) Installation of the CPMS probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the probe or interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(i) In your site-specific monitoring plan, you must also address the following:

(A) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(B) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(C) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(c) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To determine the 3-hour average, you must:

(i) Have a minimum of four successive cycles of operation to have a valid hour of data.

(ii) Have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out-of-control according to your site-specific monitoring plan.

(iii) Determine the 3-hour average of all recorded readings for each operating day, except as stated in paragraph (g) of this section. You must have at least two of the three hourly averages for that period using only hourly average values that are based on valid data (*i.e.,* not from out-of-control periods).

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(d) For each temperature monitoring device, you must meet the CPMS requirements in paragraphs (c)(1) through (c)(3) of this section and the following requirements:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.8 °C or 1.0 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, the recorder sensitivity in the minor division must be at least 20 °F.

(4) Perform an accuracy check at least semiannually or following an operating parameter deviation:

(i) According to the procedures in the manufacturer's documentation; or

(ii) By comparing the sensor output to redundant sensor output; or

(iii) By comparing the sensor output to the output from a calibrated temperature measurement device; or

(iv) By comparing the sensor output to the output from a temperature simulator.

(5) Conduct accuracy checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly or following an operating parameter deviation, perform visual inspections of components if redundant sensors are not used.

(e) For each pressure measurement device, you must meet the CPMS requirements of paragraphs (e)(1) through (e)(6) of this section and the following requirements:

(1) Locate the pressure sensor(s) in, or as close as possible, to a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap for blockage daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the manufacturer's procedures; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) At least quarterly or following an operating parameter deviation, perform visible inspections on all components if redundant sensors are not used.

(f) For each electrostatic precipitator (ESP) used to control emissions, you must install and operate a CPMS that meets the requirements of paragraphs (c)(1) through (c)(3) of this section to provide representative measurements of the voltage supplied to the ESP.

(j) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(k) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(l) If you are not using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan. The plan must specify the process parameters established during the initial compliance assessment and how they are being monitored and maintained to demonstrate continuous compliance.

(m) If you would like to use parameters or means other than those specified in Table 4 of this subpart to demonstrate continuous compliance with the emission limits specified in Tables 1 and 2 of this subpart, you must apply to the Administrator for approval of an alternative monitoring plan under § 63.8(f). The plan must specify how process parameters established during the initial compliance assessment will be monitored and maintained to demonstrate continuous compliance.

(n) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.11564 What are my Notification, Recordkeeping, and Reporting Requirements?

(a) You must submit the notifications specified in paragraphs (a)(1) through (a)(6) of this section.

(1) You must submit all of the notifications in §§ 63.5(b), 63.7(b); 63.8(e) and (f); 63.9(b) through (e); and 63.9(g) and (h) that apply to you by the dates specified in those sections.

(2) As specified in § 63.9(b)(2), if you have an existing affected source, you must submit an Initial Notification not later than 120 calendar days after December 2, 2009.

(3) As specified in § 63.9(b)(4) and (5), if you have a new affected source, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(4) You must submit a notification of intent to conduct a compliance test at least 60 calendar days before the compliance test is scheduled to begin, as required in § 63.7(b)(1).

(5) You must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the compliance test results, before the close of business on the 60th calendar day following the completion of the compliance test according to § 63.10(d)(2).

(6) If you are using data from a previously-conducted emission test to serve as documentation of compliance with the emission standards and

operating limits of this subpart, you must submit the test data in lieu of the initial compliance test results with the Notification of Compliance Status required under paragraph (a)(5) of this section.

(b) You must submit a compliance report as specified in paragraphs (b)(1) through (b)(4) of this section.

(1) If you are using a control device to comply with the emission limits, the compliance report must identify the controlled units (*e.g.,* blowing stills, saturators, coating mixers, coaters). If you are not using a control device to comply with the emission limits, the compliance report must identify the site-specific process operating parameters monitored to determine compliance with the emission limits.

(2) During periods for which there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, the compliance report must contain the information specified in paragraphs (b)(2)(i) through (b)(2)(v) of this section.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A statement that there were no deviations from the emission limitations during the reporting period.

(v) If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(3) For each deviation from an emission limitation (emission limit and operating limit), you must include the information in paragraphs (b)(3)(i) through (b)(3)(xii) of this section.

(i) The date and time that each deviation started and stopped.

(ii) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(viii) An identification of each air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the CPMS.

(xi) The date of the latest CPMS certification or audit.

(xii) A description of any changes in CPMS or controls since the last reporting period.

(4) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report specified in paragraph (b) of this section according to the following dates:

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11560 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11560.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11560.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(c) You must maintain the records specified in paragraphs (c)(1) through (c)(10) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Copies of emission tests used to demonstrate compliance and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Documentation that shows that the following conditions are true if you use a previously-conducted emission test to demonstrate initial compliance as specified in § 63.11562(a)(1)(ii), (b)(1)(ii), and (c)(1)(ii):

(i) The test was conducted within the last 5 years;

(ii) No changes have been made to the process since the time of the emission test;

(iii) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(iv) The data used to establish the value or range of values of the operating parameters, as specified in § 63.11562(a)(2)(ii), (b)(2)(ii), or (c)(2)(ii), were recorded during the emission test.

(4) Documentation that identifies the operating parameters and values specified in Table 4 of this subpart and that contains the data used to establish the parameter values as specified in § 63.11562(a)(2), (b)(2), (b)(3), or (c)(2).

(5) Copies of the written manufacturers performance specifications used to establish operating parameter values as specified in § 63.11562(b)(3)(iii).

(6) Documentation of the process knowledge and engineering calculations used to demonstrate initial compliance as specified in § 63.11562(e).

(7) Documentation of the process knowledge and engineering calculations used to establish the value or range of values of operating parameters as specified in § 63.11562(f).

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (l).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(m), if applicable.

(10) Records of the operating parameter values required in Table 4 of this subpart to show continuous compliance with each operating limit that applies to you.

Other Requirements and Information

§ 63.11565 What General Provisions Sections Apply to this Subpart?

You must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 5 of this subpart.

§ 63.11566 What Definitions Apply to this Subpart?

Asphalt coating equipment means the saturators, coating mixers, and coaters

used to apply asphalt to substrate to manufacture roofing products (*e.g.,* shingles, roll roofing).

Asphalt flux means the organic residual material from distillation of crude oil that is generally used in asphalt roofing manufacturing and paving and non-paving asphalt products.

Asphalt processing operation means any operation engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to raise the softening point and to reduce penetration of the oxidized asphalt. An asphalt processing facility includes one or more asphalt flux blowing stills.

Asphalt roofing manufacturing operation means the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps. The equipment configuration of an asphalt roofing manufacturing process varies depending upon the type of substrate used (*i.e.,* organic or inorganic). For example, an asphalt roofing manufacturing line that uses organic substrate (*e.g.,* felt) typically would consist of a saturator (and wet looper), coating mixer, and coater (although the saturator could be bypassed if the line manufacturers multiple types of products). An asphalt roofing manufacturing line that uses inorganic (fiberglass mat) substrate typically would consist of a coating mixer and coater.

Blowing still means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate of the asphalt flux, creating oxidized asphalt.

Built-up roofing operations means operations involved in the on-site (*e.g.,* at a commercial building) assembly of roofing system components (*e.g.,* asphalt, substrate, surface granules).

Coater means the equipment used to apply amended (filled or modified) asphalt to the top and bottom of the substrate (typically fiberglass mat) used to manufacture shingles and rolled roofing products.

Coating mixer means the equipment used to mix coating asphalt and a mineral stabilizer, prior to applying the stabilized coating asphalt to the substrate.

Hot-mix asphalt operation means operations involved in mixing asphalt cement and aggregates to produce materials for paving roadways and hardstand (*e.g.,* vehicle parking lots, prepared surfaces for materiel storage).

Particulate matter (PM) means, for the purposes of this subpart, includes any material determined gravimetrically using EPA Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing And Asphalt Roofing Industry (40 CFR Part 60, Appendix A–3).

Responsible official is defined in § 63.2.

Saturator means the equipment used to impregnate a substrate (predominantly organic felt) with asphalt. Saturators are predominantly used for the manufacture of rolled-roofing products (*e.g.,* saturated felt). For the purposes of this subpart, the term saturator includes impregnation vat and wet looper.

Wet looper means the series of rollers typically following the saturator used to provide additional absorption time for asphalt to penetrate the roofing substrate.

§ 63.11567 Who Implements and Enforces this Subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.11559, 63.11560, 63.11561, 63.11562, and 63.11563.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Tables

TABLE 1 OF SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT PROCESSING (REFINING) OPERATIONS

For * * *	You must meet the following emission limits * * *
1. Blowing stills	a. Limit PAH emissions to 0.003 lb/ton of asphalt charged to the blowing stills; or b. Limit PM emissions to 1.2 lb/ton of asphalt charged to the blowing stills.

TABLE 2 OF SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT ROOFING MANUFACTURING (COATING) OPERATIONS

For * * *	
1. Coater-only production lines	a. Limit PAH emissions to 0.0002 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.06 lb/ton of asphalt roofing product manufactured.
2. Saturator-only production lines	a. Limit PAH emissions to 0.0007 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.30 lb/ton of asphalt roofing product manufactured.
3. Combined saturator/coater production lines	a. Limit PAH emissions to 0.0009 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.36 lb/ton of asphalt roofing product manufactured.

TABLE 3 OF SUBPART AAAAAAA OF PART 63—TEST METHODS

For * * *	You must use * * *
1. Selecting the sampling locations[a] and the number of traverse points.	EPA test method 1 or 1A in appendix A to part 60.
2. Determining the velocity and volumetric flow rate.	EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60.
3. Determining the gas molecular weight used for flow rate determination.	EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60.
4. Measuring the moisture content of the stack gas.	EPA test method 4 in appendix A to part 60.
5. Measuring the PM emissions	EPA test method 5A in appendix A to part 60.
6. Measuring the PAH emissions	EPA test method 23[b] with analysis by SW–846 Method 8270D.

[a] The sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.

[b] When using EPA Method 23, the toluene extraction step specified in section 3.1.2.1 of the method should be omitted.

TABLE 4 OF SUBPART AAAAAAA OF PART 63—OPERATING LIMITS

If you comply with the emission limits using * * *	You must establish an operating value for * * *	And maintain[a] * * *
1. A thermal oxidizer	Combustion zone temperature	The 3-hour average combustion zone temperature at or above the operating value established as specified in § 63.11562(a)(2) and (b)(2).
2. A high-efficiency air filter or fiber bed filter.	a. Inlet gas temperature[b], and b. Pressure drop across device[b]	The 3-hour average inlet gas temperature within the operating range established as specified in § 63.11562(a)(2) and (b)(3). The 3-hour average pressure drop across the device within the approved operating range established as specified in § 63.11562(a)(2) and (b)(3).
3. An electrostatic precipitator (ESP).	Voltage[c] to the ESP	The 3-hour average ESP voltage[c] at or above the approved operating value established as specified in § 63.11562(a)(2) and (b)(3).
4. Process modifications (*i.e.*, a control device is not required).	Appropriate process monitoring parameters.[d]	The monitoring parameters within the operating values established as specified in § 63.11562(c)(2).

[a] The 3-hour averaging period applies at all times other than startup and shutdown, as defined in § 63.2. Within 24 hours of a startup event, or 24 hours prior to a shutdown event, you must normalize the emissions that occur during the startup or shutdown, when there is no production rate available to assess compliance with the lb/ton of product emission limits, with emissions that occur when the process is operational. The emissions that occur during the startup or shutdown event must be included with the process emissions when assessing compliance with the emission limits specified in Tables 1 and 2 of this subpart.

[b] As an alternative to monitoring the inlet gas temperature and pressure drop, you can use a leak detection system that identifies when the filter media has been comprised.

[c] As an alternative to monitoring the ESP voltage, you can monitor the ESP instrumentation (*e.g.* light, alarm) that indicates when the ESP must be cleaned and maintain a record of the instrumentation on an hourly basis. Failure to service the ESP within one hour of the indication is an exceedance of the applicable monitoring requirements specified in § 63.11563(a).

[d] If you are not using a control device to comply with the emission limits specified in Table 2 of this subpart, the process parameters and corresponding parameter values that you select to demonstrate continuous compliance must correlate to the process emissions.

TABLE 5 OF SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA

Citation	Subject	Applies to subpart AAAAAAA
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Nonopacity Emission Standards	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7(a)–(d)	Performance Testing Requirements	Yes.
§ 63.7(e)(1)	Performance Testing Requirements	No. Subpart AAAAAAA specifies the conditions under which performance tests must be conducted.
§ 63.7(e)(2)–(4)	Conduct of Performance Tests and Data Reduction	Yes.

TABLE 5 OF SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA—Continued

Citation	Subject	Applies to subpart AAAAAAA
§ 63.7(f)–(h)	Use of Alternative Test Method; Data Analysis, Recordkeeping, and Reporting; and Waiver of Performance Tests.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	No. Subpart AAAAAAA does not allow CEMS.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Conduct of Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.
§ 63.8(d)	CMS Quality Control	No; § 63.11563 specifies the CMS requirements.
§ 63.8(e)–(f)	CMS Performance Evaluation	Yes.
§ 63.8(g)(1)–(4)	Data Reduction Requirements	Yes.
§ 63.8(g)(5)	Data to Exclude from Averaging	No. All monitoring data must be included when calculating averages.
§ 63.9	Notification Requirements	Yes.
§ 63.10(a)	Recordkeeping and Reporting Requirements—Applicability	Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes.
§ 63.10(b)(2)(i)–(iii)	General Recordkeeping Requirements	Yes.
§ 63.10(b)(2)(iv)–(v)	Records of Actions Taken During Startup, Shutdown, and Malfunction Plans.	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(b)(2)(vi)–(xiv)	General Recordkeeping Requirements	Yes.
§ 63.10(c)(1)–(14)	Additional Recordkeeping Requirements for Sources with Continuous Monitoring Systems.	Yes.
§ 63.10(c)(15)	Additional Recordkeeping Requirements for Sources with Continuous Monitoring Systems.	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(d)(1)–(4)	General Reporting Requirements	Yes.
§ 63.10(d)(5)	Periodic Startup, Shutdown, and Malfunction Reports	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(e)	Additional Reporting Requirements for Sources with Continuous Monitoring Systems.	Yes.
§ 63.10(f)	Waiver of Recordkeeping or Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

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Part IV

The President

Proclamation 8459—World AIDS Day, 2009

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Presidential Documents

Title 3—

The President

Proclamation 8459 of November 25, 2009

World AIDS Day, 2009

By the President of the United States of America

A Proclamation

Our Nation joins the world in celebrating the extraordinary advancements we have made in the battle against HIV and AIDS, and remembering those we have lost. Over the past three decades, brave men and women have fought devastating discrimination, stigma, doubt, and violence as they stood in the face of this deadly disease. Many of them would not be here today, but for the dedication of other persons living with HIV, their loved ones and families, community advocates, and members of the medical profession. On World AIDS Day, we rededicate ourselves to developing a national AIDS strategy that will establish the priorities necessary to combat this devastating epidemic at home, and to renewing our leadership role and commitments abroad.

Though we have been witness to incredible progress, our struggle against HIV/AIDS is far from over. With an infection occurring every nine-and-a-half minutes in America, there are more than one million individuals estimated to be living with the disease in our country. Of those currently infected, one in five does not know they have the condition, and the majority of new infections are spread by people who are unaware of their own status. HIV/AIDS does not discriminate as it infiltrates neighborhoods and communities. Americans of any gender, age, ethnicity, income, or sexual orientation can and are contracting the disease.

Globally, there are over 33 million people living with HIV. While millions have died from this disease, the death rate is slowly declining due, in part, to our Nation's global effort through the President's Emergency Plan for AIDS Relief (PEPFAR) program. However, HIV remains a leading cause of death worldwide. Women and children around the world are particularly vulnerable due to gender inequalities, gaps in access to services, and increases in sexual violence. While the statistics are distressing, new medications and scientific advancements give us reason for hope.

Tackling this disease will take an aggressive, steadfast approach. My Administration is developing a national HIV/AIDS strategy to bolster our response to the domestic epidemic, and a global health initiative that will build on PEPFAR's success. We will develop a strategy to reduce HIV incidence, improve access to care, and help eliminate HIV-related health disparities. We have already ensured that visitors to our shores living with HIV are not marginalized and discriminated against because of their HIV status. We have also secured the continuation of critical HIV/AIDS care and treatment services. Today, we recommit ourselves to building on the accomplishments of the past decades that have dramatically changed the domestic and global HIV/AIDS landscape.

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 December 1, 2009, as World AIDS Day. I urge the Governors of the States and the territories subject to the jurisdiction of the United States, and the American people to join in appropriate activities to remember those who have lost their

lives to AIDS, and to provide support and comfort to those living with this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of November, 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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